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Vol. I.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 352-73

THE INTERSTATE COMMERCE COMMISSION,
APPELLANT,

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY
ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 28, 1906.

(20,317.)

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INDEX.

	Original.	Print.
Captions, &c.	*a*	1
Placita..	3	2
Petition (No. 27723)	4	3
Exhibit A—Petition to Interstate Commerce Commission	12	9
B—Answer, C., St. P., M. & O. Ry. Co. to petition	18	11
C—Answer, C., M. & St. P. Ry. Co. to petition	22	12
D—Answer, Wabash R. R. Co. to petition	26	13
E—Answer, Ills. Central R. R. Co. to petition	30	14
F—Answer, C. G. W. Ry. Co. to petition	34	16
G—Answer, C., R. I. & P. Ry. Co. to petition	38	18
H—Answer, C. & A. Ry. Co. to petition	42	19
I—Answer, W. C. Ry. Co. to petition	46	20
J—Answer, C., B. & Q. R. R. Co. *et al.* to petition	51	21
K—Answer, B., C. R. & N. Ry. Co. to petition	55	23

JUDD & DETWEILER (INC.) PRINTERS, WASHINGTON, D. C., JANUARY 28, 1907.

	Original.	Print.
Exhibit L—Answer, M. & St. L. R. R. Co. to petition	59	23
M—Answer, M., K. & T. Ry. Co. to petition	63	24
N—Answer, M. P. Ry. Co. to petition	67	25
O—Answer, Iowa Central Ry. Co. to petition	71	26
P—Report and opinion of the Commission	75	28
Q—Order of the Commission	106	47
Certificate of Secretary Moseley to the foregoing exhibits	110	49
Order to show cause, April 29, 1905	111	50
Order extending time to answer, June 1, 1905	112	50
Answer of Chicago Great Western Ry. Co.	114	51
Chicago, St. Paul, Minneapolis and Omaha Ry. Co.	128	57
Chicago and Northwestern Ry. Co.	140	65
Chicago and Alton Ry. Co.	153	72
Wabash Railroad Co.	167	80
Missouri, Kansas and Texas Ry. Co.	177	86
Minneapolis and St. Louis Railroad Co.	191	94
Burlington, Cedar Rapids and Northern Ry. Co.	203	101
Iowa Central Ry. Co.	215	108
Chicago, Rock Island and Pacific Ry. Co.	229	116
Illinois Central Railroad Co.	241	123
Missouri Pacific Ry. Co.	253	131
Joint answer of Chicago, Burlington and Quincy Ry. Co. *et al.*	266	139
Answer of Chicago, Milwaukee and St. Paul Ry. Co.	279	147
Order setting cause for final hearing, July 3, 1905	292	154
Order of consolidation, September 15, 1905	293	155
Petition (case No. 27829) (omitted in printing)	294	—
Order for service, July 17, 1905 (" ")	301	—
Answer of Missouri, Kansas and Texas Ry. (" ")	302	—
Plea of Burlington, Cedar Rapids and Northern Ry. Co. *et al.* (omitted in printing)	303	—
Plea of Missouri Pacific Ry. Co. (omitted in printing)	320	—
Plea of Chicago Great Western Ry. Co. (" ")	325	—
Order of August 15, 1905, as to hearing pleas, &c. (omitted in printing)	328	—
Answer of Wabash Railroad Co. (omitted in printing)	329	—
Petition of Union Stock Yards Co. of Omaha	336	155
Answer of Iowa Central Ry. Co. (omitted in printing)	342	—
Answer of Minneapolis and St. Louis Railroad Co. (omitted in printing)	347	—
Answer of Missouri Pacific Ry. Co. (omitted in printing)	352	—
Joint answer of Burlington, Cedar Rapids and Northern Ry. and others (omitted in printing)	361	—
Order of consolidation, September 15, 1905 (omitted in printing)	380	—
Order of September 15, 1905, as to pleadings, &c.	381	159
Petition of T. M. Sinclair & Co., Limited	383	160
St. Joseph Stock Yards Co.	387	162
St. Paul Union Stock Yards Co.	393	166
Sioux City Stock Yards Co.	399	169
Railroad and Warehouse Commissioners	404	172
Answer of Chicago Great Western Ry. Co. (omitted in printing)	412	—
Order of Sept. 18, 1905, continuing hearing (" ")	417	—
Sept. 19, 1905, continuing hearing (" ")	418	—
Sept. 20, 1905, continuing hearing (" ")	419	—

	Original.	Print.
Order of Sept. 21, 1905, continuing hearing (omitted in printing)..	420	—
Sept. 22, 1905, continuing hearing (" ")..	421	—
Sept. 25, 1905, continuing hearing (" ")..	422	—
Sept. 26, 1905, continuing hearing (" ")..	423	—
Sept. 27, 1905, continuing hearing (" ")..	424	—
Sept. 28, 1905, continuing hearing (" ")..	425	—
Sept. 29, 1905, continuing hearing (" ")..	426	—
Oct. 2, 1905, continuing hearing.. (" ")..	427	—
Oct. 3, 1905, continuing hearing.. (" ")..	428	—
Oct. 4, 1905, continuing hearing.. (" ")..	429	—
Oct. 5, 1905, continuing hearing . (" ")..	430	—
Oct. 6, 1905, continuing hearing.. (" ")..	431	—
Oct. 11, 1905, continuing hearing. (" ")..	432	—
Oct. 12, 1905, continuing hearing. (" ")..	433	—
Oct. 13, 1905, continuing hearing. (" ")..	434	—
Oct. 14, 1905, concluding hearing. (" ")..	435	—
Opinion	436½	177
Order dismissing petitions, November 20, 1905	438	178
Order substituting petition, January 12, 1906 (No. 27723)	441	179
Order substituting petition, January 12, 1906 (No. 27829)	442	179
Petition for appeal	443	180
Assignment of errors	445	181
Order allowing appeal, January 15, 1906	453	186
Order enlarging time to file record, February 2, 1906	454	187
Order enlarging time to file record, March 9, 1906	455	188
Order of March 15, 1906, granting leave to withdraw papers, &c	456	188
Order of March 20, 1906, granting leave to withdraw papers, &c	458	189
Order enlarging time to file record, April 10, 1906	460	190
Order enlarging time to file record, May 10, 1906, &c	462	191
Order as to certificate of evidence, June 1, 1906	463	192
Certificate of evidence	1	193
Appearances, &c.	2	193
Opening statements of counsel, &c. (omitted in printing)..	6	—
Offers by complainant	32	195
Certified copy of the report and opinion of the Interstate Commerce Commission in the case of The Chicago Live Stock Exchange *vs.* Chicago Great Western Ry. Company *et al.* (omitted in printing)	63*a*	—
Offers of Minn. R. R. & Warehouse Commission	71	212
Testimony of Thomas Yapp	73	213
Statement showing number of heads of live stock listed for taxation; also number received at South St. Paul stock yards from 1898 to 1904, inclusive (omitted in printing)	103½	—
Offers of defendants	115	236
Testimony of George H. Crosby	115	236
Exhibit 1—Statement showing rates in cents per hundred pounds, &c.	117½	237
2—Statement of earnings for year 1905	119½	239
3—Comparative statement	124½	241
4—Live stock tariffs.. (omitted in printing)..	130½	—
7—Statement of cars	142½	250
A—Memorandum	236½	295

	Original.	Print.
Testimony of Wm. A. Gardner	285	319
Exhibit A—Statement of stock yards—		
Wisconsin division (omitted in printing)	329*a*	—
Galena division (" ")	329*c*	—
Iowa division (" ")	329*f*	—
Iowa and Minn. division (omitted in printing)	329*i*	—
Northern Iowa division (omitted in printing)	329*k*	—
Sioux City division (omitted in printing)	329*m*	—
Madison division (" ")	329*o*	—
Minn. division (" ")	329*r*	—
Statement of cost of stock yards and tracks	329*u*	339
Exhibit A F B D—Forty-fifth annual report of C. & N. W. Ry. Co., June 30, 1904 (parts omitted in printing)	393*a*	370
B—Statement marked "Fresh meat and packing-house products"	412*a*	382
C—Statement marked "Live stock"	412*b*	383
Testimony of William E. Keepers	441	397
Exhibit No. 1 —Statement of rates	442½	398
No. 2 —Statement of freight receipts	443½	399
No. 3 —Comparative statement	444*a*	401
No. 3½—Comparative statement	448*a*	407
No. 3½—Comparative statement	450*a*	409
No. 4 —Tariffs (omitted in printing)	452*a*	—
No. 5 —Statement	455*a*	417
Testimony of Fletcher C. Rice	526	452
Exhibit No. 2—Statement showing names of stations, &c (part omitted in printing)	554*a*	466
Testimony of J. H. Highland	629	503
Exhibit No. 1—Statement	629*a*	505
No. 2—Statement	635*a*	508
Testimony of R. M. Calkins	670	525
Exhibit No. 3 —Statement	672*a*	526
No. 3½—Statement	674*a*	528
No. 4 —Statement	674*b*	529
No. 5 —Statement	674*e*	532
No. 5 —Statement (omitted in printing)	674*g*	—
No. 6 —Statement	676*a*	536
No. 7 —Statement	678*a*	537
A—Statement	681*a*	539
B—Statement	681*b*	540
C—Statement	682*a*	541
D—Statement	683*a*	542
E—Statement	684*a*	543
F—Statement	684*b*	544
Testimony of J. N. Tittemore	733	567
Exhibit No. 1 —Statement	734*a*	568
No. 2 —Statement	740*a*	571
No. 2½—Statement	743*a*	573
No. 3 —Statement	744*a*	574
No. 4 —Statement	748*a*	577

	Original.	Print.
Exhibit No. 5 —Schedules.....(omitted in printing)..	751*a*	—
No. 6 —Statement	754*a*	580
Testimony of E. T. Koch.....	786	597
A. B. Stickney	834	621
Thomas D. Foster	880	641
A. L. Eberhart.....	910	657
Exhibit No. 1—Statement.....	913	659
Testimony of George E. Simpson	930	671
Exhibit No. 1—Statement (part omitted in printing)..	946*a*	679
Testimony of A. B. Stickney (resumed).	1014	713
Harry Gower.....	1026	718
Exhibit No. 1—Statement	1027*a*	719
No. 2—Statement.....	1032*a*	722
No. 3—Freight tariffs, &c.	1040*a*	727
No. 4—Statement.....	1041*a*	749
No. 5—Statement.	1042*a*	751
No. 6—Statement.....	1042*b*	752
No. 7—Statement.....	1044*a*	753
No. 8—Statement.....	1046*a*	754
No. 9—Statement.	1046*b*	755
Testimony of Mark D. Flower.	1083	774
Exhibit No. 1—Statement	1093	779
No. 3—Map.....(omitted in printing)..	1099*a*	—
No. 2—Statement.....	1101	786
Testimony of John M. Daly.....	1124	798
Exhibit No. 1—Statement	1172*a*	820
No. 19—Fifty-second annual report of directors Ills. Central R. R. Co. for year ending June 30, 1902 (parts omitted in printing).....	1189*a*	831
No. 17—Fifty-third annual report of directors Ills. Central R. R. Co. for year ending June 30, 1903 (omitted in printing)	1189*r*	—
No. 18—Fifty-fourth annual report of directors Ills. Central R. R. Co. for year ending June 30, 1904 (part omitted in printing).....	1189*s*	842
Exhibit X—Statement... (part omitted in printing)..	1206*a*	859
2—Statement	1237*a*	874
Testimony of F. L. Eaton.....	1238	877
Exhibit A—Statement.....	1239	878
B—Statement....	1245	881
Testimony of E. J. Baird	1269	898
Exhibit No. 1—Rules and regulations for the transportation of live stock (omitted in printing)	1269*a*	—
No. 2—Rules and regulations for the transportation of live stock (omitted in printing)	1270*a*	—
No. 3—Rules and regulations for the transportation of live stock (omitted in printing)	1270*c*	—

	Original.	Print.
Exhibit No. 4—Rules and regulations for the transportation of live stock (omitted in printing)	1271a	—
No. 5—Rules and regulations for the transportation of live stock (omitted in printing)	1271c	—
Exhibit No. 6—Rules and regulations for the transportation of live stock (omitted in printing)	1271i	—
Testimony of R. M. Calkins (recalled)	1277	902
Exhibit — Statements	1279a	905
Testimony of O. P. Anderson	1283	914
Exhibit No. 1—Comparison of rates	1286a	915
Testimony of Hiram R. McCullough	1288	921
Exhibit No. 1—Statement	1288a	922
No. 2—Statement	1290a	923
No. 3—Statement	1291a	924
No. 4—Statement	1293a	926
No. 5—Statement	1295a	933
No. 6—Freight tariff...(omitted in printing)	1295b	—
No. 7—Statement	1297a	935
Map....(omitted in printing)	1300a	—
Exhibit No. 9—Freight tariff..(" ")	1300b	—
No. 10—Statement	1300c	937
No. 11—Statement	1300d	938
Testimony of Hiram R. McCullough	1305	940
Exhibit A—Statement	1306a	941
B—Statement	1306b	942
C—Statement	1307a	943
D—Statement	1307b	943
Testimony of Wm. A. Gorman	1357	967
Exhibit No. 1—Statement	1358a	969
Testimony of H. R. McCullough (recalled)	1359	973
Exhibit X—Statement	1360a	975
Documentary evidence introduced	1367	986
Appendix G—Table LXVII	1367a	987
Table LXVII	1368a	989
Table LXVIII	1369a	993
Table LXIX	1369b	994
Table LXX	1369c	995
Table IV	1369d	996
Testimony of William J. C. Kenyon	1374	998
Exhibit A —Statement	1408a	1017
B —Statement	1408g	1023
C —Statement	1408h	1024
D —Statement	1408i	1025
E —Statement	1408j	1026
F —Statement	1408k	1027
G —Statement	1408l	1028
Ga—Statement	1408m	1029
H —Statement	1408o	1031
I —Freight tariff ....(omitted in printing)..	1408p	—
L —Freight tariff ....(" ")..	1408q	—

	Original.	Print.
Exhibit K —Freight tariff ....(omitted in printing)..	1408*r*	—
M —Freight tariff ....(" ")..	1408*s*	—
N —Freight tariff.....(" ")..	1408*t*	—
O —Freight tariff.....(" ")..	1408*u*	—
P —Freight tariff.....(" ")..	1408*v*	—
Q —Freight tariff.....(" ")..	1408*w*	—
R —Freight tariff.....(" ")..	1408*x*	—
S —Freight tariff.....(" ")..	1408*y*	—
T —Freight tariff.....(" ")..	1408*z*	—
U —Freight tariff ....(" ")..	1408*aa*	—
V —Freight tariff ....(" ")..	1408*bb*	—
W —Freight tariff .. .(" ")..	1408*cc*	—
X —Freight tariff.....(" ")..	1408*dd*	—
Y —Freight tariff.....(" ")..	1408*ee*	—
Z —Freight tariff.....(" ")..	1408*ff*	—
Z^1 —Freight tariff.....(" ")..	1408*gg*	—
Z^2 —Freight tariff. ...(" ")..	1408*hh*	—
Z^3 —Freight tariff.....(" ")..	1408*ii*	—
Z^4 —Freight tariff.....(" ")..	1408*jj*	—
Defendants rest.	1409	1033
Evidence for complainant in rebuttal.....	1409	1033
Testimony of H. L. Wilson.....	1409	1033
Oscar Stribling...	1461	1060
H. L. Wilson (recalled).....	1473	1066
James Delany	1473	1066
Joseph Cox	1485	1072
S. J. Wheeler	1491	1075
Evidence for defendants	1496	1078
Testimony of G. H. Crosby (resumed)	1496	1078
General Exhibit 9—Statement.....	1501*a*	1080
Report of cars.....	1501*c*	1083
Further evidence in rebuttal.....	1502	1099
Testimony of E. P. Ripley	1502	1099
Exhibit A^1—Statement.....	1514*a*	1104
B —Statement.	1514*b*	1105
C —Statement	1514*c*	1106
A^3—Diagram.	1540*a*	1119
No. 1—Tenth annual report of A., T. & S. F. Ry. Co. for year ending June 30, 1905 (parts omitted in printing).....	1613*a*	1155
D —Eighth annual report of A., T. & S. F. Ry. Co. for year ending June 30, 1903 (part omitted in printing)	1613*f*	1158
D^2—Diagram.....	1620*a*	1165
E —Diagram	1620*b*	1166
Testimony of A. Sykes	1621	1167
Documentary evidence for defendants.....	1659	1187
Appendix G—Table IX..	1659*a*	1188
Further evidence in rebuttal.	1659	1190
Testimony of B. S. Cusey....	1659	1190
E. P. Ripley (resumed)	1694	1207
Exhibit—Statement.....	1705*a*	1212

	Original.	Print.
Exhibit—Statement	1705*d*	1213
Exhibit—Telegram	1705*e*	1214
Exhibit—Telegram	1705*f*	1214
Exhibit—Statement	1765*g*	1214
Testimony of James Peabody	1711	1219
Exhibit C[1]—Statement	1730*a*	1228
Testimony of W. S. Witten	1742	1234
Exhibit—Letter, Ashby to Leonard, Sept. 26, 1905	1784*a*	1257
Testimony of M. P. Buel	1785	1258
A. L. Ames	1833	1281
M. P. Buel (resumed)	1943	1335
James Peabody (resumed)	1966	1346
Exhibit—Statements	2012*a*	1368
Testimony of James V. Mahoney	2048	1391
Exhibit No. 1—Statement	2053*a*	1392
No. 2—Statement	2053*b*	1393
No. 3—Statement	2053*c*	1394
No. 4—Statement	2053*d*	1395
No. 5—Statement	2053*g*	1396
No. 6—Statement	2053*m*	1397
Freight tariff.. (omitted in printing)..	2073*a*	—
Freight tariff.. (" ")..	2073*b*	—
Freight tariff.. (" ")..	2073*c*	—
Testimony of William S. Tasker	2074	1407
John McCarthy	2113	1427
J. W. Moore	2134	1438
Charles W. Baker	2145	1443
Exhibit—Statements	2204*a*	1472
Exhibit—Chart	2204*d*	1477
Testimony of D. Miller	2226	1487
Exhibit Book—Tonnage rating of freight engines, C., B. & Q. R. R. Co. (omitted in printing)	2265*a*	—
Testimony of W. B. Biddle	2269	1505
B. S. Cusey (resumed)	2296	1517
Exhibit A—Statement	2334*a*	1537
B—Statement	2334*b*	1537
C—Statement	2334*c*	1538
D—Statement	2334*d*	1539
E—Statement	2334*e*	1539
I—Statements	2334*k*	1542
Testimony of T. W. Tomlinson	2335	1545
Exhibit 1—Pamphlet.....(omitted in printing)..	2344*a*	—
2—Pamphlet.....(" ")..	2344*b*	—
3—Pamphlet.....(" ")..	2344*c*	—
4—Pamphlet.....(" ")..	2344*d*	—
5—Pamphlet.....(" ")..	2344*e*	—
6—Pamphlet.....(" ")..	2346*a*	—
7—Statements	2348*a*	1552
—Statements	2388*a*	1578
10—Statements	2401*a*	1586
9—Statements	2408*a*	1590
—Maps.....(omitted in printing)..	2408*b*	—

	Original.	Print.
Exhibit 12—Statement	2410*a*	1592
—Statements	2418*a*	1597
14—Statement	2455*a*	1627
15—Statement	2465*a*	1633
211—Statement	2465*b*	1634
—Statement	2467*a*	1635
201—Statement	2468*a*	1637
203—Statement	2475*a*	1641
—Table XLIX	2476*a*	1643
—Table LXVIII	2476*b*	1644
Exhibit—Table LXIX	2476*bb*	1645
Exhibit—Table LXX	2476*c*	1646
Exhibit—Table LXXI	2476*cc*	1647
Exhibit 204—Statement	2476*d*	1648
205—Statement	2476*e*	1649
206—Statement	2476*f*	1650
207—Statement	2476*g*	1651
208—Statement	2476*gg*	1652
209—Statement	2476*h*	1653
—Statement	2476*i*	1654
Offers of exhibits, &c	2491	1663
General Exhibit 1—Statement	2492*a*	1664
—Statements	2493*a*	1666
4—Affidavit of J. G. Martin	2494*a*	1676
5—Statement	2494*b*	1677
6—Extracts from testimony of A. C. Bird	2496*a*	1684
—Tenth report C. G. W. Ry. Co. (parts omitted in printing)	2496*i*	1690
—Forty-third report C. & N. W. Ry. Co. (parts omitted in printing)	2496*m*	1692
—Twenty-second report C., R. I. & P. Ry. Co. (parts omitted in printing)	2496*t*	1697
—Statement	2499*a*	1702
—Thirty-sixth report Union Stock Yards and Transit Co. (omitted in printing)	2500*a*	—
—Thirty-first report Kansas City stock yards (omitted in printing)	2500*b*	—
—Eighteenth report Union Stock Yards Co. (omitted in printing)	2500*c*	—
Testimony of Frederick A. Delano	2502	1703
Statements	2521	1713
Testimony of E. B. Boyd	2523*b*	1717
Burton Johnson	2547	1727
W. S. Witten	2566	1736
Exhibit—Table XLVIII	2566*a*	1737
Testimony of T. W. Tomlinson	2571	1740
Exhibit—Statement	2571*a*	1741
Exhibit 54—Statement	2573*a*	1750
55—Statement	2573*b*	1750

	Original.	Print.
Exhibit—Statement	2580*a*	1754
Exhibit—Statement	2602*a*	1765
Exhibit—Statement (omitted in printing)	2602*b*	—
Testimony of Edward E. Betts	2628	1778
Exhibit No. 1—Statement	2629*a*	1779
No. —Statement	2630*a*	1797
No. —Statement	2635*a*	1819
Extracts from testimony of W. A. Gardner	2636*a*	1859
Tomlinson's Exhibit No. 10—Forty-sixth report C., & N. W. Ry. Co. (part omitted in printing)	2636*g*	1862
Ninth Report A., T. & S. F. Ry. Co. (omitted in printing)	2636*l*	—
General Exhibit 14—Forty-ninth report C., B. & Q. Ry. Co. (part omitted in printing)	2636*m*	1865
12—Fiftieth report C., B. & Q. Ry. Co. (part omitted in printing)	2636*r*	1869
Testimony of T. W. Tomlinson (resumed)	2638	1873
R. C. Richards	2673	1891
Exhibit No. 1—Statement	2678*a*	1894
Exhibit—Statement	2678*f*	1900
Exhibit—Statement	2678*g*	1900
Exhibit—Statement	2679*a*	1901
Exhibit 15—Statement	2679*b*	1902
14—Statement	2679*c*	1902
Exhibit—Statement	2680*a*	1903
Testimony of J. J. Ryan	2681	1904
Circular, "Private and confidential"	2694*a*	1911
Kenyon's General Exhibit 1—Statement	2695*a*	1917
Testimony and exhibits before the Interstate Commerce Commission which were offered and considered in evidence	*a*	1919
Testimony of C. F. Staples	1	1919
Thomas Yapp	23	1932
Exhibit—Statement	24	1933
Exhibit No. 1—Statement (omitted in printing)	29	—
No. 2—Map (" ")	30	—
No. 3—Statement	32	1937
No. 4—Statement	34	1938
No. 5—Statement	35	1938
No. —Statement	46	1946
Laws relating to Railroad and Warehouse Commission of Minnesota (omitted in printing)	51	—
Laws relating to Railroad and Warehouse Commission of Minnesota (omitted in printing)	124	—
Laws relating to Railroad and Warehouse Commission of Minnesota (omitted in printing)	161	—
Testimony of A. C. Bird	177	1950
Exhibit 4—Thirty-eighth annual report of C., M. & St. P. Ry. Co. (part omitted in printing)	215	1975
1—Memorandum	323	2028
2—Statement	329	2032
3—Statement	331	2033
4—Statement	333	2034

	Original.	Print.
Exhibit 5—Statement, &c.	336	2036
6—Statement	346	2042
Testimony of Wm. A. Gardner	364	2053
Judge's certificate to certificate of evidence	390	2067
Clerk's certificate to transcript of record	391	2068
Citation and service	393	2069
Designation by appellant of parts of record to be printed, &c.	405	2072
Designation by Union Stock Yards Co. of Omaha of additional parts of record to be printed	419	2079
Designation by certain appellees of additional parts of record to be printed	423	2080

a In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

b 27723.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously Sued as THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY.

c 27829.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously sued as THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY; Original Defendants; SIOUX CITY STOCK YARDS COMPANY; ST. JOSEPH STOCK YARDS COMPANY; ST. PAUL UNION STOCK YARDS COMPANY; RAILROAD & WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA; T. M. SINCLAIR & COMPANY, LIMITED, and THE UNION STOCK YARDS COMPANY OF OMAHA, Intervenors.

1 Mr. L. A. Shaver, Mr. C. B. Morrison, United States district attorney, Mr. S. H. Cowan, in behalf of the complainant.

Mr. Edward Baxter, associate counsel for B., C. R. & N. Ry.; C., St. P., M. & O. Ry.; Chicago & Alton Ry.; C. & N. W. Ry.; C., B. & Q. Ry., C., M. & St. P. Ry.; C., R. I. & P. Ry.; Hannibal & St. Joseph Ry.; Illinois Central R. R.; Iowa Central Ry.; K. C., St. J. & C. B. Ry.; M. & St. L. Ry.; Omaha, Kansas City & Eastern Ry., defendants.

Mr. C. A. Severance, for the Chicago Great Western Ry. Co., defendant, and the St. Paul Union Stock Yards Co., intervening petitioner.

Mr. S. A. Lynde, for the C. & N. W. Ry. Co., defendant; Mr. Chester M. Dawes, for the C., B. & Q. Ry. Co., defendant.

Mr. James C. Jeffery, for the Missouri Pacific Ry. Co., defendant.

2 Mr. Charles A. Clark, for T. M. Sinclair & Co., Limited, intervening petitioner.

Messrs. Milchrist & Scott, for the Sioux City Stock Yards Co., intervening petitioner.

Mr. Ira B. Mills, for the Minnesota Railroad & Warehouse Commission, intervening petitioner.

Mr. F. T. Ransom, for the Omaha Packing Co., intervening petitioner.

3 Pleas in the Circuit Court of the United States for the Northern District of Illinois-Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Solomon H. Bethea, District Judge of the United States for the Northern District of Illinois, on Monday, the twentieth day of November, being one of the days of the regular July Term of said Court, in the year of our Lord one thousand nine hundred and five and of our independence the one hundred and thirtieth year, when the following proceedings were had to-wit:

MARSHALL E. SAMPSELL, *Clerk.*

4 Northern District of Illinois, Eastern Division.

27723.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously Sued as THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY.

5 Be it remembered that on this day to-wit: the twenty-ninth day of April, 1905, came the Interstate Commerce Commission by Edward A. Moseley, the Secretary thereof, thereunto duly authorized and C. B. Morrison, United States District Attorney and filed in the clerk's office of said Court a certain Petition in the words and figures following to-wit:

6 In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois. In Equity.

No. —.

THE INTERSTATE COMMERCE COMMISSION

v.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO AND ALTON RAILWAY COMPANY; THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; THE HANNIBAL AND ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY; THE OMAHA, KANSAS CITY AND EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY.

To the Circuit Court of the United States, sitting in equity, within and for the northern division of the northern district of Illinois:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of the Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by various subsequent acts, humbly complaining, showeth:

I.

That the Chicago Great Western Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of St. Paul, in the State of Minnesota; that the Chicago, St. Paul, Minneapolis and Omaha Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of St. Paul, State of Minnesota; that the
7 Chicago and Alton Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of New York, State of New York; that the Chicago and Northwestern Railway Company is a corporation chartered and existing under and by virtue of the laws of the States of Illinois and Wisconsin, having its principal offices in the city of Chicago, State of Illinois, and in the city of New York, State of New York; that the Chicago, Burlington and Quincy Railroad Company is a corporation char-

tered and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago, State of Illinois; that the Chicago, Milwaukee and St. Paul Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of Chicago, State of Illinois; that the Chicago, Rock Island and Pacific Railway Company is a corporation chartered and existing under and by virtue of the laws of the States of Illinois and Iowa, having its principal office in Chicago, State of Illinois; that the Illinois Central Railroad Company is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago, State of Illinois; that the Iowa Central Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, having its principal office at Minneapolis, in the State of Minnesota; that the Minneapolis and St. Louis Railroad Company is a corporation chartered and existing under and by virtue of the laws of the States of Minnesota and Iowa, having its principal office in the city of Minneapolis, State of Minnesota; that the Missouri Pacific Railway Company is a corporation chartered and existing under and by virtue of the laws of the States of Missouri, Kansas, and Nebraska, having its principal offices in St. Louis, State of Missouri, and New York, State of New York; that the Missouri, Kansas City and Texas Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Kansas, having its principal offices in St. Louis, State of Missouri, and Parsons, State of Kansas; that the Wabash Railroad Company is a corporation chartered and existing under and by virtue of the laws of the States of Michigan, Ohio, Indiana, Illinois, and Missouri, having its principal office in the city of St. Louis, State of Missouri; that the Wisconsin Central Railway Company is a corporation chartered and existing under and by virtue of the laws of the State of Wisconsin, having its principal office in the city of Milwaukee, State of Wisconsin; that the properties of the Burlington, Cedar Rapids and Northern Railway Company, a corporation created June 22, 1876, under the laws of the State of Iowa, were on June 15, 1903, sold to defendant herein, the Chicago, Rock Island and Pacific Railway Company, and its line has since been and is now operated by said last-named company;

8 that the properties of the Hannibal and St. Joseph Railroad Company, an incorporation under the laws of the State of Missouri, were purchased in the year 1901 by defendant herein, the Chicago, Burlington and Quincy Railroad Company, and its line has since been and is now operated by said last-named company; that the properties of the Kansas City, St. Joseph and Council Bluffs Railroad Company, an incorporation under the laws of the State of Missouri, were purchased in the year 1901 by defendant herein, the Chicago, Burlington and Quincy Railroad Company, and its line has since been and now is operated by said last-named company; that the properties of the Omaha, Kansas City and Eastern Railroad Company, a corporation under the laws of the State of Missouri, were purchased by the Quincy, Omaha and Kansas City Rail-

road Company in the year 1902, and its line has since been and now is operated by said last-named company, and that said last-named company is a corporation chartered and existing under the laws of the State of Missouri, having its principal office in the city of Kansas City, State of Missouri.

II.

That the defendants were on the 5th day of April, 1902, and ever since have been and still are common carriers engaged in the transportation of persons and property by railroad under joint through rates and as members of continuous through lines between points in different States of the United States, and particularly in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the State of Illinois, from points on the Missouri River, extending from Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, both inclusive, and from south St. Paul, in the State of Minnesota, or from other points in the territory between the Missouri River or South St. Paul and Chicago, and as such common carriers and in respect to such transportation were and are subject to the provisions of the said act to regulate commerce and the amendments thereto.

III.

That on said April 5, 1902, the Chicago Live Stock Exchange, an incorporated association, with its office in the city of Chicago, State of Illinois, filed under section 13 of the said act to regulate commerce a petition or complaint to the complainant herein, the Interstate Commerce Commission, alleging violations on the part of the defendants of certain provisions of said act, as at large and more fully appears in and by the said complaint or petition on file in the office of said Commission, a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit A; and that a copy of said complaint or petition, Exhibit A hereto, attested by the secretary of said Commission, under the seal of said Commission, was duly forwarded by said Commission to each of said defendants as required by section 13 of said act.

9 IV.

That on various dates between April 18, 1902, and November 6, 1902, the defendants, with the exception of the Chicago and Northwestern Railway Company and the Omaha, Kansas City and Eastern Railroad Company, filed answers to said complaint, Exhibit A hereto, as at large and more fully appears in and by said answers on file in the office of the complainant herein, copies of which answers are hereto annexed and made a part of this petition as exhibits B to O, inclusive.

V.

That thereafterwards the said cause, being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the complainant herein, the said Interstate Commerce Commission, at various times and places at which the parties complainant and de-

fendant appeared by their attorneys or had due notice to appear, and at the said hearings testimony was taken in behalf of said parties, and thereafterwards, on June 26, 1903, argument was heard by complainant in behalf of said parties at Washington, D. C.

VI.

That on January 7, 1905, the complainant herein duly determined the matter in controversy between the said parties before it, and made a report in writing in respect thereof, setting forth its findings of facts and its conclusion based on said facts, namely, that the "relation of rates maintained and enforced by the defendants, whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago, in the State of Illinois, from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago, constitutes an undue and unreasonable prejudice and an unjust discrimination, in violation of the provisions of the act to regulate commerce," as at large and more fully appears in and by the said report of complainant, a copy whereof is hereunto annexed and made a part of this petition as Exhibit P.

VII.

That forthwith upon the determination of said cause as aforesaid, to wit, on said 7th day of January, 1905, the complainant duly formulated an order and notice in the premises based upon its aforesaid findings and determination, requiring the defendants to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing the said unlawful relation of rates and from further continuing said unlawful prejudice and discrimination, which said order now remains in full force and effect, and a copy whereof is hereunto annexed and made a part of this bill of complaint as Exhibit Q.

VIII.

That thereafterwards the complainant herein, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report, Exhibit P hereto, together with a copy of its said order, Exhibit Q hereto, to be delivered to said defendants herein; and complainant shows that the said defendants, unmindful of their duty in that regard, have through their officers, servants, and attorneys wholly disregarded and set at naught said order of complainant, Exhibit Q hereto, and have willfully and knowingly violated and disobeyed the same and still do neglect and refuse to comply with the same or any part thereof.

IX.

And the complainant charges that the said relation maintained by the defendants between the rates on live cattle and live hogs, on the

one hand, and on the dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter as aforesaid, creates an undue and unreasonable prejudice and operates as an unjust discrimination, in violation of sections 3 and 2 of the act to regulate commerce, and further results in unjust and unreasonable rate charges on said live cattle and live hogs in violation of section 1 of said act.

X.

Wherefore the complainant prays—

1. That a subpœna or other suitable process may issue, according to the course of equity, requiring the said defendants herein to appear at such time and place as this honorable court may determine, then and there to make full, complete, and perfect answer to all the matters and things hereinabove stated and charged, as fully and particularly as if each of the said defendants were specially interrogated in regard thereto, but not under oath, which is hereto waived.

2. That upon the filing of this petition an order may be made by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing bill of complaint.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as
11 the court may think needful and lawful to enable it to form a just judgment of the matters and things stated and charged in the foregoing bill of complaint.

5. That upon the final hearing hereof, a decree may be entered granting to complainant a writ of injunction, or other proper process, mandatory or otherwise, to restrain the said defendants, and each of them, and their respective officers, servants, and agents, from further continuing in their violation of and disobedience to the said order of the complainant.

6. That a decree may be entered requiring the said defendants and each of them to pay such sum of money not exceeding the sum of $500 for every day after a day to be named in such decree that they shall respectively fail to obey the said injunction or other proper process.

7. That a decree may be entered requiring the said defendants to pay the costs of this proceeding and reasonable counsel fees.

8. For such other and further relief in the premises as to the court may seem meet and as justice and the equities of the cause may require.

[Seal Interstate Commerce Commission, 1887.]

THE INTERSTATE COMMERCE COMMISSION,
By EDWARD T. MOSELEY,
The Secretary Thereof, Thereunto Duly Authorized.
G. B. MORRISON,
United States District Attorney, for Petitioner.

12 & 13 EXHIBIT A.

14 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
against
ATCHISON, TOPEKA AND SANTA FE RAILWAY; BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY; CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY; CHICAGO AND ALTON RAILWAY COMPANY; CHICAGO AND NORTHWESTERN RAILWAY; CHICAGO, BURLINGTON AND QUINCY RAILWAY; CHICAGO GREAT WESTERN RAILWAY; CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY; CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY; HANNIBAL AND ST. JOSEPH RAILROAD; ILLINOIS CENTRAL RAILROAD; IOWA CENTRAL RAILWAY; KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD; MINNEAPOLIS AND ST. LOUIS RAILROAD; MISSOURI PACIFIC RAILWAY; MISSOURI, KANSAS AND TEXAS RAILWAY; OMAHA, KANSAS CITY AND EASTERN RAILROAD; FRISCO SYSTEM—ST. LOUIS AND SAN FRANCISCO RAILROAD; WABASH RAILROAD; WISCONSIN CENTRAL RAILWAY COMPANY.

The petition of the above-named complainant respectfully shows:

I.

That the Chicago Live Stock Exchange is an association of live stock commission men, raisers, owners, shippers, and slaughterers of live stock; that its office is in the city of Chicago, State of Illinois; that live stock owned by the members of the Chicago Live Stock Exchange, or the shippers whom they represent, is being constantly shipped over the lines of defendant carriers from all points in the West to Chicago, in the State of Illinois.

II.

That the defendants above named are common carriers engaged in the transportation of passengers and property by railroad between points in the States of Iowa, Missouri, Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, Nebraska, and Colorado and points in the States of Illinois and Missouri, and as such common carriers are subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That the rates charged, collected, or received by defendant carriers for the transportation of live stock, in carloads, from points in Iowa, Missouri, Minnesota, and Wisconsin to the city of Chicago, in the State of Illinois, are in and of themselves, and relatively com-
15 pared with rates charged by defendant carriers on the product of live stock, unjust and unreasonable, in violation of section 1 of the act to regulate commerce.

IV.

That the raisers of live stock in the States of Iowa, Missouri, Wisconsin, and Minnesota are subjected to an undue and unreasonable prejudice or disadvantage by reason of the rates charged, collected, or received by defendant carriers for transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof in violation of section 3 of the act to regulate commerce.

V.

That the rates charged, collected, or received by defendant carriers for the transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof, and that the rates charged, collected, or received by defendant carriers for the transportation of live stock from said markets and intermediate points in Iowa, Missouri, Wisconsin, and Minnesota to Chicago, subject the city of Chicago and The Chicago Live Stock Exchange to an undue and unreasonable prejudice or disadvantage and are unlawful, in violation of section 3 of the act to regulate commerce.

VI.

That the decisions of the Interstate Commerce Commission in the case of The Board of Trade of the City of Chicago *v.* The Chicago and Alton Railroad *et al.*, with regard to "relative rates on live hogs and hog product from Missouri River points and intermediate points in Iowa and Missouri to Chicago," decided October 16, 1890, and in the case of John P. Squire & Co. *v.* The Michigan Central R. R. Co. *et al.*, in the matter of "relative rates on live hogs, live cattle, and the dressed product of each," decided April 21, 1891, established certain principles applicable to rates on live stock and its product, and that divers tariffs of defendant carriers violate the principles therein set forth and are unlawful.

Wherefore the petitioner prays that the defendants may be required to answer the charges herein, and that after due hearing and investigation an order may be made commanding the defendants to cease and desist from said violations of the act to regulate commerce and for such other further orders as the Commission may deem necessary in the premises.

Chicago, Ill., March 31, 1902.

THE CHICAGO LIVE STOCK EXCHANGE,

(Signed) By T. W. TOMLINSON,
Railway Representative.

16 & 17 STATE OF ILLINOIS, *County of Cook, ss:*

T. W. Tomlinson, being duly sworn, says that he is the railway representative of The Chicago Live Stock Exchange, the complainant in this proceeding, and that the matters set forth in the foregoing petition are true, as he verily believes.

(Signed) T. W. TOMLINSON.

Subscribed and sworn to before me this 31st day of March, 1902.
[NOTARIAL SEAL.] (Signed) CHAS. W. BAKER,
Notary Public.

18 & 19 EXHIBIT B.

20 & 21 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
against
ATCHISON, TOPEKA AND SANTA FE RAILWAY; BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY; CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY ET AL.

The Chicago, St. Paul, Minneapolis and Omaho Railway Company, answering for itself the complaint herein, alleges:

1. That it admits that it is a common carrier, engaged in the transportation of passengers and property by railroad between points in the States of Iowa, Wisconsin, Minnesota, South Dakota, Nebraska, and points in the State of Illinois, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof and supplemental thereto, and that it has been and is engaged in the transportation of the product of live stock from St. Paul and from points on its line in Iowa, Wisconsin, Minnesota, South Dakota, and Nebraska to Chicago.

2. That it denies that it has been or is engaged in the transportation of the products of live stock from Missouri River points to Chicago.

3. Except as above admitted, it denies each and every allegation of the complaint.

CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY,
By JAS. T. CLARK,
Its Second Vice-President and General Traffic Manager.

STATE OF MINNESOTA, *County of Ramsey, ss:*

James T. Clark, being duly sworn, says that he is second vice-president and general traffic manager of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, the defendant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) JAMES T. CLARK.

Subscribed and sworn to before me this April, A. D. 1902.
[SEAL.] (Signed) PIERCE BUTLER,
Notary Public, Ramsey County, Minn.

22 & 23 EXHIBIT C.

24 & 25 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY and Others, Defendants.

Now comes the above-named defendant, Chicago, Milwaukee and St. Paul Railway Company, and answers the petition of the complainant as follows:

1. That whether the Chicago Live Stock Exchange is an association, as averred in said petition, or whether live stock that is shipped over its lines of road from points in the west to Chicago is owned by the members of said Exchange, or by shippers whom they represent, this defendant denies any knowledge or information thereof sufficient to form a belief.

2. This defendant admits that it is a common carrier engaged in the transportation of passengers and property by railroad, and as such is subject to the act of Congress referred to in said petition.

3. It denies the allegations contained in Paragraphs III, IV, V, and VI of said petition.

Wherefore it demands that said petition be dismissed.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
By J. H. HILAND, *Its Traffic Manager.*

STATE OF ILLINOIS, *County of Cook, ss:*

J. H. Hiland, being duly sworn, says that he is the traffic manager of the above-named defendant, Chicago, Milwaukee and St. Paul Railway Company; that he has read the foregoing answer and knows the contents thereof, and that the same is true, as he verily believes.

(Signed) J. H. HILAND.

Subscribed and sworn to before me this 22d day of April A. D. 1902.

[SEAL.] (Signed) W. D. MILLARD,
Notary Public, Cook County, Illinois.

26 & 27 EXHIBIT D.

28 Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE
v.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, WABASH RAILROAD COMPANY ET AL.

The Wabash Railroad Company, one of the defendants named in this proceeding, for answer to the complaint herein respectfully states as follows:

1. That this defendant is not advised as to what constitutes the Chicago Live Stock Exchange, or its nature or objects as an association, but presumes that shipments of live stock owned by its members, or shippers represented by them, are being made over this defendant's lines and those of other carriers from points in the West on said lines to the City of Chicago, State of Illinois, but this defendant denies the right of the petitioner, the Chicago Live Stock Exchange, to complain, as in its petition, against this defendant on account of any shipments of live stock owned by said members or shippers represented by such members.

2. That this defendant admits it is a common carrier, engaged in the transportation of passengers and property by railroad between points on its lines in the States of Iowa and Missouri to points on its lines in the States of Missouri and Illinois, and also to points on its lines in other States east of Illinois, and that as such common carrier it is subject to the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

3. That this defendant is not advised as to the rates charged, collected, and received by its codefendants for the transportation mentioned in said petition, but that the rates charged, collected, and received by this defendant for the transportation of live stock in carloads from points in Iowa and Missouri to the city of Chicago, in the State of Illinois, are not in and of themselves, and relatively compared with rates charged by this defendant on the product of live stock, unjust and unreasonable, and in violation of section 1 of the act to regulate commerce, as in the petition alleged.

4. That this defendant is not advised as to the acts of its codefendants in respect to the matters charged, but that the raisers of live stock in the States of Iowa and Missouri, or elsewhere, are not subjected to an undue and unreasonable prejudice, or disadvantage by reason of the rates charged, collected, or received by this de-
29 fendant for transportation of the product of live stock from Kansas City, or any point named in said petition, to Chicago and points east thereof, in violation of section 3 of the act to regulate commerce, as alleged in said petition.

5. That this defendant is not advised as to the rates charged, collected, and received by its codefendants for the transportation mentioned, but the rates charged, collected, and received by this defend-

ant for the transportation of the product of live stock from Kansas City and other points named in said petition to Chicago, and points east thereof, and the rates charged, collected, and received by this defendant for the transportation of live stock from said markets and intermediate points in Iowa, Missouri, and other points named in said petition do not subject the city of Chicago and the petitioner to an undue and unreasonable prejudice or disadvantage, and are not unlawful and in violation of section 3 of the act to regulate commerce, as in said petition alleged.

6. That this defendant is advised, and so states the fact to be, that divers tariffs of this defendant do not violate the principles established in the decisions of this honorable Commission in the case of the Board of Trade of the City of Chicago *v.* The Chicago and Alton Railroad Company *et al.*, and in the case of John P. Squire & Co. *v.* The Michigan Central Railroad Company *et al.*, and that this defendant's said tariffs are not unlawful as in said petition alleged.

Wherefore, this defendant prays that the complaint in this proceeding may as to it be dismissed.

THE WABASH RAILROAD COMPANY,
By S. B. KNIGHT,
Its General Freight Agent.

STATE OF MISSOURI, *City of St. Louis, ss:*

S. B. Knight, of lawful age, being duly sworn, on oath states that he is the general freight agent of the Wabash Railroad Company, one of the defendants in this proceeding, and that the foregoing answer is true, as he verily believes.

(Signed) S. B. KNIGHT.

Subscribed and sworn to before me this 22d day of April, A. D. 1902, and I certify that I am authorized to administer oaths.

[SEAL.] (Signed) JOSEPHINE K. BAKER,
Notary Public.

My commission expires January 23, 1905.

30 & 31 EXHIBIT E.

32 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
against
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY and Others, Including THE ILLINOIS CENTRAL RAILROAD COMPANY, Defendants.

Separate Answer of Illinois Central Railroad Company to the Petition of the Above-named Complainant.

This defendant, not admitting or denying any of the allegations in respect of the other railroad companies named in the caption to the

petition, and demanding strict proof of all of same, if it shall become material to its rights, answering only so much of said petition as applies specifically to this defendant, says:

I.

It is admitted that the Chicago Live Stock Exchange is an asociation of live stock commission men, raisers, owners, shippers, and slaughterers of live stock; that its office is in the city of Chicago, in the State of Illinois, and that live stock owned by members of said exchange, or shippers whom they represent, is being constantly shipped over the lines of defendant carrier from all points on its railroad in the west to Chicago in the State of Illinois.

II.

This defendant is engaged in the transportation of passengers and property by railroad between points in the States of Iowa, Missouri, Wisconsin, Minnesota, and South Dakota and points in the State of Illinois. It admits that it is a common carrier and subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

It denies that the rates charged, collected, or received by defendant for the transportation of live stock in carloads between the points above designated are, in and of themselves, unjust and unreasonable, and it denies that the said rates are unjust and unreasonable in their relation to the rates charged by defendant on the product of live stock between the same points. It denies that there is anything in the relation between the charges made upon live stock and the product of live stock which is in violation of section 1 of the act to regulate commerce.

33 IV.

It denies that it transports any product of live stock from Kansas City and South St. Joseph, and it denies that the raisers of live stock in the States of Iowa, Missouri, Wisconsin, and Minnesota are subjected to an undue and unreasonable prejudice or disadvantage by reason of the rates charged, collected, or received by defendant for the transportation of the product of live stock from any points on its road to Chicago and points east thereof, and it denies that any acts or doings of this defendant in this respect are in violation of section 3 of the act to regulate commerce. For a short time prior to the filing of the petition, the proportions accruing to this company of the rates on live stock from South Omaha and Sioux City to points east of Chicago were greater than the proportions which accrued to it on packing-house product, but this has now been changed so that the proportions of such through rates which this company receives are the same on both commodities to all destinations east of the Indiana-Illinois State line.

V.

It denies that the rates charged, collected, or received by this defendant for the transportation of live stock from any points on its railroad in any of the States named to Chicago, and through its connections to points east thereof, and that the rates charged, collected, or received by this defendant for the transportation of live stock from points on its railroad and intermediate points in any of the States named to Chicago, subject the city of Chicago and the Chicago Live Stock Exchange to an undue and unreasonable prejudice or disadvantage, and it denies that anything done by it in respect of these matters is violative of section 3 of the act to regulate commerce.

VI.

Defendant neither admits nor denies the allegations of the sixth paragraph of complainant's petition, but says that it tenders only a proposition of law.

Wherefore the defendant prays that the complaint in this proceeding be dismissed.

ILLINOIS CENTRAL RAILROAD COMPANY,
By J. T. HARAHAN,
Second Vice-President.

STATE OF ILLINOIS, *County of Cook, ss:*

J. T. Harahan, being duly sworn, says that he is the second vice-president of the Illinois Central Railroad Company, defendant in this proceeding, and that the foregoing is true as he verily believes.

(Signed) J. T. HARAHAN.

Subscribed and sworn to before me this 23d day of April, 1902.

[SEAL.] (Signed) ANDREW P. HUMBURG,
Notary Public.

34 & 35 EXHIBIT F.

36 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
THE CHICAGO GREAT WESTERN RAILWAY ET AL., Defendants.

And now comes the Chicago Great Western Railway Company, and, for answer to the petition of the Chicago Live Stock Exchange, states and alleges:

1. It admits that the Chicago Live Stock Exchange is an association of live-stock commission men doing business at the stock yards in the city of Chicago, and denies that it has any knowledge or information sufficient to form a belief as to whether they are raisers, shippers, owners, or slaughterers of live stock, or as to whether they ship over defendant's line of railroad.

2. Defendant admits that it is a common carrier engaged in the transportation of passengers and property by railroad between Kansas City, Mo., Leavenworth, Kans., St. Joseph, Mo., and intermediate stations to Chicago, and from St. Paul and Minneapolis and intermediate stations to Chicago, and that it is subject to the provisions of the act to regulate commerce known as the "Interstate-commerce act;" defendant admits and alleges that it makes joint tariffs and participates in the transportation of commodities, both east of Chicago and west of Kansas City, Leavenworth, St. Paul and Minneapolis, and other Mississippi and Missouri River points, as more fully appears from its tariffs on file with the Interstate Commerce Commission.

3. Defendant denies that the rates it is charging, collecting, and receiving for the transportation of live stock in carloads from points in Iowa, Missouri, and Minnesota to the city of Chicago, in the State of Illinois, are in and of themselves, or relatively compared with rates charged by it on the product of live stock, unjust and unreasonable and in violation of section 1 of the act to regulate commerce.

4. Defendant denies that the raisers of live stock in the States of Iowa, Missouri, Minnesota, and on the line of the defendant's road are subject to any undue or unlawful prejudice or disadvantage by reason of the rates charged, collected, or received by defendant for transportation of the product of live stock from Kansas City, St. Joseph, or South St. Paul to Chicago and points east thereof in violation of section 3 of the act to regulate commerce.

37 5. Defendant denies that the rates charged, collected, or received by : for the transportation of the product of live stock from Kansas City, South St. Joseph, and South St. Paul to Chicago and points east thereof, or from intermediate points in Iowa, Missouri, and Minnesota to Chicago, subject the city of Chicago and the Live Stock Exchange to any undue and unlawful prejudice or disadvantage; and denies that the said rates are unlawful and in violation of section 3 of the act to regulate commerce, or otherwise.

6. Defendant denies that its tariffs violate the principles set forth in any decision of the Interstate Commerce Commission or in the law to regulate commerce, and denies that the said tariffs are unlawful.

Wherefore, the Chicago Great Western Railway Company asks that this petition be dismissed.

____ ____,
General Counsel.

STATE OF MINNESOTA, *County of Ramsey, ss:*

Frank B. Kellogg, being duly sworn, on his oath says that he is the general counsel of the Chicago Great Western Railway; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

____ ____.

38 & 39 EXHIBIT G.

40 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,

v.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; CHICAGO AND ALTON RAILWAY COMPANY; CHICAGO AND NORTHWESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY ET AL., Defendants.

Now comes the Chicago, Rock Island and Pacific Railway Company, one of the defendants herein, and for answer to said complaint, says:

1. It has no knowledge as to the status of the said complainant as an association or otherwise, or as to the business in which it is engaged, or whether the live stock shipped over its lines or from points in the West to Chicago is owned by members of said Chicago Live Stock Exchange, or by shippers whom they represent, sufficient to form a belief.

2. This defendant admits it is a common carrier engaged in the transportation of passengers and property between points in the States of Iowa, Missouri, Kansas, Nebraska, Colorado, and Illinois, and that it is subject to the act to regulate commerce of February 4, 1887, and subsequent amendatory acts.

3. It denies each and every allegation contained in Paragraph III of said complaint.

4. It denies each and every allegation contained in Paragraph IV of said complaint.

5. It denies each and every allegation contained in Paragraph V of said complaint.

6. It denies each and every allegation contained in Paragraph VI of said complaint.

Wherefore the said defendant prays that the said complaint be dismissed.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By ROBERT MATHER, *General Attorney.*

41 STATE OF ILLINOIS, *County of Cook, ss:*

I, J. M. Johnson, being first duly sworn, on oath state that I am the third vice president and freight traffic manager of the Chicago, Rock Island and Pacific Railway Company; that I have

read the foregoing answer of the said defendant, and that the facts therein stated are true as I verily believe.

(Signed) J. M. JOHNSON.

Subscribed and sworn to before me this 23d day of April, A. D. 1902.

[SEAL.] (Signed) CHARLES T. SCHWARZ,
Notary Public, Cook County, Illinois.

42 & 43 EXHIBIT H.

44 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL.

The Chicago and Alton Railway Company, one of the defendants in the above proceeding, for answer to the petition of the complainant, respectfully states that it is a common carrier engaged in the transportation of passengers and property over its lines of railroad between Chicago, Ill., and Kansas City, in the State of Missouri, and said Kansas City and East St. Louis, in the State of Illinois, and intermediate stations between those points, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

This defendant, further answering, denies, as charged in said petition, that the rates charged, collected, or received by it for the transportation of live stock in carloads from points on its line of railroad in Missouri to the city of Chicago, in the State of Illinois, are in and of themselves, and relatively when compared with rates charged on the product of live stock, in any respect unjust and unreasonable and in violation of section 1 of the act to regulate commerce.

This defendant, further answering, denies, as charged in said petition, that the raisers of live stock in the States of Iowa, Missouri, Wisconsin, and Minnesota are subjected to an undue and unreasonable prejudice or disadvantage by reason of the rates charged, collected, or received by this defendant for transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof, in violation of section 3 of the act to regulate commerce.

This defendant, further answering, denies, as charged in said petition, that the rates charged, collected, or received by this defendant for the transportation of the product of live stock from the points above stated to Chicago and points east thereof, and that the rates charged, collected, or received by it for the transportation of live stock from those markets and intermediate points in Iowa, Missouri, Wisconsin, and Minnesota to Chicago, subject the city

of Chicago and the Chicago Live Stock Exchange to an undue and unreasonable prejudice or disadvantage, and that they are unlawful, in violation of section 3 of the act to regulate commerce.

45 This defendant, further answering, denies, as charged in said petition, that divers of its tariffs violate any principle applicable to rates on live stock or its products that were established in the suits mentioned in the sixth clause of the petition, and it denies that its tariffs are unlawful.

This defendant, further answering, says that it will maintain and prove that all rates charged, collected, or received by it for the transportation of live stock or its product are in all respects just and reasonable, and do not discriminate in any way or subject the city of Chicago, or the petitioner, or any person or persons, locality or localities to any undue and unreasonable prejudice or disadvantage in any manner whatsoever.

This defendant, further answering, denies each and every allegation of the petition not herein expressly admitted or denied.

And having fully answered, it prays to be dismissed with its reasonable costs, etc.

THE CHICAGO AND ALTON RAILWAY COMPANY,
By WILLIAM BROWN, *Its General Solicitor.*

STATE OF ILLINOIS, *Cook County, ss:*

Fred A. Wann, being duly sworn, deposes and says that he is general freight agent of the Chicago and Alton Railway Company, one of the defendants in the above proceedings; that he has read the above and foregoing answer of said company and knows the contents thereof, and that the same are true to the best of his knowledge and belief.

(Signed) FRED A. WANN.

Subscribed and sworn to before me this 23d day of April, 1902.

[SEAL.] (Signed) FRANK G. OFFENLOCK,
Notary Public.

46 & 47 EXHIBIT I.

48–50 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
WISCONSIN CENTRAL RAILWAY COMPANY and Others, Defendants.

Now comes the above-named defendant, Wisconsin Central Railway Company, and answers the petition of the complainant as follows:

1. That whether the Chicago Live Stock Exchange is an association as averred in said petition, or whether live stock that is shipped

over its line of road to Chicago is owned by the members of said Exchange or by shippers whom they represent, this defendant denies any knowledge or information thereof sufficient to form a belief.

2. This defendant admits that it is a common carrier engaged in the transportation of passengers and property by railroad, and as such is subject to the act of Congress referred to in said petition.

3. It denies the allegations contained in Paragraphs III, IV, V, and VI of said petition.

Wherefore it demands that said petition be dismissed.

WISCONSIN CENTRAL RAILWAY COMPANY,
By BURTON JOHNSON, *General Freight Agent.*

STATE OF WISCONSIN, *Milwaukee County, ss:*

Burton Johnson, being duly sworn, says that he is the general freight agent of the above-named defendant, Wisconsin Central Railway Company; that he has read the foregoing answer and knows the contents thereof, and that the same is true, as he verily believes.

(Signed) BURTON JOHNSON.

Subscribed and sworn to before me this 23d day of April, A. D. 1902.

[SEAL.] (Signed) EDWARD P. SHANNON,
Notary Public, Milwaukee County, Wis.

My commission expires June 13, 1903.

51 & 52 EXHIBIT J.

53 Before the Interstate Commerce Commission.

In the matter of the complaint of the Chicago Live Stock Exchange, against the Chicago, Burlington and Quincy Railroad Company, the Hannibal and St. Joseph Railroad Company, and the Kansas City, St. Joseph and Council Bluffs Railroad Company, impleaded with the Atchison, Topeka and Santa Fe Railway Company, *et al.:*

First. These defendants severally admit that the Chicago Live Stock Exchange is an association of live stock commission men, with an office in the city of Chicago, Ill.; but deny that live stock owned by said association is shipped over the lines of the defendants' roads from any points in the West to Chicago; and they assert, on information and belief, that said association is unlawful, as being in restraint of trade, its purpose being to restrain, limit, and destroy competition, contrary to the laws of the State of Illinois and of the United States of America in this behalf.

Second. These defendants admit that they are common carriers engaged in the transportation of passengers and property by railroad between points in the States of Iowa, Missouri, Wisconsin, Minnesota, South Dakota, Kansas, Nebraska, and Colorado, and points in the States of Illinois and Missouri, but deny that they transport any pas-

sengers or property from the State of North Dakota to points in Illinois and Missouri, as alleged in said bill of complaint.

Third. These defendants severally deny that the rate charged, collected, or received by them for the transportation of live stock in carloads from points in Iowa, Missouri, Minnesota, and Wisconsin to the city of Chicago and State of Illinois are in and of themselves and relatively compared with the rates charged by them on the product of live stock, unjust and unreasonable, and in violation of the act to regulate commerce, as is in said petition alleged.

Fourth. These defendants severally deny that the raisers or receivers of live stock in the States of Iowa, Missouri, Wisconsin, and Minnesota are subjected to any undue or unreasonable prejudice or disadvantage by reason of any rates charged, collected, or received by these defendants or any of them for transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof in violation of the act to regulate commerce, as is in said petition alleged.

54 Fifth. These defendants deny that the rates charged, collected, or received by these defendants or any of them for the transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, and South St. Paul to Chicago and points east thereof, or that the rates charged, collected, or received by these defendants or any of them for the transportation of live stock from said markets and intermediate points in Iowa, Missouri, Minnesota, and Wisconsin to Chicago subject the city of Chicago and the Chicago Live Stock Exchange to any undue or unreasonable prejudice or disadvantage, and deny that the same are unlawful or in violation of the act to regulate commerce; and these defendants further assert that the said Chicago Live Stock Exchange is not and has not been at any time heretofore engaged in the business of shipping live stock or the products of live stock from any of the points mentioned and could not, therefore, have any direct interest in the matters alleged.

Sixth. These defendants severally deny that the tariffs now and heretofore in force on live stock and the products thereof violate in any manner the act to regulate commerce as interpreted by this honorable Commission or otherwise in the decisions cited in said petition.

Wherefore, by reason of the matters and things set forth in the above answer these defendants pray to be hence dismissed.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
HANNIBAL AND ST. JOSEPH RAILROAD COMPANY,
KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD COMPANY,
By THOS. MILLER, *Traffic Manager.*
O. M. SPENCER,
CHESTER M. DAWES,
Solicitors.

Chicago, Ill., April 25, 1902.

55 & 56 EXHIBIT K.

57 & 58 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY, Defendant.

Now comes the Burlington, Cedar Rapids and Northern Railway Company and answers the petition of the complainant, as follows:

1. That whether the Chicago Live Stock Exchange is an association, as averred in said petition, or whether live stock that is shipped over its lines of road from points in the West to Chicago is owned by the members of said Exchange or by shippers whom they represent, this defendant denies any knowledge or information thereof sufficient to form a belief.

2. This defendant admits that it is a common carrier engaged in the transportation of passengers and property by railroad, and as such is subject to the act of Congress referred to in said petition.

3. It denies the allegations contained in Paragraphs III, IV, V, and VI of said petition.

Wherefore it demands that said petition be dismissed.

THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY CO.,
By C. J. IVES, *President.*

STATE OF IOWA, *County of Linn, ss:*

C. J. Ives, being duly sworn, says that he is the president of the above-named defendant, the Burlington, Cedar Rapids and Northern Railway Company; that he has read the foregoing answer and knows the contents thereof, and that the same is true, as he verily believes.

(Signed) C. J. IVES.

Subscribed and sworn to before me this 24th day of April, A. D. 1902.

(Signed) BEN E. MILLER,
Notary Public, Linn County, Iowa.

59 & 60 EXHIBIT L.

61 & 62 The Minneapolis and St. Louis Railroad Company,
General Freight Department.

MINNEAPOLIS, MINN., *April* 26, 1902.

DEAR SIR: Referring to your favor of April 5, inclosing complaint from the Chicago Live Stock Exchange regarding our rates on live stock, carloads, from points in Iowa and Minnesota to Chicago, I beg

to advise that this company does not own or operate any line of railroad between the Missouri River and Chicago, and is therefore not interested in the rates between those points.

As to rates from South St. Paul, and from our Iowa and Minnesota territory to Chicago, we believe that the rates are just and reasonable, both as to the rates themselves, and as compared with the rates on fresh meat and packing-house products, and are not discriminative against the city of Chicago and the Chicago Live Stock Exchange, nor unlawful, as alleged in the complaint.

Yours, truly,

(Signed) W. M. HOPKINS,
General Freight Agent.

Mr. Edw. A. Moseley, Secretary Interstate Commerce Commission, Washington, D. C.

63 & 64 EXHIBIT M.

65 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
ATCHISON AND SANTA FE RAILWAY, MISSOURI, KANSAS AND TEXAS RAILWAY ET AL., Respondents.

Separate Answer of the Missouri, Kansas and Texas Railway Company.

The Missouri, Kansas and Texas Railway Company, for its separate answer to the complaint herein, states:

I.

That as to whether or not the complainant is an association of live-stock commission men, raisers, owners, shippers and slaughterers of live stock, with its office in Chicago, Ill., as alleged in the complaint, this respondent has no information or belief, and calls upon the complainant for strict proof in that regard; and this respondent further states it has no information or belief as to whether the live stock owned by the Chicago Live Stock Exchange, its members or the shippers whom they represent, if any, is being constantly shipped over the lines of the defendant, carriers from all points in the West to Chicago, in the State of Illinois, as in said complaint alleged, and this respondent calls upon complainant for strict proof in that regard.

II.

This respondent admits that defendants named in said complaint are common carriers engaged in the transportation of passengers and property by railroad, as alleged, and as such are subject to the provisions of the act of Congress to regulate commerce.

III.

The respondent denies each and every other allegation in said complaint contained, and especially those contained in Paragraphs III, IV, V, and VI, so far as said allegations or any of them relate to this respondent.

(Signed) JAMES HAGERMAN,
Attorney for Missouri, Kansas and Texas R'w'y Co.

66 STATE OF MISSOURI, *City of St. Louis:*

C. Haile, being first duly sworn, upon his oath, states that he is traffic manager of the Missouri, Kansas and Texas Railway Company, one of the respondents in the above-entitled complaint, and that the matters set forth in the foregoing answer of said railway company are true, as he verily believes.

(Signed) C. HAILE.

Subscribed and sworn to before me this 29th day of April, 1902.

[SEAL.] (Signed) LUN HAGERMAN,
Notary Public.

Term expires March 22, 1904.

67 & 68 EXHIBIT N.

69 Before the Interstate Commerce Commission.

CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ET AL., Defendants.

Answer of Defendant Missouri Pacific Railway Company.

The Missouri Pacific Railway Company, one of the defendants in the above-entitled cause, comes and, for its answer to the complaint filed herein, denies that the rates charged, collected, or received by it for the transportation of live stock in carloads from points in Missouri or elsewhere to the city of Chicago, in the State of Illinois, are in themselves or relatively, compared with the rates charged by it on the products of live stock, unjust or unreasonable or in violation of section 1 of the act to regulate commerce.

This defendant also denies that the raisers of live stock in the States named in the complaint, to wit, Iowa, Missouri, Wisconsin, and Minnesota, are subjected to an undue or unreasonable prejudice or disadvantage by reason of the rates charged, collected or received by defendant for the transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City, or South St. Paul to Chicago or points east thereof, in violation of said section 3.

Defendant further denies that the rates charged, collected, or received by defendants for the transportation of the product of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City or South St. Paul to Chicago and points east thereof, or that rates charged, collected, or received by defendant carriers for the transportation of live stock from the markets named or intermediate points in Iowa, Missouri, Wisconsin, and Minnesota to Chicago, subject the city of Chicago and the Chicago Live Stock Exchange to an undue or unreasonable prejudice or disadvantage, or that they are unlawful, or that they are in violation of section 3 of the act to regulate commerce.

And it is further denied that the defendant carriers violate the interstate-commerce act, as construed by this Commission, or at all.

And this defendant asks to be discharged, with its costs laid out and expended.

(Signed) MARTIN L. CLARDY,
Attorney for Missouri Pacific R'w'y Company.

70 STATE OF MISSOURI, *City of St. Louis:*

W. C. Stith, being duly sworn, on his oath states that he is the freight traffic manager of the Missouri Pacific Railway Company, the above-answering defendant; that he has read the above and foregoing answer, and that the facts therein stated are, to the best of his knowledge and belief, true.

(Signed) W. C. STITH.

Subscribed and sworn to before me this 28th day of April, 1902.

[SEAL.] (Signed) HENRY G. JERBEL,
Notary Public.

My commission expires September 4, 1904.

71 & 72 EXHIBIT O.

73 Before the Interstate Commerce Commission.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,
v.
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY and Others, Defendants.

Answer.

Comes now the Iowa Central Railway Company, and, answering for itself only the complaint herein filed, states:

I.

It admits it is a common carrier engaged in the transportation of property and passengers between points in the States of Minnesota,

Iowa, and Illinois, and subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplemental thereto.

II.

That of the truth of no other allegations made in said complaint has this defendant such knowledge or information as justifies it in making specific affirmation or denial thereof, further than may be embraced in the facts hereinafter alleged and made specifically applicable to said complaint in behalf of this respondent.

III.

This defendant, further answering said complaint, states: That it does not own, lease, or operate any line of railway to or from any point upon the Missouri River, nor does it own, lease, or operate any line of railway to the City of Chicago, in the State of Illinois; and that it has neither made nor published any rate upon live stock, or any product thereof, from any Missouri River point to the city of Chicago.

IV.

That this defendant expressly denies that it has made or fixed any rate upon any product named in the complaint herein in violation of the said act or acts referred to in said complaint or the decision of this Commission, and distinctly disavows any intention so to do.

74

V.

That there is no distinction or discrimination made by this company between the shipments of live stock destined to Chicago and the products thereof.

Wherefore, this defendant prays this complaint be dismissed as against it, and an order of this Commission so entered upon the final hearing of this cause.

IOWA CENTRAL RAILWAY COMPANY,
By GEO. W. SEEVERS, *Its General Attorney.*

STATE OF ILLINOIS, *Cook County, ss:*

I, J. N. Tittemore, being first duly sworn, say I am traffic manager of the Iowa Central Railway Company, defendant answering herein; that I have read the foregoing answer, and the matters set forth therein are true, as I verily believe.

(Signed) J. N. TITTEMORE.

Subscribed and sworn to before me, by the said J. N. Tittemore, this 6th day of November, 1902.

[SEAL.] (Signed) W. D. MILLARD,
Notary Public.

75–77 EXHIBIT P.

78 THE CHICAGO LIVE STOCK EXCHANGE
v.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY; THE RAILROAD & WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA; THE ST. PAUL UNION STOCK YARDS COMPANY OF ST. PAUL, MINNESOTA; THE SOUTH ST. JOSEPH LIVE STOCK EXCHANGE; THE UNION STOCK YARDS COMPANY OF OMAHA, NEBRASKA; THE SIOUX CITY STOCK YARDS COMPANY, and THE SIOUX CITY LIVE STOCK EXCHANGE OF SIOUX CITY, IOWA, Interveners.

79 Decided January 7, 1905.

1. The complainant, an incorporated association, is entitled under section 13 of the Act to regulate commerce to bring and maintain a proceeding of this character.
2. The defendant, the Atchison, Topeka & Santa Fe Ry. Co., removed the discrimination complained of as to its lines, and it appeared that the defendant, the St. Louis & San Francisco Railroad Co., does not participate in the rates in question. Complaint as to those lines dismissed.
3. Defendants exact higher rates for transporting cattle and hogs than for transporting live-stock products to Chicago from points west, northwest and southwest thereof, including Missouri River po-nts and South St. Paul, Minn. Upon all the facts and circumstances, *Held:*

   1. That such discrimination is not justified by difference in cost of transportation or otherwise, and subjects the traffic in cattle and hogs at Chicago and other points, and those interested therein, to undue and unreasonable prejudice and disadvantage, and gives to the traffic in the products of hogs and cattle, and to shippers and localities interested in such traffic, undue and unreasonable preference and advantage, in

violation of the Act to regulate commerce. Chicago Board of Trade *v.* C. & A. R. Co. (4 I. C. C. Rep. 158), reaffirmed and the principle therein announced extended to the transportation of cattle and their products.

2. That the desire of a carrier to secure additional business for its line of road does not justify a change in the relation of rates resulting in a higher rate upon cattle and hogs, the raw material, than upon live-stock product, the manufactured article, where, as in this case, the articles are in sharp competition with each other in markets of purchase and sale, where it appears that upon other lines and in other sections rates are generally no higher, and in many instances much lower, on the traffic prejudiced than on that favored by the change, and where numerous and important industries, which have been built up and maintained under the former adjustment, and those interested in such industries, will be injuriously affected by the action taken.

S. H. Cowan and T. W. Tomlinson for complainant.
A. B. Stickney and F. B. Kellogg for C. G. W. Ry. Co.
W. B. Biddle for A., T. & S. F. Ry. Co.
Thomas Wilson for C., St. P., M. & O. Ry. Co.
Wm. Brown and F. A. Wann for C. & A. Ry. Co.
Thomas Miller and O. M. Spencer for the Burlington Lines.
Geo. R. Peck and Burton Hansom for C., M. & St. P. Ry. Co.
W. T. Rankin for C., R. I. & P. Ry. Co.
R. A. Jackson for C., R. I. & P. Ry. Co. and B., C. R. & N. Ry. Co.
80 S. F. Andrews for I. C. R. R. Co.
T. N. Gill for W. C. Ry. Co.
C. N. Travous for Wabash R. R. Co.
Ira B. Mills and C. F. Staples for the R. R. & W. Com. of Minn.
Milchrist & Scott for Sioux City Stock Yards Co., and Sioux City Live Stock Exchange.
F. T. Ransom for Union Stock Yards Co. of Omaha.
M. D. Flower for St. Paul Union Stock Yards Co.
Horace Wood for South St. Joseph Live Stock Exchange.

Report and Opinion of the Commission.

FIFER, *Commissioner:*

The subject-matter of the complaint in this case is the rates exacted by defendants for transporting live stock and its products in carloads to Chicago from points west, northwest and southwest thereof, including South St. Paul, Minn., and points on the Missouri River, Sioux City, Iowa, to Kansas City, Mo., inclusive. Complainant alleges that the live-stock rates are unreasonable *per se*, and relatively unreasonable compared with rates applied on the products; that defendants' adjustments of rates between live stock and its products subject complainant, the locality of Chicago and producers of live stock in the states of Iowa, Missouri, Wisconsin

and Minnesota to undue and unreasonable prejudice and disadvantage; and that by reason of the premises defendants are violating sections 1 and 3 of the Act to regulate commerce. Complainant also alleges that said adjustments are in violation of the rulings of this Commission in Chicago Board of Trade *v.* Chicago & Alton R. Co. *et al.*, 4 I. C. C. Rep. 158, and Squire & Co. *v.* Michigan Central R. Co. *et al.*, 4 I. C. C. Rep 611.

In their answers, defendants, generally, deny the alleged violations of law. The St. Louis & San Francisco Railroad Company denies participation in the live-stock rates complained of; the Wabash Railroad Company denies complainant's right to institute this
81 proceeding; and some of the other defendants allege that complainant is an unlawful association, its purpose being to restrain, limit and destroy competition in trade.

The interveners deny that the adjustments of rates complained of, so far as they apply to live stock, as between Chicago on the one hand and the localities represented by the interveners respectively on the other, subject complainant, the locality of Chicago or producers of live stock in the states of Iowa, Missouri, Wisconsin and Minnesota to undue and unreasonable prejudice or disadvantage.

Facts deemed material to a determination of the questions thus presented, to the extent that we think it expedient to pass upon them at this time, are found as follows:

Findings of Fact.

Complainant is an incorporated association. Its principal office and place of business are at Chicago, Illinois. Its members are engaged in the purchase, shipment and sale of live stock for themselves and upon commission. Some of them own large farms in the territory under consideration where they raise live stock for the market, while others are interested as packers in the products of live stock. The purposes for which complainant was organized, as stated in its charter, are: "To establish and maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to provide for the speedy adjustment of all business disputes between its members; to facilitate the receiving and distributing of live stock, as well as to provide for and maintain a rigid inspection thereof, thereby guarding against the sale or use of unsound or unhealthy meats; and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits."

Apparently, the St. Louis & San Francisco Railroad Company does not participate in the live-stock rates, and for this reason that company will not be included in the statements hereinafter made.

The other defendants, according as their various lines or routes may run, are engaged as common carriers of interstate traffic, including live stock and its products, between different points
82 in the territory described. They all reach Chicago and one point or more on the Missouri River, either directly or in

connection with other lines, but only a few of them are directly interested in the traffic carried between Chicago and South St. Paul. Some of them own lines which run westerly, northwesterly and southwesterly from the Missouri River.

Chicago is now and for many years has been the largest live-stock market in the United States; but during recent years packing houses have been erected and important live-stock markets built up at South St. Paul, Minn., Sioux City, Iowa, South Omaha, Neb., South St. Joseph and Kansas City, Mo., and at other points on the Missouri River. There are also many packing houses and live-stock markets of importance at different points in the territory lying between Chicago and the Missouri River. To a very large extent all these markets receive their supply of live stock from the same territory; that is to say, from points in states west of Chicago and east of the Rocky Mountains. An important portion of the products is shipped by way of Chicago and the Atlantic Seaboard to foreign countries and large shipments are also made by way of Chicago to consuming markets in the eastern part of the United States. Under these circumstances, the importance of establishing and enforcing rates for the transportation of live stock and its products that are relatively just and reasonable will be readily observed. The higher the rate on the live stock compared with the rate on the products the greater the difficulty of moving the former and the more freely the latter will move, over long distances. To illustrate: Other things being equal, if Chicago, compared with Kansas City, is 100 miles nearer the consuming market but 100 miles farther from the point where the live stock is raised, whether or not the live stock will be slaughtered at Chicago will depend largely upon whether or not the rate on the live stock to Chicago plus the rate on the products from Chicago to the consuming market is more than the rate on the live stock to Kansas City plus the rate on the products from Kansas City to the consuming market.

Efforts to buy and sell in common territory, made by parties located and doing business at different points outside of
83 that territory is called market competition; but market competition, so far as it relates to rates of transportation, can be made effective only through the instrumentality of common carriers. It often happens that the interests of carriers serving the same territory are in conflict, and under such circumstances, one carrier will sometimes make a rate on a particular kind of traffic that will result in considerable injury to persons and localities interested in another kind of traffic, and also to competing carriers, and, apparently, this is what has happened in the present case.

Live stock and its products are in sharp competition with each other in the different markets, and some of the defendants are more interested in the former than in the latter and *vice versa*.

Those whose lines reach Chicago and also run through live-stock districts in states west, northwest and southwest of the Missouri River desire the long haul they will obtain if the live stock is shipped to Chicago, while those whose lines terminate at the river wish the live stock to be slaughtered there, because this will

give them an opportunity to participate in hauling the products. And this conflict of interest appears to be largely responsible for the adjustment of rates complained of.

Aside from the rates in question, carriers generally make rates on live stock somewhat, and in many cases considerably, lower than on the products. This was formerly true concerning rates made by carriers operating between the Missouri River and Chicago; but soon after the large packers erected packing houses at different points on the Missouri River changes began to take place. The tonnage controlled by the packers was comparatively large, and this fact enabled them to obtain secret concessions from individual carriers. These concessions, being discovered by other interested carriers, were followed by open reductions in the published rates applied on the products. As corresponding reductions were not made in the live-stock rates the relation formerly existing between live stock and its products became changed. The rate on packing house products from Missouri River points to Chicago was finally made 5 cents per 100 pounds less than on live hogs; whereupon, complaint was filed with this Commission, which led
84 to an investigation that was followed by the decision in the Chicago Board of Trade case *supra*. The rates complained of in that case pertained to transportation to Chicago from Missouri River points and points in the states of Iowa and Missouri intermediate between the Missouri River and Chicago. The Commission found that the cost to the defendants of transporting live hogs was not greater than the cost of transporting packing house products; held that under the circumstances disclosed by the record the discrimination against the former traffic was unlawful, and issued an order requiring the defendants to cease and desist from exacting higher rates for transporting live hogs than for transporting packing house products from said shipping points to Chicago. This order was issued on November 3, 1890, and was complied with by the defendants on January 1, 1891.

The subject-matter of the complaint in the Squire & Co. case *supra* was the rates exacted by the defendants for transporting cattle and hogs and their products from Chicago to Boston and other eastern points. After stating that live stock and its products were bought and sold in competition with each other in the markets and relating the circumstances surrounding their transportation the Commission held that the different rates should be based upon cost of carriage, but as the record did not contain data from which such cost could be ascertained no order was made.

The interests of carriers operating lines running easterly from the Missouri River are such that the rates from the different points on the river to Chicago and other eastern destinations are usually the same on the same kind of traffic. A reduction made by a carrier at one point is ordinarily followed by corresponding reductions made by interested carriers at the other points. This is of course necessary to prevent a diversion of the traffic.

The distance from St. Paul to Chicago is about 400 miles and the average distance from the Missouri River points to Chicago is about 500 miles.

The rate from St. Paul to Chicago in each instance is about 80 per cent. of the rate to Chicago from Missouri River points, and carriers serving St. Paul endeavor to maintain this relation;
85 but a reduction made in a rate from St. Paul might or might not be followed by a corresponding reduction from the Missouri River.

Although sheep are properly included in the term "live stock," practically no evidence was adduced concerning them or their transportation, and the parties to this proceeding ignored them almost entirely in their briefs and oral arguments; consequently, the term live stock as used herein is intended to cover only cattle and hogs.

The local rate from the Missouri River to Chicago is ordinarily made the maximum on shipments to Chicago from points intermediate between Chicago and the river and is applied to all points in a territory ranging from 100 to 150 miles in width and lying immediately east of the river. The rates to Chicago from points east of said territory are somewhat less and are graded with some regard to distance. What has been said about local rates on live stock to Chicago from the river and the intermediate points applies also to the local rates on the products; and a like method obtains in making rates on live stock and its products to Chicago from South St. Paul and points intermediate between those places.

Rates on live stock and its products to Chicago from Missouri River points and South St. Paul have ranged as follows: At the time the order referred to was complied with the rate from the river on live hogs and packing house products was made 22 cents per 100 pounds. The rate from the river on cattle was then 23½ cents, except that from Sioux City it was 25 cents; and these relations continued, with one unimportant exception, until December 1, 1894. At the latter date the rates were made the same on cattle and hogs and their products; namely, 23½ cents, except that the rate from Sioux City on cattle was not changed; and this adjustment was adhered to, except for short periods, until January 1, 1902. Between December 1, 1894, and January 1, 1902, except, possibly, for short periods, rates from South St. Paul were: On cattle 25 cents, on hogs 27, on packing house products 18½, and on fresh and dressed meats 20. On January 1, 1902, a rate of 18½ cents, called a proportional rate, was established and put in force from the river on live-stock pro-
86 ducts destined to points east of the Indiana-Illinois state line, but no other changes were made, either from the river or from South St. Paul. This adjustment continued until April 14, 1902, but meanwhile and on April 5 the complaint in this case was filed.

The first hearing was held at Chicago on May 15, 1902. At that time an officer of the Chicago, Milwaukee & St. Paul Company, speaking for his company and also for the other defendants, made a motion for an adjournment until some time in the month of July, and in support of the motion said: "It is the policy and the general practice of western roads to make their rates from the west and northwest to Chicago arbitrarily, regardless of destination. It is not obligatory. They do it when they can. Certain conditions have arisen

which have made it necessary to depart in some respects from that policy, but those conditions will doubtless end with the 30th day of June next, and it is believed that thereafter the revision of the rates on live stock and live-stock products will be satisfactory to all persons interested; and for this reason we ask for a postponement." He further stated that it was the intention of the defendants to make such adjustments as would accord with the order hereinbefore referred to. Upon this representation the hearing was adjourned until June 16, 1902, and it was afterwards postponed until the 6th day of the following November.

After the complaint was filed changes were made in the rates as follows: On April 14, 1902, a proportional rate of 18½ cents was put in force from the river on live stock either originating at points west of the river or destined to points east of the Indiana-Illinois state line, leaving the local rate to Chicago still 23½ cents. On August 8, 1902, pursuant to a contract entered into between the Chicago Great Western Company on the one hand and all packers doing business at the Missouri River points on the other, that company established and put in force from Kansas City and St. Joseph on the products of live stock a rate of 20 cents on traffic destined to Chicago and a rate of 18½ cents on traffic destined to points east of the Indiana-Illinois state line. The contract provided that these rates should remain in force seven years, in consideration
87 whereof the packers agreed to deliver to the Chicago Great Western a certain percentage of their traffic in the products, or, upon failure to do so, pay it each month, by way of liquidated damages, an agreed amount for each car short. The action of the Chicago Great Western was followed by other interested carriers and corresponding rates were put in force from the other Missouri River points, while rates from South St. Paul were put in force as follows: On packing house products, 15 7/10 cents when destined to Chicago and 14 6/10 when destined to points east of the Indiana-Illinois state line; and on fresh and dressed meats, 17 cents when destined to Chicago and 15 7/10 when destined to points east of the Indiana-Illinois state line. On August 11, 1902, the Atchison, Topeka & Santa Fe Company made a 12-cent rate to Chicago from Kansas City and intermediate points on live stock, and other carriers followed this action to the extent of making a 12-cent proportional rate from the river on live stock originating at points west of the river. On January 1, 1903, the Atchison Company cancelled the 12-cent rate and made a rate of 18½ cents to take its place. This action was followed by the other carriers to the extent of canceling the 12-cent proportional rate and making a proportional rate of 18½ cents to take its place. On March 1, 1903, the Atchison Company put in the place of its 18½-cent rate a rate of 20 cents and made a proportional rate from the river on live stock destined to points east of the Indiana-Illinois state line of 18½ cents; whereupon the other carriers substituted for their 18½-cent proportional rate a proportional rate of 20 cents and made another proportional rate from the river on live stock destined to points east of the Indiana-Illinois state line of 18½ cents.

Since the latter date no changes in the rates have been made. It will thus be seen that the expectations of defendants, as voiced by the officer of the Chicago, Milwaukee & St. Paul Company at the hearing on May 15, 1902, have not been realized, and the disparities in the rates are greater now than they were at that time. The Atchison Company is the only one of the defendants that is complying with the order in the Chicago Board of Trade case, hereinbefore mentioned. That company exacts from Missouri River points
88 the same local rate and the same proportional rate on live stock that it exacts on the products of live stock, and makes the local rate, namely 20 cents, the maximum from the intermediate points. On the other hand, while the other defendants operating between the Missouri River and Chicago follow the Atchison Company rates so far as the rates on the products and the proportional rate on the live stock are concerned, they exact from the river on live stock a local rate of 23½ cents and make that rate the maximum from the intermediate points; that is to say, the local rate they exact from the river, and which is made the basis of rates from the intermediate points, is 3½ cents per 100 pounds more on live stock than on the products of live stock. And the defendants that carry live stock and its products to Chicago from South St. Paul and points intermediate between those places charge rates for the transportation that are very much higher on the former traffic than on the latter.

Since all, or nearly all, the live stock carried easterly from the Missouri River is shipped there in the first instance from other points, practically no shipments are made from the river to Chicago upon the local rates in force between those points, and such rates are therefore important, principally, because of their effect upon rates from the intermediate points.

At the hearing on November 6, 1902, on motion of complainant, the complaint in this case, so far as it related to the Atchison, Topeka & Santa Fe Railway Company, was dismissed.

As applied to the other defendants that operate between the Missouri River and Chicago, it is substantially accurate to say that the matters advanced by them in justification of the discrimination complained of, are as follows: The Chicago Great Western contends that the discrimination is justified, first, by difference to the carriers in the cost of transportation, and second, by competition created by the packers, as hereinbefore described. The other defendants rely for their justification upon the competition created by the Chicago Great Western Company in making said contract and publishing and enforcing rates in accordance with its provisions.

Matters advanced in justification by the defendants that op-
89 erate between South St. Paul and Chicago, as will be hereinafter explained, are somewhat different.

Generally speaking, the live stock is carried in cars owned by the carriers, while the products are carried in refrigerator cars owned by the packers. The refrigerator cars are nearly always returned empty to the shipping points, while 20 per cent. or more of the live-stock cars are returned loaded.

The carriers pay the packers for the use of the refrigerator cars 1

cent per mile for each mile the cars are transported, and make settlements among themselves at the rate of 6 mills per mile for the use of the live-stock cars. The former cars are much more expensive to build than the latter.

Evidence concerning weights of the cars used and the revenue-paying and other traffic carried in them was very conflicting, but we think fair averages would be about as follows:

Packing House Products.

Car	36,000	pounds.
Revenue-paying load	28,000	"
Ice and other preservatives	3,000	"
Car, on return trip	36,000	"
Total weight carried for revenue received	103,000	"
Revenue on 28,000 pounds at 20 cents per 100	$56.00	
Less mileage from and to point of shipment	10.00	
Net revenue received	$46.00	

Revenue per 100 on total weight hauled, 4 cents and about 5 mills.

Fresh and Dressed Meats.

Car	36,000	pounds.
Revenue-paying load	21,000	"
Ice and other preservatives	4,000	"
Car, on return trip	36,000	"
Total weight carried for revenue received	97,000	"
Revenue on 21,000 pounds at 20 cents per 100	$42.00	
Less mileage from and to point of shipment	10.00	
Net revenue received	$32.00	

Revenue per 100 on total weight hauled, 3 cents and about 3 mills.

90 Cattle.

Car	26,500	pounds.
Revenue-paying load	22,000	"
Bedding, manure, etc.	2,000	"
Car, on return trip	26,500	"
Total weight carried for revenue received	77,000	"
Revenue on 22,000 pounds at 20 cents per 100	$44.00	
Less mileage from and to point of shipment	6.00	
Net revenue received	$38.00	

Revenue per 100 on total weight hauled, 4 cents and a little more than 9 mills.

Hogs.

Car	26,500	pounds.
Revenue-paying load	17,000	"
Bedding, manure, etc.	2,000	"
Car, on return trip	26,500	"
Total weight carried for revenue received	72,000	"
Revenue on 17,000 pounds at 20 cents per 100	$34.00	
Less mileage from and to point of shipment	6.00	
Net revenue received	$28.00	

Revenue per 100 on total weight hauled, 3 cents and about 9 mills.

If there should be a scarcity of cars the weights of the revenue-paying loads above stated would be somewhat increased, and we think the increases pertaining to packing house products and fresh and dressed meats would be greater than those pertaining to either cattle or hogs; but on account of the mileage received by them the packers do not, ordinarily, load very much in excess of the minimums required by the carriers, which are: On packing house products, 26,000 pounds; and on fresh and dressed meats, 20,000. The minimums pertaining to live stock vary according to the kind of live stock shipped and the length of the car used in each instance.

The length of the car most generally used is 33 feet and 9
91 inches, and minimums pertaining to such a car are: On cattle, 22,000 pounds; and on hogs, double-deck, 22,000, and single-deck 17,000.

Further variations in the above comparisons might result from differences in incidental expenses pertaining to the different classes of traffic at terminals and while en route.

Packing house products and fresh dressed meats are loaded and unloaded by the shippers. Live stock is nearly always loaded at the intermediate points by the shippers, without expense to the carriers, but the president of the Chicago Great Western stated that the carrier pays the stock yards company, in each instance, for loading, a fee which ranges from 25 cents to $1.50 per car. No explanation of the wide range in expense thus indicated was made, and a similar claim as regards expense was not made by any of the other defendants. The carriers pay the expense of unloading at Chicago, which is 25 cents per car, but this is included in a terminal charge of $2 per car, which is exacted on live stock, in addition to the transportation charges above specified.

Trains carrying packing house products or fresh or dressed meats are stopped at different points en route to afford an opportunity for re-icing the cars, but the re-icing is done at the expense of the shippers. On the other hand, the carriers bear the expense of spraying hogs while in transit during hot weather, and the expense of clean-

ing the live-stock cars, the amount of which has not been definitely shown, is also borne by the carriers.

Evidence concerning risk assumed by the carriers in transporting the different kinds of traffic was very conflicting, but the damages paid are such a small percentage of the revenue received that they are not a very important factor.

At many of their local stations the defendants furnish stock yards to accommodate shipments of live stock, but from the record it is impossible to say how much, if any, greater the expense of terminal facilities thus furnished is than the expense of terminal facilities furnished for shipments of live-stock products. In connection with some of these cattle yards defendants provide weighing facilities.

For the purpose of explaining more fully the matter of terminal expenses we quote from the testimony of an officer of the
92 Chicago, Burlington & Quincy Company as follows: "Terminal charges on packing house product and live stock, viz., loading and unloading charges, switching charges paid other lines, etc., are difficult of comparison; they stand in different relation at different terminal points and the comparison would not be the same in the case of any two carriers because their means of access to the place of loading and unloading are seldom the same at any one point, nor is their relative situation the same at any two points. For illustration, this company reaches the Kansas City Stock Yards with its own rails and therefore does not pay any switching charge on live stock, but is obliged to pay $3 per car switching on packing house product shipped from the same point. At St. Joseph we pay a switching charge of $1 per car on live stock, while the Chicago Great Western Railway pays a total of $4 per car. We pay $1.50 per car on packing house products shipped from St. Joseph, while the Chicago Great Western Railway pays a total of $4.50 per car. At Chicago we pay a switching charge of $3.50 per car on packing house product delivered at the Union Stock Yards, which charge includes return of the empty car to our tracks. We pay from $2 to $5 per car for switching service on packing house product delivered on other lines in the City of Chicago; on live stock delivered at the Union Stock Yards we charge $2 per car in addition to the regular tariff rate and pay for trackage and unloading $1.75 per car, which does not include the cost of our own switching service. There is no difference in the practice of the several lines who deliver live stock and packing house product at Chicago and Union Stock Yards from western points."

We understand that delivery in Chicago when that point is the final destination is nearly always at the Union Stock Yards, if the traffic is live stock; also, that a large portion of the products is delivered there. But while the defendants exact a terminal charge of $2 per car for such delivery of live stock, they exact no terminal charge whatever for such delivery of live-stock products, if the traffic is shipped from a point west of Joliet, Ill. The latter point is located a short distance southwesterly of Chicago.

The freight traffic manager of the Atchison Company, tes-
93 tifying as to the effect of terminal and other charges paid and absorbed by his company, said: "My view is that the

rate on the product should be higher than the rate on the raw material. The rate of 12 cents per hundred pounds on live stock from the Missouri River to Chicago pays the Atchison road as much in gross for transporting a carload of live stock as the 18½-cent rate pays us for transporting a carload of fresh meat. By gross revenue I mean the charges we collect and retain after paying the terminal charges, switching charges, mileage, etc."

Defendants pass men free, who accompany and care for cattle and hogs while in transit, as follows: One man one way in charge of one car; one man each way in charge of two to five cars; two men each way in charge of six to ten cars; and three men each way in charge of eleven or more cars. Returning, these men ride on defendants' passenger trains.

Speed and tonnage of trains appear to be practically the same whether the traffic carried is live stock or the products of live stock. In each instance the tonnage offered is large and shipments are regularly and continuously made; and in these respects there is apparently no appreciable difference between the two classes of traffic.

Weights of products of cattle and hogs are percentages of weights of the live animals as follows: Hogs, meat products about 72 per cent., total products, including offal, fertilizer, hair, etc., about 82 per cent.; cattle, meat products, 45 to 60 per cent., total products about 67 per cent.

The value of the products of cattle and hogs, pound for pound, is about twice that of the live animals.

Although defendants do not exact higher rates per 100 pounds for transportation to Chicago from intermediate points between the Missouri River and Chicago than to the same destination from the river, nor claim a right to do so, some of them contend that as the bulk of the live-stock shipments are from the intermediate points while the shipments of the products are more largely from the river and the latter traffic is often carried in full train loads from the river while the former traffic, when shipped from the intermediate points, is what might be called pick-up business, the cost of transporting the live stock is greater than the cost of transporting the live stock
94 products. This statement is true to the extent that the more switching done and the greater the number of stops made by a train the more expensive to the carrier the transportation service is, and more switching and stops are necessary when the shipments are from the intermediate points than when they are from the river. But the difference in cost thus indicated appears to be offset in the present case by the greater rate per ton per mile received by defendants on shipments from the intermediate points. As before stated, the rate is the same to Chicago from intermediate points in a territory ranging from 100 to 150 miles in width and situated just east of the river as from the river. The only one of defendants' operating officials who gave testimony on this point was the general manager of the Chicago, Burlington & Quincy Company, and he made replies as indicated below to questions concerning this matter.

Q. On the basis of the same rate on both live stock and the product, which would you consider the more remunerative traffic

from a railroad standpoint, a train of fresh meat or packing house products from the Missouri River destined to Chicago, or a train of live stock picked up at main line stations east of the Missouri River?

A. That is a pretty difficult question to answer and I should think it was largely a matter of opinion, which would be arrived at by studying the ordinary conditions of handling the business. My judgment would be that the train of live stock would be the more remunerative of these two, although the difference might not be so very great. My reason for that is that while there are a good many expenses incident to the handling of live stock from local stations, the picking up of live stock on a division and gathering it into a train at a division point is not quite as expensive as hauling a train of the full size over the entire division. The cost per ton or per car is greater, but the total cost is not greater. The conditions in handling live stock, although they are pretty severe and pretty difficult to meet, have never been quite as severe or quite as difficult to meet as the conditions in hauling the dressed products.

Q. Make the same comparison between a train of live stock
95 from the Missouri River compared with a train of live stock picked up east of the Missouri River, at the same rate.

A. I should say that the train picked up at stations east of the Missouri River, assuming that the business was moving eastward, would be more remunerative than a solid train of the same number of cars and same weight picked up at the Missouri River terminal.

Packing house products and fresh and dressed meats include almost the entire products of live stock.

Carriers usually make lower rates on raw material than on its products, and all the railroad officials who testified in this case on that point, except the president of the Chicago Great Western Company, said that under normal conditions they believed the rates on live stock should not be higher, while some of them stated that in their opinion they should be lower, than on the products of live stock.

The president of the Chicago Great Western Company stated that his company entered into the aforesaid contract for the purpose of securing a greater proportion of the traffic in the products of live stock than it had previously been able to obtain.

In justification of the discrimination complained of, defendants operating between South St. Paul and Chicago, in addition to matters advanced in justification by the other defendants as above specified, contend that if live-stock rates to Chicago from points in the state of Minnesota are reduced the Railroad & Warehouse Commission of that state will reduce rates on live stock from such Minnesota points to South St. Paul.

Under the laws of the State of Minnesota the Commission referred to has power, subject to revision by courts of competent jurisdiction, after complaint made and investigation duly had to substitute for rates established by common carriers doing business in that state, for the transportation of passengers or property therein, rate established by the Commission, if it determines that the rates established by the carriers are unequal or unreasonable.

The present adjustment of rates on live stock to Chicago as com-

pared with South St. Paul, from the Minnesota points in
96 question, was the result of conferences between said Commission and officials of the interested carriers.

After the complaint in this case was filed the Minnesota Commission notified the defendants referred to above as operating between Chicago and South St. Paul that if the rates on live stock from Minnesota points to Chicago were reduced the Commission would make corresponding reductions in the rates on live stock from such Minnesota points to South St. Paul.

Complainant introduced considerable evidence which showed that Chicago as compared with South St. Paul and the Missouri River markets has received a smaller proportion during recent years than prior thereto of the live stock raised in the territory under consideration, and claimed that this tended to show that the discrimination complained of has injured the Chicago live-stock market and those interested therein.

On the other hand, defendants showed that during recent years great improvements have been made in the facilities for handling live stock at South St. Paul and the Missouri River markets, including the erection of new packing houses and additions to old ones; that there has been a greater increase in the amount of live stock raised west of the river than east of it; and that live stock shipped from the river to Chicago shrinks in weight from 3 to 5 per cent. while in transit; and claimed that these facts and others that are similar fully account for changes shown in the destinations of live-stock shipments.

That the facts shown would tend to produce the effect claimed for them is evident, but in that connection it is impossible to determine to what extent each of the facts was effective.

Complainant also introduced considerable evidence tending to show that the rates exacted by defendants for transporting live stock to Chicago from points in the states of Iowa, Missouri, Wisconsin and Minnesota are unreasonable *per se*, but the testimony upon that point is unsatisfactory and we do not feel justified in making a finding in relation thereto.

Based upon the foregoing, we make specific findings as follows:

The discrimination against the transportation of live stock to Chicago from the shipping points in question, brought about by
97 defendants' action in establishing and putting in force upon the products of live stock rates of transportation lower than those contemporaneously exacted by defendants for the transportation of live stock between the same points injured the live-stock market of Chicago and those interested therein, is not justified by difference to defendants in the cost of transportation, and is not otherwise justified, and therefore subjects the traffic in live stock and the Chicago live-stock market and those interested therein, including complainant, to undue and unreasonable prejudice and disadvantage, and gives to the traffic in the products of live stock and shippers and localities interested in such traffic undue and unreasonable preference and advantage.

Conclusions.

Complainant is an incorporated association whose members are engaged in the purchase, shipment and sale of live stock, and whether or not a purpose of its organization is, as some of the defendants have alleged, to restrain, limit and destroy competition in trade, it had a right under section 13 of the Act to regulate commerce to institute and maintain this proceeding.

Cattle Raisers' Association of Texas *v.* Fort Worth & Denver City Railway Company *et al.*, 7 I. C. C. Rep. 513.

The jurisdiction of the Commission over the defendants is not denied.

In the Chicago Board of Trade case hereinbefore mentioned the Commission, after stating the circumstances and conditions surrounding the transportation of live hogs and the products of hogs, including the competitive relations existing between these two kinds of traffic, and the cost of transportation, held that the greater charge exacted by the defendants for transporting the former was unlawful, and issued an order requiring the defendants to cease and desist from charging more per 100 pounds for transporting live hogs than for transporting the products of hogs. The territory there in question was substantially the same as that now under consideration, and, as shown in the findings of fact, essential conditions have not changed materially since. It follows, therefore, that if the order referred to was right when issued the discrimination complained of, so
98 far as it relates to the transportation of hogs and their products to Chicago from the river and points intermediate between the river and Chicago, is unlawful. And if it is unlawful to exact a higher rate on hogs than on their products it is unlawful to charge more for transporting cattle than for transporting the products of cattle, because the relation between the live animal and its products is substantially the same in each case, and, at the same rate, the net revenue per 100 pounds received by defendants for transporting cattle is greater than the net revenue on equal tonnage received by them for transporting hogs.

Packing house products and fresh and dressed meats include almost the entire products of live stock, and although at the same rate per 100 pounds the traffic in packing house products pays, above cost of transportation, a greater revenue than the traffic in either fresh or dressed meats, defendants make no difference in their rates on that account. They also charge the same rates for transporting cattle that they exact for transporting hogs.

If cattle and hogs are considered together on the one hand and packing house products and fresh and dressed meats on the other it will be seen that after deducting mileage according to payments made by defendants the revenue received by them compared with the paying and non-paying tonnage hauled is greater at the same rate on live stock than on the products of live stock. But expenses incidental to the transportation do not apply equally to the different classes of traffic.

Although the products of live stock are shipped to some extent from packing houses located at some of the intermediate points and the local rate from the river is made the maximum for such shipments, generally speaking, the local rates in question apply to live stock shipped from the intermediate points and products of live stock shipped from Missouri River points and South St. Paul, because the bulk of the live-stock shipments in question is from the intermediate points while shipments of the products are largely from the river and South St. Paul.

At intermediate stations where the tonnage of live stock shipped is considerable defendants provide, for the accommodation of this traffic, cattle yards, and, in many instances, weighing
99 facilities. This is an expense that does not apply to shipments of the products; but, on the other hand, the switching and terminal charges paid on the products at Missouri River points and absorbed by defendants, although not definitely shown, are large, and fully sufficient, we think, to offset terminal expenses on live stock at the intermediate shipping points.

Apparently, the switching and terminal charges paid by defendants at Chicago, when that point is the final destination, are the same whether the traffic is live stock or the products of live stock, except that defendants pay 25 cents per car for unloading the live stock and also pay for cleaning the live-stock cars, and we understand that nearly all the former traffic and a large portion of the latter is delivered at the Union Stock Yards; but while defendants exact a terminal charge of $2 per car for such delivery of live stock they make no terminal charge whatever for such delivery of live-stock products when the shipments are from points west of Joliet, Ill. The latter point is located a short distance south-westerly of Chicago.

Another expense incidental to the transportation of live stock that does not apply to the products is that connected with the transportation of men who accompany the live-stock shipments. Such transportation subjects defendants to some additional risk, but we think this risk is about the only expense connected with the transportation of the men that should be considered in connection with the transportation of the live stock. These men take care of the stock while in transit and thus relieve defendants of duties they would otherwise have to perform, and the carriage of the men free is incidental to, and cannot be considered separately from, the transportation of the live stock. But whatever the expense to defendants thus caused may be, we are convinced that it is offset, and more than offset, by the fact that 20 per cent. or more of the live-stock cars are returned to the shipping points loaded, while refrigerator cars are nearly always returned empty.

There are a few other differences in cost of transportation, but they are not very important and have been fully explained in the findings of fact; we do not deem it necessary, therefore, to notice them here in detail.

100 After a careful consideration of all matters disclosed by the record we conclude that the discrimination complained of is not justified by difference to defendants in the cost of transportation.

And this was the view expressed by some of defendants' officials. The freight traffic manager of the Atchison Company, as hereinbefore stated, testified that from the Missouri River to Chicago a 12-cent rate on live stock is as profitable as a rate of 18½ cents on fresh meat. But this might be true when applied to transportation by the Atchison Company although not true when applied to transportation by some of the other defendants. What are called "out-of-pocket" expenses, which are paid by the defendants and because of which no charges in addition to the regular rates of transportation are exacted from shippers, vary according to the variations in location of defendants' respective lines of railway.

In making calculations concerning cost of transportation we have endeavored to describe the general situation and have not attempted to give in detail the differences that exist between the different lines operating in the territory under consideration; first, because it would be impossible to state such differences accurately, and, second, because although we think cost of transportation is a very important element we do not consider it a controlling element in this case.

In determining what the relation should be between the rates charged for transporting two different freight articles value is often an important factor; but this is not alone because of the greater risk connected with the transportation of the more valuable article. Improvements made during recent years in the road-beds and equipment of carriers have rendered the item of risk in many cases of little consequence. The value of the article is important, principally, because of its bearing upon the value to the shipper of the transportation service; and the value of the service is, and has always been considered by carriers, one of the important elements to be considered when fixing the rates to be charged for transportation. As stated in the findings of fact, live-stock products, compared with the live animals, are about twice as valuable.

Another very important factor is the relation existing be-
101 tween the articles transported. If the relation is remote, such as that between flour and silk, a change of a few cents per hundred pounds in the rates charged for transporting one of them may not affect traffic in the other; but if the relation is close, such as that between raw material on the one hand and goods manufactured from that material on the other, a slight change in the adjustment of transportation charges between the two articles may be sufficient to close manufacturing plants at some points and increase the output of plants located elsewhere. And it is because of this difference that some discriminations made by carriers are justifiable under certain circumstances.

The competition between live stock and the products of live stock is very severe both in the markets of purchase and in the markets of sale, and live stock raised in the vicinity of the Missouri River is now and for many years has been transported to and slaughtered at different points in territory lying between that river and the Atlantic Seaboard. Packing houses at these different points have been established and maintained under rates of transportation which, generally speaking, have not been higher, while in many instances they

have been lower, on the live stock than on the products; and the principle governing this adjustment, namely, that the rates on raw material shall not be greater than on the products of the material, has been applied in nearly all other cases of a similar nature. It is therefore apparent that if the matters of defense advanced in this case are held to justify the discrimination complained of many other discriminations of a like nature may result.

But some of the defendants contend that it is natural and therefore proper for live stock to be slaughtered at or near the points where it is raised. They say that if this is done shrinkages in weights and other waste that would otherwise result will be avoided.

The record shows that live stock shrinks some in weight while in transit, and this is naturally an advantage to the near-by market and one to which it is entitled, but such natural advantage does not justify a discrimination in rates in favor of the near-by market which would otherwise be unlawful. The record also shows that it
102 is practicable to transport live stock long distances and that this has been done continuously for many years. Commissioner Bragg, in delivering the opinion of the Commission in the Chicago Board of Trade Case, *supra,* referring to the live-stock business, said: "A business like that, involving the preparation for and consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it, is too large to be done in a corner." We think this dictum was true at the time the decision in that case was rendered and is true now, and that the relations of rates on these highly competitive kinds of traffic should not be adjusted with reference to the interests of any particular market or markets. Rates relatively just and reasonable should be established, regardless of results that may ensue, and the live stock should be allowed to go wherever it will under such circumstances.

Several of defendants' officers gave testimony concerning the relation that should exist between the rates on live stock and its products, and, with the exception of the president of the Chicago Great Western Company, expressed the opinion that, as a general proposition, the rates on the former traffic should not be higher than on the latter, while some of them said the rates on the manufactured product should be higher than on the raw material. But they stated that the rates on live-stock products, provided for in the contract aforesaid, are unreasonably low; that they had no voice in making such rates, but were compelled to accept them in order to secure a fair share of the traffic; that the carriers represented by them respectively would suffer great loss if compelled to establish corresponding rates on live stock; and that, therefore, they believed the discrimination complained of, so far as it relates to such carriers, is justifiable. The president of the Chicago Great Western stated that his company entered into the contract for the purpose of securing more of the traffic in the live-stock products than it had previously been able to obtain. It is therefore evident that, as regards responsibility for the discrimination under consideration, the position of the Chicago Great Western Company is somewhat different from that of the other defendants.

It is undoubtedly true that the Chicago Great Western Company

had a right to change its rate on packing house products
103 for the purpose of increasing its business, but that right is qualified by the prohibition that that company shall not unduly discriminate against another kind of traffic; and when that company established and put in force from Kansas City and St. Joseph to Chicago rates on the products of live stock that were lower than rates it was then exacting between the same points on live stock it unduly discriminated against the latter traffic. This conclusion is based upon all the circumstances and conditions surrounding the transportation of and the relation existing between these two classes of traffic, which have been fully explained above and need not be repeated here. As it appears to us, a contrary holding would be equivalent to saying that a quasi-public servant may use its franchise for the purpose of building up some markets and destroying others, if in its judgment its stockholders will be benefited by such action. The large interests affected, the immense amount of money invested, the many live-stock markets and packing centers that have been built up and maintained under the former relation of rates, and the injury that will result if the change in that relation is permitted to continue, amply warrant the conclusion that the discrimination in question is not justified by the desire of the Chicago Great Western Company to benefit its stockholders by increasing its business.

Having held that the action of the Chicago Great Western Company in reducing the rate on the products from Kansas City and St. Joseph without making corresponding reductions in the live-stock rate was unlawful, the like ruling must be made as to the other defendants who have followed that company in making the disparity complained of effective. The rate on the products was reduced from the other Missouri River points and South St. Paul because it had been reduced from Kansas City and St. Joseph and reduced from the intermediate points because it had been reduced from the river, and all the defendants have been and are practicing at these various points an unlawful discrimination against live-stock traffic. Therefore, whether the unlawful practice was begun by one or by another is not a matter of great importance. It is apparent that should we issue an order only against the Chicago Great Western requiring it to restore the former relation of rates and the
104 order should be complied with, the principal ground of justification now advanced by the other defendants would be removed; and unless such action of the Chicago Great Western were followed by the other defendants it would become necessary to issue another order against the latter. Moreover, higher rates on live stock were being charged by a number of the other defendants as well as the Chicago Great Western before the Chicago Great Western contract was made and at the time the complaint was filed.

The defendants operating between South St. Paul and Chicago contend that if rates on live stock from points in Minnesota intermediate between South St. Paul and Chicago are reduced to Chicago the Minnesota Commission will make corresponding reductions from such Minnesota points to South St. Paul. This contention was supported by testimony of a member of that commission, who stated

that, in his opinion, the present adjustment of live-stock rates, as between South St. Paul and Chicago, is fair, and that, therefore, any reduction to Chicago, unless followed by a corresponding reduction to South St. Paul, would make the relation unequal. If such relation is now just (concerning which we express no opinion) and in complying with any order that may be made in this case these defendants reduce the rates to Chicago, corresponding reductions to South St. Paul should of course be made. This also applies to similar contentions of the interveners representing interests at points on the Missouri River.

The defendant, the St. Louis & San Francisco Railroad Company, is not engaged in the carriage of live stock to Chicago, and as to it the complaint should be dismissed. The formal order will also show the dismissal of the Atcheson, Topeka & Santa Fe Railway Company, heretofore allowed upon motion of complainant's counsel. As to the other defendants an order will be entered, in accordance with the conclusions above expressed, requiring them to cease and desist from making any higher charge for the transportation of live stock than they contemporaneously enforce for the carriage of products of live stock, between the points involved in this case.

105 KNAPP, *Chairman* (concurring):

While I agree with nearly everything said in the foregoing report and opinion, I feel bound to express my doubt whether the action of the Chicago Great Western did not, as regards the other carriers, introduce a competitive condition which creates or justifies an exception to the general rule. To my mind the competition brought about by that action is not easily distinguishable in legal effect from the competition which the Supreme Court in various decisions has held a valid excuse for discriminations claimed to be unlawful. Nor is it altogether clear to me that any order which the Commission has authority to make in this proceeding is likely on the whole to promote the public advantage. Nevertheless I am so unwilling, even under the circumstances here disclosed, to sanction a rate adjustment which I regard as fundamentally wrong, and which if permitted in this case would in my judgment establish a dangerous precedent, that I am constrained to concur in the findings and conclusions of my associates.

106 & 107 EXHIBIT Q.

108 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 7th day of January, A. D. 1905.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, Hon. Joseph W. Fifer, Commissioners.

THE CHICAGO LIVE STOCK EXCHANGE, Complainant,

v.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO AND ALTON RAILWAY COMPANY; THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; THE HANNIBAL AND ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH AND COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY; THE OMAHA, KANSAS CITY AND EASTERN RAILROAD COMPANY; THE ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY, Defendants, and THE RAILROAD AND WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA; THE ST. PAUL UNION STOCK YARDS COMPANY OF ST. PAUL, MINNESOTA; THE SOUTH ST. JOSEPH LIVE STOCK EXCHANGE; THE UNION STOCK YARDS COMPANY OF OMAHA, NEBRASKA; THE SIOUX CITY STOCK YARDS COMPANY, and THE SIOUX CITY LIVE STOCK EXCHANGE OF SIOUX CITY, IOWA, Interveners.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

109 It is ordered, that, in accordance with said report and opinion, the present relation of rates maintained and enforced by defendants, the Chicago Great Western Railway Company; the Burlington, Cedar Rapids and Northern Railway Company; the Chicago, St. Paul, Minneapolis and Omaha Railway Company; the Chicago and Alton Railway Company; the Chicago and Northwestern Railway Company; the Chicago, Burlington and Quincy Railroad Company; the Chicago, Milwaukee and St. Paul Railway Company; the Chicago, Rock Island and Pacific Railway Company; the Hannibal and St. Joseph Railroad Company; the Illinois Central Railroad Company; the Iowa Central Railway Company; the Kansas City, St. Joseph and Council Bluffs Railroad Company; the Minneapolis and St. Louis Railroad Company; the Missouri Pacific Railway Company; the Missouri, Kansas and Texas Railway Company; the Omaha, Kansas City and Eastern Railroad Company; the Wabash Railroad Company, and the Wisconsin Central Railway

Company, whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago, in the State of Illinois, from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago, constitutes wrongful prejudice and discrimination, in violation of the provisions of the act to regulate commerce; and that said defendants be, and each of them is hereby, notified and required to cease and desist, on or before the 15th day of February, 1905, from maintaining or enforcing the said unlawful relation of rates, and from further continuing said unlawful prejudice and discrimination.

And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of section 15 of the act to regulate commerce.

110 *Certificate.*

OFFICE OF THE INTERSTATE COMMERCE COMMISSION.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, seventeen in number, and marked A to Q, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission at the city of Washington, in the District of Columbia, this 17 day of April, 1905.

[Seal Interstate Commerce Commission, 1887.]

EDWARD A. MOSELEY,
Secretary of the Interstate Commerce Commission.

(Endorsed:) Filed January 12, 1906, *Nunc pro tunc* as of April 29, 1905, Marshall E. Sampsell, Clerk.

111 And on the same day to-wit: the twenty ninth day of April, 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of April 29, 1905.

27723.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

And now upon the filing of the bill of complaint and accompanying motion herein, it is hereby

Ordered, that the Secretary of the Interstate Commerce Commission be, and he is hereby authorized to make service of said bill of complaint and accompanying motion and of this order, by registering and depositing in the mails of the United States true copies thereof, duly authenticated under the seal of the said Interstate Commerce Commission, correctly addressed to the President or one of the Vice Presidents or the Secretary of each of the defendants herein.

It is also hereby Ordered that the said defendants file their answers to said bill of complaint on or before the first day of June A. D. 1905, and also appear before the Court on the first day of June, A. D. 1905, and show cause why such order and further preliminary orders as to the Court may seem meet should not be entered in this cause to speed the same to final hearing.

112 And on to-wit: the first day of June, A. D. 1905, being one of the days of the regular December term of said Court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of June 1, 1905, Extending Time for Defendants to Answer.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

By Agreement of Counsel the time for defendants to answer herein is extended to June 12th, 1905.

113 And afterwards to-wit: on the tenth day of June, 1905, came the Chicago Great Western Railway by its solicitors, Mr. Frank B. Kellogg, and filed in the clerk's office of said Court in said entitled cause its certain Answer to the Petition of the Interstate Commerce Commission in words and figures following to-wit:

114 *Answer Chicago Great Western Ry.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of The Chicago Great Western Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the state of Illinois, and that it has its principal offices in the city of Chicago, state of Illinois, in the city of St. Paul, in the state of Minnesota, and in the city of New York and state of New York, but it says that it does not know and can neither admit nor deny the averments of the said first paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons
115 and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States, and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from Kansas City, Missouri, St. Joseph, Missouri, and Omaha, Nebraska, on the Missouri river, and as a common carrier from South St. Paul, in the state of Minnesota, and from points in the territory between the Missouri river or South St. Paul and Chicago, and to other Eastern points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri river to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Ex. A is a correct copy of said complaint; but this

defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and
116 commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made, or have been made to this defendant by shippers of live-stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the same complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys, and it admits further that testimony was taken at such hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the fifth paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in re-
117 spect to the matter of said complaint, setting forth its findings of fact and its conclusion based upon said facts, and that said Ex. P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Ex. Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Ex. P to said petition) and a copy of said order (Ex. Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith, but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Secs. 3 and 2 of the Act to Regulate Commerce.

118 It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Sec. 1 of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri river, Sioux City, in the State of Iowa, to Kansas City, in the state of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri river or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following namely:

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri river points and intermediate points and from South St. Paul and intermediate points to Chicago

119 were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has been at any time made to this defendant by any shipper of such livestock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri river and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been made the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said commission, were and have been very low, but this defendant has been obliged to make such rates and charges for the transportation of such products

from said points to Chicago because of the extreme competitive conditions existing at said Missouri river points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order
120 can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri river points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between such points have been fixed and established by such competition and to enable it to meet such competition.

That such competition in the transportation of packing-
121 house products from Kansas City, Omaha, South St. Paul and other Missouri river towns, between the said railroads and the rail and water routes from the Gulf of Mexico and the Lake ports, does not apply to live stock and especially when shipped locally from stations east of the Missouri river and east of St. Paul to Chicago, and points east of Chicago.

That at the time of filing the complaint before said commission there was in existence and ever since has been in existence proportional rates on all live stock originating west of the Missouri river and shipped east thereof, which are no higher than the rates on the products of live stock, so that substantially all of the live cattle and hogs shipped from the Missouri river to Chicago and points east of Chicago, are shipped on such proportional rates, which are not and have not been in excess of the rates charged for the transportation of the dressed product of cattle and hogs from such Missouri river points to Chicago and points east thereof.

Fourth. This defendant further avers that as heretofore stated

its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on livestock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the
122 Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low, and will not furnish it fair remuneration for the service to be performed by it.

Fifth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City, in the state of Iowa, and St. Paul, in the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri river, and in the country round about and adjacent to said towns, and that large stockyards and packing-houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stockyards and packing-houses at such points and the growth and development of such market towns has been and has been and now is of inestimable advantage to the stock-growers throughout said territory, furnishing them a near market for their live-stock and also giving them the advantage and benefit of the home market, as compared with the dis-
123 advantage of shipping their livestock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of lake Superior and lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of livestock upon which the country west of the Missouri river and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs

and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri river points and St. Paul and Chicago in said proceeding was *but* this was operating to the prejudice of Chicago and tended to divert livestock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale
124 of livestock at Missouri river points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and such hogs which would tend to injure or destroy such markets and which would tend to deprive the stock-growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock-growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the railroad commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and
125 insisted that any such order as has now been made by said commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock-growers throughout the country in the vicinity of said home markets and to the west thereof.

Sixth. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Wherefore, defendant prays that this action be dismissed.

FRANK B. KELLOGG,
General Counsel Chicago Great Western Ry., St. Paul, Minn.

126 STATE OF MINNESOTA, *County of Ramsey:*

Frank B. Kellogg came before me personally, and being duly sworn, doth say that he is the General Counsel of Defendant in the above entitled action; that the foregoing is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

FRANK B. KELLOGG.

Subscribed and sworn to before me on this 5th day of June A. D. 1905.

[NOTARIAL SEAL.] GUY CHASE,
Notary Public, Ramsey County, Minn.

(Endorsed:) Filed June 10, 1905 Marshall E. Sampsell, Clerk.

127 And on the same day to-wit: the tenth day of June 1905, came the Chicago, St. Paul, Minneapolis and Omaha Railway Company by its solicitor Mr. Thomas Wilson and filed in the clerk's office of said court in said entitled cause its certain Answer in words and figures following to-wit:

128 *Answer of Chicago, St. Paul, Minneapolis & Omaha Ry. Co.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and OTHERS.

The answer of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, Defendant, to the petition of the Interstate Commerce Commission, Petitioner:—

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:—

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Wisconsin, and that it has it- principal offices in the City of St. Paul, State of Minnesota; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of con-

tinuous through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago in the State of Illinois, and as a common carrier from South St. Paul, in
129 the State of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to other western points; and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint, but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of livestock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said
130 hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

V.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of fact and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based

upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) were served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

VIII.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

131 IX.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February 1905, from maintaining or enforcing rates for the transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago from South St. Paul in the State of Minnesota, or from points in the territory between South St. Paul and Chicago, "whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from South St. Paul, in the state

of Minnesota, or from points in the territory between South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been ob-
132 liged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of the said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri Rive- Points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of a very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the Lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such
133 competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are

located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the
134 Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, because it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which were in existence at the time of the filing of the said complaint and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal is not unlawful and does not constitute undue or unreasonable preference or advantage in favor of said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable prejudice or disadvantage against the said dressed products of cattle and hogs or against the City of Chicago, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as heretofore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order
135 compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it fair remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the State of Iowa, and St. Paul, in the State of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been — now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have sub-
136 stantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs

and the rates and charges for the transportation of the dressed products of such cattle and hogs between St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complainang in this proceeding are the persons who are combining and
137 associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other person with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any charge being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the State of Minnesota and representatives of the local interests at these home markets in the State of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from the Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for the transportation of the dressed products
138 of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any,

live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the commission in its report, Exhibit P, to this petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY,
By A. W. TRENHOLM, *Its General Manager.*

Attest:
E. E. WOODMAN, *Secretary.*
THOMAS WILSON,
Counsel for Defendant, Chicago, St. Paul, Minneapolis & Omaha Railway Company.

(Endorsed:) Filed Jun- 10, 1905. Marshall E. Sampsell, Clerk.

139 And on the same day to-wit: the tenth day of June, 1905, came the Chicago and North Western Railway Company by Mr. S. A. Lynde and filed in the clerk's office of said Court in said entitled cause its certain answer in words and figures following to-wit:

140 *Answer of Chicago & Northwestern Railway Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Chicago & Northwestern Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the states of Illinois, Wisconsin and Michigan, and that it has its principal offices in the City of Chicago, state of Illinois, and in the city of New York and state of New York; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from Sioux City, Iowa and Omaha, Nebraska, on the Missouri River, and as a common carrier from South St. Paul, in the state of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to
141 other eastern points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an

incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of livestock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it did not file any answer to said complaint for reason that no complaint was ever served upon it.

V.

142 It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission at which time the parties complainant and defendant with the exception of this defendant appeared by their attorneys, but that this defendant did not appear in said proceeding for the reason above stated; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of fact and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges, that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle
143 and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendants says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the state of Iowa to Kansas City, in the state of Missouri, inclusive, and from South St. Paul in the state of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not
144 only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from St. Paul, in the state of Minnesota, or from points in the territory between Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago be-

cause of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for

145 the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico to the Lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points

146 to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers

in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of the conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between
147 said points than its rate and charge for the transportation of the live animal; is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable prejudice or advantage in favor of the said dressed products of cattle or hogs nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said

points which will be unreasonably low and will not furnish it reasonable remuneration for the services to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the state of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City, in the state of Iowa, and St. Paul in the state of Minnesota, and other points in the general territory covered by said complaint had become large /arket towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished,
148 with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Inter-state Commerce Commission with respect to the differences between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and pros-
149 perity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair

consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions sur-
150 rounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation

thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charges for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri points, and from South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority
151 conferred upon said Commission by Law.

CHICAGO & NORTH-WESTERN
RAILWAY COMPANY,
By W. A. GARDNER,
Its General Manager.

Attest:
J. B. REDFIELD,
Assistant Secretary. [SEAL.]
S. A. LYND,
Counsel for Defendant, Chicago & North-western Railway Company.

(Endorsed:) Filed June 10, 1905. Marshall E. Sampsell, Clerk.

152 And on the same day to-wit: the tenth day of June, 1905, came the Chicago and Alton Railway Company by its solicitor Mr. Ralph M. Shaw, and filed in the clerk's office of said Court its certain Answer in words and figures following, to-wit:

153 *Answer of Chicago & Alton Railway Company.*

UNITED STATES OF AMERICA, *State of Illinois, ss:*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Defendant, the Chicago & Alton Railway Company, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, saving and reserving unto itself any and all manner of benefit of exception to the many errors and insufficiencies in the bill of complaint of the said complainant manifest, for answer unto same or so much thereof as this defendant is advised it is necessary or material for it to answer unto answering says:

1. This defendant admits that it is a corporation organized and

existing under and by virtue of the laws of the State of Illinois, and that it has its principal offices in the City of Chicago, State of Illinois, but it says that it does not know and can neither admit nor deny the averments of the said first paragraph of said petition, as to the incorporation and offices of the several other defendants.

2. It admits that it is and has been, since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates, and
154 as a member of continuous through lines between points in different states of the United States, and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago in the State of Illinois, from Kansas City, Missouri, on the Missouri river, and from points in the territory between Kansas City, Missouri, on the Missouri river, to Chicago, Illinois, and to other eastern points, and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on the lines west of Kansas City, Missouri, to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said act to regulate commerce, and the amendments thereto.

3. It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was, at the date of the filing of said petition, and has ever since been, an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this
155 defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

4. This defendant admits that it filed its answer to said complaint.

5. It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the fifth paragraph of said petition.

6. It admits that on or about the 7th day of January, 1905, the

Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

7. It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

8. It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

156 9. It denies that the charges maintained by it for the transportation of live cattle and live hogs on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of section one of said Act to Regulate Commerce.

10. Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:

157 *First.* This defendant's rate for the transportation of live cattle and live hogs from Missouri River points and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs, on shipments thereof to Chicago from Kansas City, in the State of Missouri, and from points in the territory between Kansas City, Missouri, and Chicago, along the line of this defendant company, at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by the order of said Commission, were and have been very low and have not furnished a reasonable remuneration for the services rendered in the transportation of such products but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago, because of the extreme competitive conditions existing at said Kansas City, Missouri, in respect to the transportation of such products, and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs
158 between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said

product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated
159 on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the
160 transportation of live cattle and live hogs between said points are reasonable, and it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract, and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable preference or advantage against said live stock, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of

cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as heretofore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rate on live stock and deprive
161 this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it a reasonable reward for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the state of Iowa, and St. Paul, in the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also thus giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant mar-
162 kets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

The said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate

Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that territory if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products
163 of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs, that the rates and charges for the transportation thereof should not be compared one with the other, nor should the
164 rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other; that substantially all of the live cattle and hogs are shipped from points west of the Missouri River over the lines of this defendant, upon through rates, and that the rates from Kansas City,

Missouri, to Chicago, on such shipments, over the lines of this defendant, are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from Kansas City, Missouri, or Missouri River points over the lines of this defendant; that very few, if any, live cattle and live hogs are handled from Kansas City, Missouri, and Missouri River points, over the lines of this defendant, on the local tariff in force from Kansas City, Missouri, to Chicago; that at points east of Kansas City, Missouri, and east of the Missouri River, and between said Kansas City and said Missouri River and the City of Chicago, there are no plants or factories for the production of dressed beef or the products of cattle and hogs, and that there is no competition from any of such intermediate points to Chicago, between live cattle and live hogs and the products of live cattle and live hogs; that by reason of the foregoing facts this defendant avers that the rates from Kansas City, Missouri, on live stock and live hogs and the products thereof, are the same, and that there is no competition as between live stock and live hogs from any intermediate points to Chicago, and this defendant avers the fact to be that the rates of this defendant upon live stock from intermediate points to Chicago are very low and that there is no discrimination or wrongful prejudice or wrongful relation in rates as between live cattle and live hogs on the one hand and the products thereof on the other hand, from any point or points on the line of this
165 defendant east of Kansas City and the Missouri River to Chicago, Illinois.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to this petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, and said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products, and is therefore an attempt on the part of the commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Further answering, this defendant denies each and every allegation of the said petition and of the said petitioner not hereinabove specifically admitted or denied, and denies that the petitioner is entitled to the relief prayed for, or any part thereof; and so, having answered the petition of the said petitioner, the said defendant prays

to be hence dismissed with its costs and charges in this behalf most grievously sustained.

CHICAGO & ALTON RAILWAY COMPANY,
By RALPH M. SHAW, *Its Solicitor.*

(Endorsed:) Filed June 10, 1905 Marshall E. Sampsell, Clerk.

166 And on the same day to-wit: the tenth day of June, 1905, came the Wabash Railroad Company by its solicitor, Mr. C. N. Travous and filed in the clerk's office of said Court in said entitled cause its certain Answer in words and figures following to-wit:

167 *Answer of Wabash Railroad Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The answer of the Wabash Railroad Company, impleaded as defendant to the petition of the Interstate Commerce Commission, petitioner.

This defendant, for answer, to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Illinois and other states, and that it has its principal offices in the city of St. Louis, State of Missouri, and in the City of New York and state of New York; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from Sioux City, Iowa, and Omaha, Nebraska, on the Missouri River, and as a common carrier from South St. Paul, in the state of Minnesota, and from points in the territory between the Missouri

River or South St. Paul and Chicago, and to other eastern
168 points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restrain- of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of livestock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

169 V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice

based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the state of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock concerning its said rates.

171 *Second.* The rates which were charged by this defendant for transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because such order can only be complied with by this defendant by the raising of its rates and charges for transportation of such products between said points, which if done would under the competitive conditions existing as herein explained, result in this defendant losing all said traffic, or by the lowering of its rates and charges for the transportation of live cattle and hogs between said points, which if done would result in unjustifiable loss and damage to it, and in view of the conditions which now exist in respect to such traffic, the order of said Commission is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and

172 live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs, or to an order compelling this defendant to increase its rates and charges for transportation of live stock products to conform to the said rates and charges upon live stock, which would deprive this defendant, as before stated, of all such traffic, and said order is therefore unlawful and beyond the power of said Commission.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to

the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and were and are necessarily so fixed in order to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions herein set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated
173 on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract or arrangement, the exact nature of which this defendant does not know, with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds, in consideration that it should have the carriage of all or a certain large part of all said products; which said contract or arrangement originated and forced upon this defendant the competitive conditions mentioned, and as a direct consequence thereof this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products, by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, so long as said competitive conditions exist, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission, and this defendant says that so long as its
174 rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, because it has been compelled by force of the competition aforesaid to carry the dressed

products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs, and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points, which resulted from the making of said contract and which have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of
175 the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it a reasonable reward for the service to be performed by it.

Sixth. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Morever, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Seventh. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products necessarily resulted from

the said contract or arrangement of one of the defendant's competitors, hereinabove referred to, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; solely because of the unauthorized and wrongful act of such competing carrier, and is an attempt on the part
176 of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to so make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Further answering this defendant says that petitioner is not entitled to the relief prayed, or any part thereof, and asks that it be dismissed with its reasonable costs, etc.

THE WABASH RAILROAD COMPANY,
By C. N. TRAVOUS, *Its Solicitor.*

(Endorsed:) Filed Jun. 10, 1905. Marshall E. Sampsell, Clerk.

177 And on to-wit: the twelfth day of June, 1905, came the Missouri, Kansas & Texas Railway Company, impleaded as defendant to the petition of the Interstate Commerce Commission by its solicitors and filed in the clerk's office of said Court its certain answer in words and figures following to-wit:

Answer of Missouri, Kansas & Texas Railway Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

The Answer of the Missouri, Kansas & Texas Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Kansas, and that it has its principal offices in the City of Parsons, Kansas, and in the City of St. Louis, in the State of Missouri; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition, as to the incorporation and officers of the several others defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of con-
tinuous through lines between points in different states of
178 the United States; and that it has been engaged in and is
now engaged in the transportation of live cattle and hogs, in connection with other lines of railway, to Chicago, in the State of Illinois, from some points on the Missouri River extending from Sioux City, Iowa, to Kansas City, Missouri, and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did, on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was originated pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the mem-
bers thereof had no interest whatever in the said petition so
179 filed with the Interstate Commerce Commission or in the sub-
ject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

180 VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the state of Minnesota, or from points in the territory between the Missouri River
181 or South St. Paul and Chicago," whereby such rates for transportation of live catle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts; and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant

and violative of the rights of this defendant for the reasons following namely:

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago, because of the extreme competitive conditions ex-

182 existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet the rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said commission, seeking to compel this defendant to make the same rate or charge for the transportation of live stock and live hogs that is made by it for the transportation of such products from said points to Chicago, is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defend-nt by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports and other markets, and that the rates and charges which have been made by this

183 defendant and which are now in force by this defendant for the transportation of such products between said points have

been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendants' line in the territory lying between said river and the city of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri Rover points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused and is the result of conditions wholly beyond the control of this defendant and

184 defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said commission and this defendant says that so long as its rates and charges for transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charges exacted by it for the transportation of said live cattle and live hogs and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points have resulted from the execution of such contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed pro-

ducts of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvant-
185 age against said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs nor is its said action in this respect a violation of section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as heretofore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it a reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the state of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the State of Iowa and St. Paul, in the state of Minnesota and other points in the general territory covered by said complaint had become large market towns, and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the
186 killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof, and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the hand-

ling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between
187 the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of the country if any order should be put in force with respect to the rates on live cattle and hogs, or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Inter-
188 state Commerce Commission the Railroad Commissioners of the State of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for

the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

189 Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to this petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereon during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; *and is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products;* and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant asks that the proceeding as to it be dismissed.

JAMES HAGERMAN,
JOSEPH M. BRYSON,
Attorneys for the Missouri, Kansas & Texas Railway Company.

(Endorsed:) Filed June 12, 1905, Marshall E. Sampsell, Clerk.

190 And on the same day to-wit: the twelfth day of June, 1905, came The Minneapolis and St. Louis Railroad Company by its solicitor, Mr. Albert E. Clarke, and filed in the clerk's office of said Court its certain Answer in words and figures following to-wit:

191 *Answer of Minneapolis & St. Louis Railroad Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY, and Others.

The Answer of —, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the States of Minnesota and Iowa, and that it has its principal offices in the City of Minneapolis, State of Minnesota, and in the City of New York, and State of New York; but it says that it does not know and can neither admit nor deny the averments of the first paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is, and has been since the fifth day of April, 1892, a common carrier engaged in the transportation of persons and property by railroad, under joint through rates, and as a member of continuous lines between points in different states of the United States. It owns and operates lines of railroad extend-
192 ing from the cities of Minneapolis and St. Paul to the cities of Des Moines and Storm Lake, Iowa, and the City of Watertown, South Dakota; and as lessee of the Des Moines & Fort Dodge Railroad, it operates the last named railroad between Ruthven and Des Moines, Iowa. It does not handle, over any of its lines of railroad, either live stock or packing house product, from the Missouri River to Chicago, nor does it handle live stock or packing house product, over either of its Iowa lines, between the cities of Minneapolis or St. Paul and Chicago. The Des Moines and Fort Dodge Railroad, which this defendant operates as lessee, does not handle either live stock or packing house product from the Missouri River to Chicago, nor from Minneapolis or St. Paul to Chicago. The rates now charged and collected by this defendant upon shipments of live stock from points upon the Des Moines and Fort Dodge Railroad, and from points upon the lines of The Minneapolis and St. Louis Railroad in the State of Iowa, to Chicago, are too low to be fairly remunerative. The business of this defendant in respect to the transportation of live stock from points upon its owned, leased and operated lines in the state of Iowa, is competitive with business and

traffic originating upon the lines of railroad engaged in like business between the Missouri River and Chicago; and notwithstanding this defendant does not handle live stock or packing house product between the Missouri River and Chicago, its rates from its Iowa stations are largely affected and determined by competition with railroad carriers engaged in such through business. If the order of the Interstate Commerce Commission referred to in the complaint be made effective, the rates and earnings of this defendant for the transportation of live stock from points upon the said lines of railroad in the State of Iowa to the City of Chicago, will be so reduced and diminished as to be wholly unremunerative and insufficient to compensate this defendant for the actual cost of supplying the necessary and proper service.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said
193 complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was, at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Chicago Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

This defendant admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission; that testimony was taken at said hearings in behalf of said parties, and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in

respect to the matter of said complaint, setting forth its findings of fact and its conclusions based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

194 VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order, and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth specifically herein.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring the defendants to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City in the State of Iowa, to Kansas City in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs, are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant for the reasons following, namely:—

195 First. Rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were, at the

time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock, of its said rates.

Second. The rates which are charged for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul in the state of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago, at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products to Chicago because of the extreme competitive conditions existing in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation
196 of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports and to other markets, and that the rates and charges which have been made by this defendant for the transportation of such products have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago

and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect, in establishing a difference in the rates on said products and said live stock from towns where packing houses are located in
197 the territory lying between said river and the city of Chicago.

Fourth. This defendant further avers that, as heretofore stated its said rates on live stock have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive the defendant of its property without due process of law, and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs which will be unreasonably low, and will not furnish it fair remuneration for the service to be performed by it.

Fifth. That long prior to the filing of said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha in the state of Nebraska, Sioux City in the state of Iowa, and St. Paul in the state of Minnesota, and other points in the general territory covered by said complaint, had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs, had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the
198 establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for the disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock, upon which the country west of the

Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges for the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between the Missouri River points and St. Paul and Chicago on said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets, and was operating to the advantage of the said home markets which complaint this defendant believes to be wholly unfounded, but it avers
199 that the public interests which are involved in the maintenance and prosperity of these several home markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago, deserve and should receive full and fair consideration, and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs, or on the dressed and prepared products of such cattle and hogs, which would tend to injure or destroy such markets, and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint, except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested, and are protesting, against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission, the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the State of Iowa, appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates, and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established
200 and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Sixth. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges

for the transportation of the one be made the basis of the rates and charges for transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul, very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Seventh. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report (Exhibit P to this petition) that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduct its rate and charge for transportation of such live cattle and hogs from said points, to the rate and charge for the transportation of such dressed products; and is equivalent to an attempt on the part of the Commussion to make and estab-

201 lish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago, and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

And this defendant denies all and all manner of unlawful combination, confederacy, undue and unreasonable prejudice, unjust discrimination and violation of law wherewith it is by said petition charged and prays to be hence discharged with its reasonable costs and charges.

ALBERT E. CLARKE,
Attorney for Defendant The Minneapolis & St. Louis Railroad Company.

(Endorsed:) Filed June 12, 1905, Marshall E. Sampsell, Clerk.

202 And on the same day to-wit: the twelfth day of June, 1905, came the Burlington, Cedar Rapids and Northern Railway Company by its solicitors Mr. R. A. Jackson and W. T. Rankin and filed in the clerk's office of said Court in said entitled cause its certain Answer in words and figures following to-wit:

203 *Answer of Burlington, Cedar Rapids & Northern Ry. Co.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The answer of Burlington, Cedar Rapids and Northern Railway Company, impleaded as defendant, to the petition of the Interstate Commerce Commission, petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

That this defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Iowa, and that it has its principal offices in the City of Chicago, State of Illinois, but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States; and that it has been engaged in and is now
204 engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs in connection with other lines of railroad to Chicago, in the State of Illinois, from Sioux City, Iowa, and Omaha, Nebraska, on the Missouri River, and as a common carrier from South St. Paul, in the State of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to other eastern points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is

an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject mat-
205 ter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its finding of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the
206 rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce:

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:

207 *First.* This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri river and South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been

obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering
208 of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and
209 controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents

per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission, and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed product of such cattle and hogs between said points, in order to meet said competitive rates on dressed products of said live stock, at a lower rate
210 than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points have resulted from the execution of such contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points that its rate and charge for the transportation of the live animal, is not lawful, and does not constitute undue or unreasonable prejudice or disadvantage in favor of said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law, and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a

rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish its reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the State of Iowa, and St. Paul, in the State of Minnesota, and other points in the general territory
211 covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of animals and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there had grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed
212 products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair

consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared
213 before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers through the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the codditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for the transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation

thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this
214 defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant prays that it may be dismissed from this cause.

R. A. JACKSON AND
W. T. RANKIN,
Attorneys for the Burlington, Cedar Rapids and Northern Railway Company.

(Endorsed:) Filed Jun- 12, 1905. Marshall E. Sampsell, Clerk.

215 And on to-wit: the twelfth day of June, 1905, came the Iowa Central Railway Company by its solicitor Mr. George W. Seevers, and filed in the clerk's office of said Court its certain Answer in words and figures following to-wit:

Answer of Iowa Central Railway Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The separate answer of Iowa Central Railway Company, impleaded as defendant, to the petition of the Interstate Commerce Commission, petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:—

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Illinois, and that it has its principal offices in the city of Minneapolis, State of Minnesota, and in the City of New York and State of New York; but it says that it does not know and can neither admit nor
216 deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the fifth day of April, 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates between points in the states of Minnesota, Iowa and Illinois, and that it has been and is now engaged in the transportation of live cattle and hogs and the dressed product thereof only within the states named; but avers that its said line of railroad does not reach the City of St. Paul or any point upon the Missouri River or the City of Chicago in the state of Illinois; that it neither originates business at any Missouri River point, nor delivers live stock or the product thereof originating upon its line at any point in the states mentioned to the said city of Chicago in the state of Illinois; that it does not fix or establish rates between St. Paul or Missouri River points and the City of Chicago, but participates only as an intermediate carrier in such rates upon live stock or the product thereof to and from such intermediate points between St. Paul and Missouri River points and Chicago as may be established or fixed by through carriers and to this extent only is interested or concerned in the through rates so made and to such extent and in this respect only is it engaged in the transportation of interstate commerce, or subject to the provisions of the Acts of Congress of the United States to regulate commerce between the states.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said fifth day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant
217 and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It further admits that said complaint came on for investigation and hearing before said Interstate Commerce Commission at which time complainant and the defendants appeared by their attorneys, but avers that no testimony was taken at said hearing either against or in behalf of this defendant.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its find-
218 ing of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) *was* served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of
219 February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South

St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced, and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said com-
220 plaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportaton of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points
221 east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred
222 pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago, the putting in force, therefore, of said rates of said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said

points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, because it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said pompetitive rates on said dressed products of said live stock, at a lower rate then the rate and charge exacted by it for the transportation of said live cattle and live hogs, and this defendant further avers that under the existing conditions and circumstances surrounding the trans-
223 portation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City, in the State of Iowa, and St. Paul, in
224 the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof, and the establishment of such stock yards and packing houses at such points and the growth and development of

said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the In-
225 terstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating on rates established to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that territory if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this
territory have protested and are protesting against any
226 change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the State of Minnesota and

representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rate and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transport*at*ed on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Com-
227 mission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products, and is an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago, and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant asks that the proceeding as to it be dismissed.

GEO. W. SEEVERS,
Attorney for Defendant.

(Endorsed:) Filed Jun- 12, 1905, Marshall E. Sampsell, Clerk.

228 And on the same day to-wit: the twelfth day of June, 1905, came the Chicago, Rock Island and Pacific Railway Company by its solicitors Mr. R. A. Jackson and Mr. W. T. Rankin and filed in the clerk's office of said Court in said entitled cause its certain Answer in words and figures following to-wit:

229 *Answer of Chicago, Rock Island and Pacific Railway Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Chicago, Rock Island and Pacific Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the States of Illinois and Iowa, and that it has its principal offices in the City of Chicago, State of Illinois, and in the City of New York and State of New York; but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons
230 and property by railroad under joint through rates and as a member of continuous through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the State of Illinois, from Sioux City, Iowa, and Omaha, Nebraska, on the Missouri River, and as a common carrier from South St. Paul, in the State of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to other eastern points; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carrriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter
231 thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still

refuses to comply therewith; but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has
232 not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live
233 cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and

which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of the said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates
234 and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle and live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates between said product and said live stock necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the city of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle

and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and
235 to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commissioner, and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonable low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points have resulted from the execution of such contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between
236 said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage in favor of said live stock, or against the City of Chicago, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing

competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, Sioux City, in the State of Iowa, and St. Paul, in the State of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of animals and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets
237 shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul, and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was

operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded; but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration
238 and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

239 Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is equivalent to an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant prays that it may be dismissed from this cause.

R. A. JACKSON AND
W. T. RANKIN,
Attorneys for the Chicago, Rock Island and Pacific Railway Company.

(Endorsed:) Filed Jun- 12, 1905, Marshall E. Sampsell, Clerk.

240 And on the same day to-wit: the twelfth day of June, 1905, came the Illinois Central Railroad Company by its solicitor-, Mr. J. M. Dickinson and Mr. Sidney F. Andrews and filed in the clerk's office of said Court in said entitled cause its certain Answer in words and figures following to-wit:

241 *Answer of Illinois Central Railroad Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Illinois Central Railroad Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, now and at all times hereafter, saving to itself all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof

as this defendant is advised it is material or necessary for it to make answer to, answering says:

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the State of Illinois and that it has its principal offices in the city of Chicago, State of Illinois, but it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

This defendant admits that on the 5th day of April, 1902, and ever since it has been and still is a common carrier engaged in the transportation of persons and property by railroad under joint through rates and as a member of continuous through lines between points in different states in the United States, and that it has been and now is engaged in the transportation of live cattle and
242 live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from the following points on the Missouri River, to-wit: Sioux City, Iowa, and Omaha, Nebraska, and from certain territory adjacent to its line of railroad between said Missouri River points and Chicago, under joint through rates with its connecting carriers. Defendant further admits that it has been since said date and now is engaged in said transportation from South St. Paul, Minnesota, and certain territory between that point and Chicago, under joint tariffs with the Minneapolis & St. Louis Railroad Company, and admits that in respect of all said transportation it has been and is subject to all provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

242½ IV.

This defendant admits that it filed its answer to said complaint, and that a copy thereof is annexed to said petition, marked Exhibit "E."

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys, and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said petition) and a copy of said order (Exhibit Q to said petition) *was* served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith, but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant.

IX.

It denies that the charges maintained by it for the trans-
243 portation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section one of the said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live

cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant, for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no
244 complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs which said rates and charges are now and were at the time of the filing of said

complaint and have been ever since very low and have never
245 been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed products of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said
246 Missouri River points to Chicago for a rate of 20 cents per hundred pounds. That unless this defendant charges a like rate, it would be prevented by reason of the competition and contract aforesaid, from engaging in the carrying or transportation of said dressed or prepared products of cattle and hogs from said Missouri River points, to-wit: Sioux City, Iowa, and Omaha, Nebraska, and would lose the revenue derived by it therefrom, which is desirable, and important, and valuable to it. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of the said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission

upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission, and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs, and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have
247 resulted from the making of said contract and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable preference or disadvantage against said live stock, or of said Missouri River points, or South St. Paul or said intermediate territory, as is charged in said complaint, nor does such action on its part constitute any undue or unreasonable advantage in favor of the dressed products of cattle or hogs, nor is its said action in this respect a violation of Sections 2 and 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and to deprive this defendant of its property without due process of law, and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City, in the state of Iowa, and St. Paul, in the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and ad-
248 jacent to said towns, and that large stock yards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and

handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof, and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was
249 operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that territory if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commission exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance

and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and
250 of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rate- from Missouri River points to Chicago on such shipments are a proportion or division of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points, so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products, and is an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle
251 and hogs from said Missouri River points and from said South St. Paul to Chicago, and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint, material to be answered, according to its best knowledge and belief, humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

ILLINOIS CENTRAL RAILROAD COMPANY,
By J. T. HARAHAN,
[SEAL.] *Second Vice-President.*

Attest:
W. G. BRUEN,
Ass't Secretary.

J. M. DICKINSON &
SIDNEY F. ANDREWS,
Counsel for Illinois Central R. R. Co.

(Endorsed:) Filed June 12, 1905. Marshall E. Sampsell, Clerk.

252 And on the same day to-wit: the twelfth day of June, 1905, came The Missouri Pacific Railway Company by its solicitors Mr. Martin L. Clardy and Mr. James C. Jeffery and filed in the clerk's office of said Court in said entitled cause its certain answer in words and figures following, to-wit:

253 *Answer of Missouri Pacific Railway Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

No. 27723.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

The Answer of the Missouri Pacific Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant, for answer to said petition, and to such parts thereof as it is advised that it is material for it to make answer unto, answering, says:

I. This defendant admits that it is a consolidated railroad corporation, chartered and existing under and by virtue of the laws of the States of Missouri, Kansas and Nebraska, and that it has its principal office in the City of St. Louis in the State of Missouri.

II. It admits that it is and has been since the 5th day of April, 1902, a common carrier engaged in the transportation of persons

and property by railroad under joint, through rates and as a member of continuous, through lines between points in different states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the State of Illinois, from Omaha, Nebraska, on the Missouri River; and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines West of the Missouri River to Chicago and other Eastern points, and that in respect to such transportation it has been, and is, subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did,
254 on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit "A" is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but, on the contrary, alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaint- were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the

Interstate Commerce Commission made its report in writing
255 in respect to the matter of said complaint, setting forth its findings of fact and its conclusions based upon said facts, and that said Exhibit "P" to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its findings and determination of said complaint and that said Exhibit "Q" to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit "P" to said petition) and a copy of said order (Exhibit "Q" to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith; but alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and that the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products on such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections Three and Two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of section One of said Act to Regulate Commerce.

X.

Further answering, this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or
256 prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of said complaint or by the facts, and that said order is -lawful and not within the jurisdiction and power of said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points to Chicago were, at the time of the filing of said complaint before the Interstate Commerce Commission, and have been ever since, and are now, not only reasonable, but very low, and should not be reduced and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River, or from points in the territory between the Missouri River and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive conditions existing at said Missouri River points in respect to the trans-
257 portation of such products and in order to meet rates put in force by its competitors in the transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by the lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic, is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points East of Chicago, was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been

fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri river to Chicago and points East thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions heretofore set out, resulting in establishing the present relation of rates
258 between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendant's line in the territory lying between said River and the City of Chicago.

Fourth. That on or about *the* August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry, during said term, said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant, in order to obtain any portion of said traffic, and to perform the services demanded of it by its customers in respect to said traffic, was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is, caused, and is the result of conditions wholly beyond the control of this defendant; and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of said products of such cattle and hogs, on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs
259 between said points at an unreasonably low rate, by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs; and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract and have existed ever since and are now in existence, the making by this

defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, nor does such action on its part constitute any undue or unreasonable prejudice or advantage against the said dressed products of cattle and hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that, as heretofore stated, its said rates on live stock between said points have not been and are not now unreasonably high, but, on the contrary, are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing competitive conditions, as aforesaid, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amend- of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it fair remuneration for the service to be performed by it.

260 *Sixth.* That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the State of Nebraska, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the States West of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for

the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

261 That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago and tended to divert live stock from the Chicago market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said terrritory West of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that country if any order should be put in force with respect to the rates on live cattle and live hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint, except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter, while on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission on the Railroad Commissioners of the State of Minnesota and representatives of the local interests at these home markets in the State of Iowa appeared before said Commission and made vigorous

262 protests against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the West thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges

for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points West of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that *at said that* very few, if any, live cattle and *live cattle and* live hogs are handled from Kansas City, Missouri, and Missouri River points over the lines of this defendant, on the local tariff in force from Kansas City, Missouri to Chicago; that at points east of Kansas City, Missouri, and east of the Missouri River, and between said Kansas City and said Missouri River and the City of Chicago, there are no plants or factories for the production of dressed beef or the products of cattle and hogs, and that there is no competition from any such intermediate points to Chicago, between live cattle and live hogs and the products of live cattle and live hogs; that by reason of the foregoing facts this defendant avers that the rate from Kansas City, Missouri, on live stock and live hogs and the products thereof, are the same, and that there is no competition as between live stock and live hogs from any intermediate points to Chicago, and this defendant avers the fact
263 to be that the rates of this defendant upon live stock from intermediate points to Chicago are very low and that there is no discrimination or wrongful prejudice or wrongful relation in rates as between live cattle and live hogs on the one hand and the products thereof on the other hand, from any point or points on the line of this defendant east of Kansas City and the Missouri River to Chicago, Illinois.

Eighth. In view of the condition existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to this petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products, and is therefore an attempt on the part of the commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Further answering, this defendant denies each and every allegation of the said petition and of the said petitioner not hereinabove specifically admitted or denied, and denies that the petitioner is en-

titled to the relief prayed for, or any part thereof; and so, having answered the petition of the said petitioner, the said defendant prays to be hence dismissed with its costs and charges in this behalf most grievously sustained.

264 MISSOURI PACIFIC RAILWAY COMPANY,
By MARTIN L. CLARDY,
JAMES C. JEFFERY,
Attorneys.

(Endorsed:) Filed Jun. 12, 1905. Marshall E. Sampsell, Clerk.

265 And on to-wit: the twelfth day of June, 1905, came the Chicago, Burlington & Quincy Railway Company (herein sued under the name Chicago, Burlington and Quincy Railroad Company) The Hannibal & St. Joseph Railroad Company, The Kansas City, St. Joseph & Council Bluffs Railroad Company and the Omaha, Kansas City & Eastern Railroad Company impleaded as defendants to the petition of The Interstate Commerce Commission by their respective solicitors and filed in the clerk's office of said Court their joint and several answer in words and figures following to-wit:

266 *Joint Answer of Chicago, Burlington & Quincy Ry. Co. and Others.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The joint and several Answer of the Chicago, Burlington & Quincy Railway Company (herein sued under the name Chicago, Burlington & Quincy Railroad Company), The Hannibal & St. Joseph Railroad Company, The Kansas City, St. Joseph & Council Bluffs Railroad Company, and the Omaha, Kansas City & Eastern Railroad Company, impleaded as Defendants to the Petition of The Interstate Commerce Commission, Petitioner.

These Defendants, each for answer to said Petition and to such parts thereof as they are advised that it is material for them to make answer unto, answering say

I.

These Defendants admit that they are corporations chartered and existing as in said petition set forth; but they say they do not know, and can neither admit nor deny the averments of the said First Paragraph of said Petition as to the incorporation and offices of the several other Defendants.

II.

They admit that they were, and have been since, the fifth day of April, 1902, common carriers engaged in the transportation of persons and property by railroad under joint through rates and as members of continuous through lines between points in different States of the United States; and that they have been and are now
267 engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago in the State of Illinois, and to other Eastern points, each from some of the places set forth in said Petition, and that in connection with other lines of railroad they are also engaged in the transportation of cattle and hogs originating on lines West of the Missouri River to Chicago and other Eastern points, and that in respect to such transportation they have been and are subject to the provisions of the said Act to Regulate Commerce and thr Amendments thereto.

III.

They admit that the said Chicago Live Stock Exchange did on or about the said 5th day of April 1902, file with the Interstate Commerce Commission a complaint against these defendants and other carriers, and that said Exhibit A is a correct copy of said complaint; but these defendants deny that said Chicago Live Stock Exchange is an incorporated association, but on the contrary allege that they are informed and believe said Chicago Live Stock Exchange was at the date of the filing of said Petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several States, and in restraint of trade and commerce in the State of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the Statutes of the United States and of the State of Illinois.

They further allege that said Live Stock Exchange and the members thereof had no interest whatever in the said Petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to these defendants by shippers of live stock, of the rates complained of in said Petition or of the adjustment of rates involved therein.

268 IV.

These defendants admit that they have filed their answers to said complaint, except said Omaha, Kansas City & Eastern Railroad Company, which alleges that it was never served with any process or order herein.

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They admit the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys; and they admit further that testimony was taken at said hearings in behalf of said parties, and thereafter argument was

heard by said Interstate Commerce Commission, as is alleged in the 5th Paragraph of said Petition.

VI.

They admit that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusion based upon said facts, and that said Exhibit P to said Petition is a copy of said report.

VII.

They admit that on or about the 7th day of January 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint, and that said Exhibit Q to said Petition is a copy thereof.

VIII.

They admit that a copy of said report (Exhibit P to said Petition) and a copy of said order (Exhibit Q to said Petition) was served upon these defendants; and that they have not obeyed said order and that they still refuse to comply therewith; but they allege that said order is not a lawful order as to these defendants, and is in violation of the rights of these defendants, and the reasons why these defendants have not complied with said order are set forth
269 more specifically hereinafter.

IX.

They deny that the charges maintained by them for the transportation of live cattle and live hogs, on the one hand, and their charges for the transportation of dressed or prepared products of such cattle and hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections Three and Two of the Act to Regulate Commerce.

They deny that said charges result in unjust and unreasonable rate charges on live cattle and live hogs, in violation of Section One of said Act to Regulate Commerce.

X.

Further answering, these defendants say that the said order so made by the Interstate Commerce Commission, requiring these defendants to cease and desist on or before the 15th day of February 1905, from maintaining or enforcing rates for transportation of live cattle and hogs, and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher than the rates for trans-

portation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts; and that said order is unlawful and not within the jurisdiction and power of said Commission, and is unreasonable as to these defendants and violative of the rights of these defendants, for the following reasons, namely:

270 First. These defendants' rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points, and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission, and have been ever since, and are now, not only reasonable but very low and should not be reduced; and no complaint has at any time been made to these defendants by any shipper of such live stock of the said rates.

Second. The rates which were charged by these defendants for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but these defendants have been obliged to make such rates and charges for the transportation of such products from said points to Chicago because of the extreme competitive considerations existing at said Missouri River points and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the transportation of such products.

And these defendants aver and charge that the said order of said Commission, seeking to compel these defendants to make the same rate or charge for the transportation of live cattle and live hogs that is made by them for the transportation of such products from

271 said points to Chicago, is unreasonable and violative of the rights of these defendants, and unlawful because this order can only be complied with by these defendants by the lowering of their rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling these defendants to so lower their rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint, and have been ever since, very low, and have never been the subject of any com[illegible]nt on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition

between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by these defendants and which are now in force by these defendants for the transportation of such products between said points have been fixed and established by such competition and to enable them to meet such competition.

That said extremely low rates from the Missouri River to Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a sim-
272 ilar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses are located situated on defendants' line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of their competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which they agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20¢ per hundred pounds, and these defendants in order to obtain any portion of said traffic and to perform the services demanded of them by their customers in respect to said traffic were compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by these defendants as are complained of, was and is caused, and is the result of conditions wholly beyond the control of these defendants, and defendants further aver that it is not possible for them to establish such parity between their charges for the transportation of live cattle and live hogs, on the one hand, and their charges for the transportation of the said products of such cattle and hogs, on the other hand, as they are ordered to do by said Interstate Commerce Commission, except by the lowering of their rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission; and these defendants say that so long as their
273 rates and charges for the transportation of live cattle and live hogs between said points are reasonable, they cannot be lawfully compelled to transport and carry said live cattle and live hogs between said points at an unreasonably low rate, by reason of the fact that they have been compelled by force of the competition afore-

said to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by them for the transportation of said live cattle and live hogs; and these defendants further aver that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract, and have existed ever since and are now in existence, the making by these defendants of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than their rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock; nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is their said action in this respect a violation of Section 3 of The Act to Regulate Commerce.

Fifth. These Defendants further aver that as hereinbefore stated their said rates on live stock between said points have not been and are not now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative; but that the order of said Commission in effect is, in view of existing competitive conditions as aforesaid, equivalent to an order compelling these Defendants to reduce their said rates on live stock
274 and deprive these defendants of their property without due process of law, and is in violation of the 14th Amendment of the Constitution of the United States, in that it compels these defendants to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish them reasonable remuneration for the services to be performed by them.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the State of Missouri, Omaha and South Omaha in the State of Nebraska, Sioux City in the State of Iowa, and St. Paul in the State of Minnesota, and other points in the general territory covered by said complaint, had become large market towns and the natural markets for a great part of the live stock raised in the States west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yards and packing houses for the killing of animals and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold, and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points, and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock, and also giving them the advantage and benefit of the home market, as compared with the disadvantage

of shipping their live stock to Chicago or to more distant markets, and at the same time giving them these home markets as additional markets for disposition and sale of their live stock.

275 That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock, upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages, and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to the prejudice of Chicago, and tended to divert live stock from the Chicago market to these several home markets, and was operating to the advantage of said home markets, which complaint these defendants believe to be wholly unfounded; but they aver that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration, and that it would be detrimental to the welfare of that territory if any order should be put in force with respect to the rates on live cattle and live hogs, or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complain-

276 ing in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the Commissions exacted by them in the sale of such cattle and hogs on the Chicago market, and that no complaint is made by any other persons with respect to this matter; while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates; and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the State of Minnesota and representatives of the local interests at these home markets in the State of Iowa appeared before said Commission and made vigorous protests against the making of any reduction in said cattle and hog rates, and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of

the several home markets which have been so established and have grown up in said territory, and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates, and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates, and are not in excess of
277 the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points; so that at said Missouri River points and at St. Paul very few, if any, live cattle and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of the dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P., to said Petition, that this rate and charge for transportaton of such dressed products is now established by the said contract hereinabove referred to, and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling these defendants to reduce their rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

Wherefore, these defendants pray to be hence discharged with their reasonable costs and charges in this behalf most wrongfully sustained.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY,
HANNIBAL & ST. JOSEPH RAILROAD COMPANY,
KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY,
OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY,
By CHESTER M. DAWES, *Their Solicitor.*

Chicago, June 3rd, 1905.

(Endorsed:) Filed June 12, 1905. Marshall E. Sampsell, Clerk.

278 And on to-wit: the twelfth day of June, 1905, came the Chicago, Milwaukee and Saint Paul Railway Company, impleaded as defendant to the Petition of the Interstate Commerce Commission by its solicitors and filed in the clerk's office of said Court its certain Answer in words and figures following, to-wit:

279 27723.

Answer of Chicago, Milwaukee & Saint Paul Railway Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY and Others.

The Answer of the Chicago, Milwaukee and Saint Paul Railway Company, Impleaded as Defendant, to the Petition of the Interstate Commerce Commission, Petitioner.

This defendant for answer to said petition and to such parts thereof as it is advised that it is material for it to make answer unto, answering says:—

I.

This defendant admits that it is a corporation chartered and existing under and by virtue of the laws of the state of Wisconsin but avers that it has its principal office in the city of Milwaukee, state of Wisconsin, instead of in the City of Chicago, state of Illinois as alleged in said petition, but it says that it does not know and can neither admit nor deny the averments of the said First Paragraph of said petition as to the incorporation and offices of the several other defendants.

II.

It admits that it is and has been since the 5th day of April 1902, a common carrier engaged in the transportation of persons and property by railroad under joint through rates, and as a member of continuous through lines between points in different
280 states of the United States; and that it has been engaged in and is now engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago, in the state of Illinois, from Sioux City Iowa, Omaha, Nebraska, and Kansas City Missouri, on the Missouri River, and as a common carrier from South St. Paul, in the state of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago, and to other eastern points, and that in connection with other lines of railroad it is also engaged in the transportation of cattle and hogs originating on lines west of the Missouri River to Chicago and other eastern points, and that in respect to such transportation it has been and

is subject to the provisions of the said Act to Regulate Commerce and the amendments thereto.

III.

It admits that the said Chicago Live Stock Exchange did on or about the said 5th day of April, 1902, file with the Interstate Commerce Commission a complaint against this defendant and other carriers, and that said Exhibit A is a correct copy of said complaint; but this defendant denies that said Chicago Live Stock Exchange is an incorporated association, but on the contrary alleges that it is informed and believes said Chicago Live Stock Exchange was at the date of the filing of said petition and has ever since been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states and in restraint of trade and commerce in the state of Illinois, and that said Chicago Live Stock Exchange was organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the State of Illinois.

It further alleges that said Live Stock Exchange and
281 the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof, and that no complaints were made or have been made to this defendant by shippers of live stock of the rates complained of in said petition or of the adjustment of rates involved therein.

IV.

This defendant admits that it filed its answer to said complaint.

V.

It admits that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys, and it admits further that testimony was taken at said hearings in behalf of said parties and thereafter argument was heard by said Interstate Commerce Commission, as is alleged in the Fifth Paragraph of said petition.

VI.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of facts and its conclusions based upon said facts, and that said Exhibit P to said petition is a copy of said report.

VII.

It admits that on or about the 7th day of January, 1905, the Interstate Commerce Commission formulated an order and notice based upon its said findings and determination of said complaint, and that said Exhibit Q to said petition is a copy thereof.

VIII.

It admits that a copy of said report (Exhibit P to said peti-
282 tion) and a copy of said order (Exhibit Q to said petition) was served upon this defendant and that it has not obeyed said order and that it still refuses to comply therewith but it alleges that said order is not a lawful order as to this defendant and is in violation of the rights of this defendant, and the reasons why this defendant has not complied with said order are set forth more specifically hereinafter.

IX.

It denies that the charges maintained by it for the transportation of live cattle and live hogs, on the one hand, and its charges for the transportation of dressed or prepared products of such cattle or hogs, on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections three and two of the Act to Regulate Commerce.

It denies that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of section one of said Act to Regulate Commerce.

X.

Further answering this defendant says that the said order so made by the Interstate Commerce Commission, requiring this defendant to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing rates for transportation of live cattle and hogs and rates for transportation of dressed or prepared products of cattle and hogs to Chicago "from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago," whereby such rates for transportation of live cattle and live hogs are higher
283 than the rates for transportation of dressed or prepared products of cattle and hogs, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of the said Commission and is unreasonable as to this defendant and violative of the rights of this defendant for the reasons following, namely:—

First. This defendant's rates for the transportation of live cattle and live hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago were at the time of the filing of said complaint before the Interstate Commerce Commission and have been ever since and are now not only reasonable but very low, and should not be reduced; and no complaint has at any time been made to this defendant by any shipper of such live stock of its said rates.

Second. The rates which were charged by this defendant for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri

River and from South St. Paul, in the state of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been the subject of inquiry and investigation by the said Interstate Commerce Commission, and which are covered by said order of said Commission, were and have been very low, and have not furnished a reasonable remuneration for the services rendered in the transportation of such products, but this defendant has been obliged to make such rates and charges for the transportation of such products from said points to Chicago, because of the extreme competitive conditions existing at said Missouri River points, and at said South St. Paul in respect to the transportation of such products and in order to meet rates put in force by its competitors in the
284 transportation of such products. And this defendant avers and charges that the said order of said Commission, seeking to compel this defendant to make the same rate or charge for the transportation of live cattle and live hogs that is made by it for the transportation of such products from said points to Chicago is unreasonable and violative of the rights of this defendant, and unlawful because this order can only be complied with by this defendant by lowering of its rates and charges for transportation of live cattle and live hogs between said points, and in view of the conditions which now exist in respect to such traffic is equivalent to an order compelling this defendant to so lower its rates and charges for the transportation of live cattle and live hogs, which said rates and charges are now and were at the time of the filing of said complaint and have been ever since very low and have never been the subject of any complaint on the part of any shipper of live cattle or live hogs.

Third. That the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of said complaint and has been ever since, the subject of very strong and controlling competition between the several companies owning and operating lines of railroad between said points, and that the rates and charges heretofore and now established for the transportation of such products have been established and maintained by reason of the strong competition between the railroads leading to Chicago, and the railroads leading to the Gulf of Mexico, to the lake ports, and other markets, and that the rates and charges which have been made by this defendant and which are now in force by this defendant for the transportation of such products between said points have been fixed and established by such competition and to enable it to meet such competition.

That said extremely low rates from the Missouri River to
285 Chicago and points east thereof on the dressed product of cattle and hogs, brought about by the circumstances and conditions hereinbefore set out, resulting in establishing the present relation of rates between said product and said live stock, necessarily have had a similar effect in establishing a difference in the rates on said products and said live stock from towns where packing houses

are located situated on defendant's line in the territory lying between said river and the City of Chicago.

Fourth. That on or about August 8, 1902, one of its competitors entered into a contract with certain shippers handling and controlling the shipment of all dressed or prepared products of cattle and hogs from said Missouri River points to Chicago, for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri River points to Chicago for a rate of 20 cents per hundred pounds; and this defendant in order to obtain any portion of said traffic and to perform the services demanded of it by its customers in respect to said traffic was compelled to put in force similar rates upon such products between said points or desist entirely from the carriage thereof from said Missouri River points to the City of Chicago. The putting in force, therefore, of said rates on said products by this defendant as are complained of, was and is caused, and is the result of conditions wholly beyond the control of this defendant, and defendant further avers that it is not possible for it to establish such parity between its charges for the transportation of live cattle and live hogs on the one hand, and its charges for the transportation of the said products of such cattle and hogs on the other hand, as it is ordered to do by the said Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs, all of which is fully shown and described in the evidence taken before the Interstate Commerce
286 Commission upon the hearing of said complaint, and is fully shown by the report and opinion of said Commission, and this defendant says that so long as its rates and charges for the transportation of live cattle and live hogs, between said points are reasonable, it cannot lawfully be compelled to transport and carry said live cattle and live hogs between said points at an unreasonbly low rate by reason of the fact that it has been compelled by force of the competition aforesaid to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said live stock, at a lower rate than the rate and charge exacted by it for the transportation of said live cattle and live hogs, and this defendant further avers that under the existing conditions and circumstances surrounding the transportation of said dressed products of cattle and hogs between said points which have resulted from the making of said contract, and have existed ever since and are now in existence, the making by this defendant of a lower rate and charge for the transportation of the dressed products of cattle and hogs between said points than its rate and charge for the transportation of the live animal, is not unlawful and does not constitute undue or unreasonable prejudice or disadvantage against said live stock, nor does such action on its part constitute any undue or unreasonable preference or advantage in favor of the said dressed products of cattle or hogs, nor is its said action in this respect a violation of Section 3 of the Act to Regulate Commerce.

Fifth. This defendant further avers that as hereinbefore stated its said rates on live stock between said points have not been and are not

now unreasonably high, but on the contrary are very low, and cannot be reduced without making said rates unremunerative, but that the order of said Commission in effect is, in view of existing
287 competitive conditions, as *ai* said, equivalent to an order compelling this defendant to reduce its said rates on live stock and deprive this defendant of its property without due process of law and is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it compels this defendant to establish a rate for the transportation of live cattle and live hogs between said points, which will be unreasonably low and will not furnish it fair or reasonable remuneration for the service to be performed by it.

Sixth. That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph, in the State of Missouri, Omaha and South Omaha, in the state of Nebraska, Sioux City in the state of Iowa, and St. Paul in the state of Minnesota, and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the live stock raised in the states west of the Missouri River and in the country round about and adjacent to said towns, and that large stock yeards and packing houses for the killing of live stock and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all of the facilities required for the sale and handling of cattle and hogs, and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of said market towns had been and has been and now is of inestimable advantage to the stock growers throughout said territory, furnishing them a near market for their live stock and also giving them the advantage and benefit of the home market, as compared with the disadvantage of shipping their live stock to Chicago or to more distant markets and at the same
288 time giving them these home markets as additional markets for disposition and sale of their live stock.

That said market towns have had and now have substantially as good railroad facilities as has Chicago, and have railroads extending to the ports of the Gulf of Mexico and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points a home market for the handling and sale of live stock upon which the country west of the Missouri River and around and adjacent to said cities have derived very great advantages and upon which they are now dependent in a great measure for their prosperity.

That the only complaint which was made before the Interstate Commerce Commission with respect to the difference between the rates and charges in the transportation of live cattle and live hogs and the rates and charges for the transportation of the dressed products of such cattle and hogs between Missouri River points and St. Paul and Chicago in said proceeding was that this was operating to

the prejudice of Chicago and tended to divert live stock from the Chicago Market to these several home markets and was operating to the advantage of said home markets, which complaint this defendant believes to be wholly unfounded, but it avers that the public interests which are involved in the maintenance and prosperity of these several markets for the handling and sale of live stock at Missouri River points and other points in said territory west of Chicago deserve and should receive full and fair consideration and that it would be detrimental to the welfare of that region if any order should be put in force with respect to the rates on live cattle and live hogs or on the dressed and prepared products of such cattle and hogs which would tend to injure or destroy such markets and which would tend
289 to deprive the stock growers in that territory of the benefit and advantage of these home markets. That the only persons who appear to be complaining in this proceeding are the persons who are combining and associating together under the name of said Chicago Live Stock Exchange, and who are mere brokers and have no interest in the subject matter of said complaint except in the commissions exacted by them in the sale of such cattle and hogs on the Chicago Market, and that no complaint is made by any other persons with respect to this matter, while, on the other hand, the stock growers and all persons who are interested in the maintenance and development of the said market towns and in the growth of home markets throughout this territory have protested and are protesting against any change being made in the relation between said rates, and that on the hearing before said Interstate Commerce Commission the Railroad Commissioners of the state of Minnesota and representatives of the local interests at these home markets in the state of Iowa appeared before said Commission and made vigorous protest against the making of any reduction in said cattle and hog rates and insisted that any such order as has now been made by said Commission would work very seriously to the detriment and injury of the several home markets which have been so established and have grown up in said territory and of the stock growers throughout the country in the vicinity of said home markets and to the west thereof.

Seventh. The conditions which surround the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of the dressed products of such cattle and hogs that the rates and charges for the transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation of the other.

290 Moreover, substantially all of the live cattle and hogs are shipped from points west of the Missouri River upon through rates and the rates from Missouri River points to Chicago on such shipments are a proportion of such through rates and are not in excess of the rates charged for transportation of the dressed products of cattle and hogs from such Missouri River points so that at said Missouri River points and at St. Paul very few, if any, live cattle

and live hogs are handled and transported on the local tariff in force from the Missouri River points and South St. Paul to Chicago.

Eighth. In view of the conditions existing with respect to the transportation of dressed products of cattle and hogs from said points, and in view of the fact found and stated by the Commission in its report, Exhibit P, to said petition, that this rate and charge for transportation of such dressed products is now established by the said contract hereinabove referred to and that said contract now controls and will continue to control said rate and charge for transportation thereof during the life of said contract, the said order so made by said Commission is equivalent to an order compelling this defendant to reduce its rate and charge for transportation of live cattle and hogs from said points to the rate and charge for transportation of such dressed products; and is an attempt on the part of the Commission to make and establish a rate and charge for the transportation of such live cattle and hogs from said Missouri River points and from said South St. Paul to Chicago; and that said Commission has no power by law to make or establish or fix a rate or charge for the transportation of said commodities, and its said order is for that reason unlawful and in excess of any power or authority conferred upon said Commission by law.

291 All of which matters and things this defendant is ready to prove and maintain; and it therefore prays to be dismissed.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
By H. R. WILLIAMS, *Its General Manager.*

GEO. R. PECK,
BURTON HANSON,
Of Counsel.

(Endorsed:) Filed June 12, 1905. Marshall E. Sampsell, Clerk.

292 And on to-wit: the third day of July, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of July 3, 1905—Cause Set for Hearing on September 15, 1905.

27723.

THE INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Ordered that this cause be set down for final hearing on pleadings and proofs on September 15th, 1905.

293–334 And on to-wit: the fifteenth day of September, being one of the days of the regular July term of said Court,

1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of September 15, 1905, *Consolidating with Case No.* 27829.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Now come the parties by their solicitors and on motion of the United States Attorney, It is Ordered, that this cause be consolidated with No. 27,829, The Interstate Commerce Commission *v.* Chicago Great Western Railway Company, *et al.*

* * * * * * *

335 And on to-wit: the eighth day of September, 1905, came the Union Stock Yards Company of Omaha, Limited by its Solicitor and filed in the clerk's office of said court in said entitled cause its certain Petition in words and figures following to-wit:

336 *Petition of Union Stock Yards Company.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois. In Equity.

No. —.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

Petition.

To the honorable the judges of the circuit court of the United States for said district:

The petition of the Union Stock Yards Company of Omaha (Limited) hereinafter referred to as the Stock Yards Company, by leave of court first had and obtained to intervene herein, respectfully shows to Your Honors:—

1. That it is and has been for many years a corporation duly organized and existing under and by virtue of the laws of the State of Nebraska, with authority by reason thereof, to construct, own, maintain and operate stockyards at and near the City of South Omaha in said state for the purpose of receiving, selling, feeding, watering and otherwise caring for and receiving all kinds of live stock delivered to it and awaiting transportation or sale or otherwise, and to charge and receive compensation for all such services.

2. That in the year 1884 your petitioner constructed at great expense, and has since at great expense enlarged, improved and maintained, and still maintains and operates stock yards at
337 the City of South Omaha which have cost several millions of dollars and are now in successful operation, and many extensive packing houses have been built and maintained in their immediate vicinity, all of which offers a convenient and excellent market for all kinds of live stock.

3. That the said Stock Yards Company was induced to make the said investment because the proper and healthy development and growth of the country as well as reasons of humanity required that live animals be killed and manufactured into their commercial products as near the place of their production and growth as markets of sufficient magnitude could secure proper competition and trade, and transportation could be established.

4. The defendant railroad and railway companies, mentioned as defendants in this action, are engaged in the carriage of property, including live stock, from the territory west of Chicago as far as the Pacific Ocean, and have for a long time been and now are making and giving undue and unreasonable preference and advantage in the carriage of live stock from points west of Chicago to Chicago to the detriment and injury and prejudice of the city of South Omaha, and your petitioner, the said Stock Yards Company, and subjecting your petitioner and the said City of South Omaha and the live stock traffic thereof to undue and unreasonable prejudice and advantage in that they charge, collect and receive for the transportation of live stock in carloads on their respective lines from all points west of the Missouri River to the City of South Omaha, a much greater proportional rate for the distance carried than the rate charged and collected by said railroad companies from the Missouri River to the City of Chicago. That a large portion of the rate charged for shipment of live stock originating west of the Missouri River to the City of Chicago is
338 demanded, collected and received for the portion of the way ending at the Missouri River, and a very small portion of the rate charged is for the distance from the Missouri River to the City of Chicago, all of which your petitioner charges is contrary to the provisions of the act of Congress entitled "An act to Regulate Commerce."

5. That a large number of the cattle transported by said defendant railroad companies from the territory west of the Missouri River are of the description called feeders and are taken to points within a few hundred miles of the City of South Omaha where favorable conditions exist for such feeding; that said defendant railroad companies for the purpose of inducing the owners of such cattle to ship to Chicago when fattened, instead of selling at South Omaha, return to the owners of said cattle who will ship to Chicago a large portion of the compensation charged and received from them for shipping to South Omaha, which is the same compensation demanded, collected and received from all shippers alike and for a contemporaneous service, thereby giving undue and unrea-

sonable preference to the City of Chicago and to shipments to the City of Chicago of cattle over your petitioner and the City of South Omaha, and subjecting your petitioner, the City of South Omaha and the live stock so carried by them to unreasonable and undue disadvantage, contrary to the provisions of said act of Congress entitled "An act to Regulate Commerce."

6. Your petitioner denies that the rates charged, collected or received by the defendant carriers for the transportation of live stock from points in Iowa and Missouri to the City of Chicago are unjust or unreasonable as compared with the rates to the Missouri River and to South Omaha from points west of there or from points east of there in the states of Iowa and Missouri to the city of South Omaha, so as to subject the City of Chicago or the persons
339 who made the original complaint before the Interstate Commerce Commission to any prejudice or disadvantage.

7. Your petitioner further answering the complaint herein admits the statements made in paragraphs 1, 2, 3, 4, 5, and 6, but that as to the matters and things set forth in paragraphs 7 and 8 of the complainant's bill your petitioner has no information and knowledge upon which to form a belief further than is acquired from the allegations of said complaint, and it therefore denies the allegations in that regard.

8. As to the allegations contained in paragraph 9 of the complaint the defendant makes no allegation or claim as to the reasonableness of the rates on live cattle and hogs nor as to the reasonableness of the rates on dressed or prepared products of live cattle and hogs, but your petitioner denies that the adjustment of such rates of defendant railroad or railway companies as they now exist and have heretofore existed works an unreasonable or unjust discrimination against anyone engaged in shipping or dealing in live stock, or live stock product, or slaughtering and packing the same into product, or dealing in live stock or the products thereof.

9. Your petitioner further represents and shows to Your Honors that the complaint filed before the Interstate Commerce Commission upon which the order set out in the bill of complaint in this action was made, was not filed by any person, corporation or place engaged in raising live stock or in the shipment of live stock to market or elsewhere; was not made by anyone engaged in the production and sale of live stock in the open market, and moreover was not made by anyone engaged in slaughtering and packing live stock into product, or dealing in them or in live stock, and further, was not made by anyone engaged in the shipment of the product of live
340 stock, but on the other hand, was made by a certain association called the Chicago Live Stock Exchange which has no capital and has no business except to make rules and enforce them against its own members in acting as the agents of people engaged in the shipping of live stock to the Chicago market; that no person or corporation engaged in the shipment of live stock on the rates from the Missouri River to Chicago has even made any complaint that such rates were unjust and gave any undue preference to any

kind of traffic or to any person or to any place or corporate interest; that no member of the said Chicago Live Stock Exchange who made said complaint before the said Interstate Commerce Commission was engaged in raising live stock for or in shipping cattle on the rates from the Missouri River or west of the Missouri River to the City of Chicago; nor were they engaged or interested in the shipment of product nor live stock from the Missouri River to the City of Chicago or east of the Missouri River, nor were they or any of them dealers therein.

Your petitioner therefore submits to Your Honors that the Chicago Live Stock Exchange was not authorized under the act of Congress entitled "An Act to Regulate Commerce" to file the complaint mentioned, and the filing thereof gave no jurisdiction whatever to the said the Interstate Commerce Commission and its order was without jurisdiction and is without authority and is null and void.

Your petitioner further alleges and shows to Your Honors that the rates on live stock in territory in the state- of Iowa and Missouri tributary to the City of South Omaha, and to points in Nebraska and South Dakota tributary to said City of South Omaha, and the rates from a point in Iowa equidistant from the Missouri River and the City of Chicago to the City of Chicago are so adjusted and so arranged and so operated under by the defendant railway companies as to favor the City of Chicago and so as to work an unjust discrimination to the City of South Omaha, and so as to give an unreasonable preference to the City of Chicago, and undue and unreasonable advantage to that city over the City of South Omaha.

341–380

Your petitioner further represents and shows to your Honors that if an order should be made by this Honorable Court compelling the defendant railway companies to reduce their charges on live stock from the Missouri River to Chicago to 18½ cents or in any other amount, the rates charged for carrying live stock from the states of Missouri and Iowa to South Omaha from points 250 miles east of the city of South Omaha should be reduced in proportion otherwise the order of the court would work an undue and unjust preference in favor of the shipments to the City of Chicago and would be to the great prejudice of the City of South Omaha and your petitioner.

Your petitioner therefore prays that if an order shall be finally made herein requiring a reduction of the live stock rate between the Missouri River and the City of Chicago, or between the City of South Omaha and the City of Chicago that the rates in all territory tributary to the City of South Omaha lying east of said city in the states of Iowa and Missouri be reduced proportionally, and that a readjustment of the rates charged by the different railroad companies from all points in the territory tributary to the City of South Omaha be also at the same time ordered so as to render said rates just and reasonable and to prevent the unjust discrimination that would otherwise exist in favor of shipments to the City of Chicago; and your petitioner prays for such further orders and decrees as shall

be just and proper in the premises and will protect the interests of your petitioner herein.

THE UNION STOCK YARDS COMPANY
OF OMAHA, LIMITED,
By FRANK T. RANSOM, *Its Attorney.*

(Endorsed:) Filed Sep. 8, 1905 Marshall E. Sampsell, Clerk.

* * * * * * *

381 And on to-wit: the fifteenth day of September, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of September 15, 1905.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO.

Now come the parties by their solicitors, and leave is given to T. M. Sinclair & Company, Limited, St. Paul Union Stock Yards Company, St. Joseph Stock Yards Company, Sioux City Stock Yards Company and Minnesota Railroad and Warehouse Commission respectively to file petitions of intervention; and thereupon the pleas of the defendants being over-ruled, said defendants file answers instanter and the complainant its replication thereto.

And the complainant has leave to file certified copies of the findings of the Interstate Commerce Commission, testimony, evidence taken and order of Complainant.

And thereupon said consolidated cases are set down for final hearing on pleadings and proofs; and the same being heard in part when the hour for adjournment arrived the further hearing is postponed until Monday morning next at 10 o'clock A. M.

382 And on to-wit: the fifteenth day of September, 1905, came T. M. Sinclair & Company, Limited, by its solicitor and filed in the clerk's office of said Court its certain Petition in the words and figures following to-wit:

383 *Petition of T. M. Sinclair & Company, Limited.*

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

In Equity. No. —.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

Petition of Intervention of T. M. Sinclair & Company, Limited.

To the Honorable the Judges of the Circuit Court of the United States for said District, in Equity Sitting:

The petition of T. M. Sinclair & Company, Ltd., of Cedar Rapids, Iowa, by leave of court first had and obtained to intervene herein, respectfully shows to your Honors:

1. That it is, and has been for more than five years last past, a corporation organized and existing under the laws of the State of Iowa, engaged in carrying on a packing house at Cedar Rapids, Iowa, where its principal business is the purchase, slaughter and packing of hogs and cattle, and the shipping, sale and disposition of their slaughtered products and the by-products of such packing house business.

2. That they are the successors of a former corporation under the laws of Iowa, known as T. M. Sinclair & Company, and that T. M. Sinclar & Company for many years carried on an extensive
384 packing house business, in character the same as that now carried on by your petitioner, occupying the same plant and grounds for that purpose.

3. That the plant and grounds of petitioner at Cedar Rapids have cost in the neighborhood of One Million Dollars, and that petitioner has expended thereon about a Half Million Dollars during the last five years. That the finished product from the petitioner's packing house amounts annually to more than one hundred million pounds, and that the miscellaneous tonnage into petitioner's plant, exclusive of live animals for slaughter, likewise amounts to about one hundred million pounds annually.

4. That a very considerable proportion of petitioner's finished product is shipped either to Chicago, locally, or sold to dealers on a Chicago basis of freights.

5. Your petitioner buys its hogs and cattle for slaughter principally at interior points in the State of Iowa, but purchases a portion thereof at Missouri River points. That the average freight rate paid by your petitioner on hogs shipped to its packing house for slaughter during the years 1900, 1901, 1902, 1903 and 1904 has been Eleven Cents per hundred pounds. That the local rate for petitioner's finished product from Cedar Rapids to Chicago, now in force, and

for six months last past, has been and is Thirteen and one-half cents per hundred pounds, making a total freight charge paid by the petitioner from the point of origin of live animals slaughtered by it and the finished product thereof to Chicago, locally, of Twenty-four and one-half cents per hundred pounds. That the rate on live hogs, complained of by the petition or bill in this suit, is Twenty-
385 three and one-half cents per hundred pounds from counties in Iowa bordering upon the Missouri River, and from counties in Iowa bordering on the Mississippi River, Fifteen cents per hundred pounds, with varying charges in intermediate counties, which make the average rate on live hogs from Iowa to Chicago less than Twenty-one cents per hundred pounds. That these rates now give the Chicago packers an advantage over an interior packing house in Iowa of over Three and one-half cents per hundred pounds; and your petitioner avers and charges the fact to be that any increase of the present rates of freight upon its finished product from Cedar Rapids to Chicago, locally, over and above those hereinbefore stated and set forth, or any decrease in the present freight rates on live hogs from Iowa to Chicago, will operate as a further discrimination in favor of Chicago packers, as against your petitioner, and will seriously imperil the business and investment of your petitioner.

6. That of the defendants in this suit, the Chicago, Rock Island & Pacific Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Illinois Central Railroad Company, and the Chicago & North-Western Railway Company transport live animals and freight from interior points in Iowa, including Cedar Rapids, where the packing house of this petitioner is located, to Chicago, and that these are the only railway defendants which reach the City of Cedar Rapids, Iowa, or transport freight and live animals from there to Chicago.

7. Your petitioner intervenes herein as a defendant for the purpose of protecting its own interests, and of defending against rates proposed by the petition or bill herein, which, if established,
386 will operate oppressively against this petitioner and injuriously affect its investment and business interests, as hereinbefore narrated and set forth. It specially denies that the relation maintained by the railway defendants between the rates on live hogs from Iowa, on the one hand, and on the dressed or prepared products of such hogs from Iowa, on the other hand, whereby the rates on the former are higher than on the latter, as aforesaid, creates an undue and unreasonable prejudice, or operates as an unjust discrimination as against live hogs shipped from the State of Iowa; but it avers that, on the contrary, such rates operate as an unjust and undue discrimination in favor of Chicago packers as against the products of the packing house of your petitioner, shipped to Chicago, locally.

Wherefore, your petitioner prays that the prayer of the petition or bill herein be denied, and that said petition or bill be dismissed, in so far as it seeks to decrease the rates on hogs from Iowa points to Chicago.

T. M. SINCLAIR & COMPANY, LIMITED,
By CHAS. A. CLARK, *Its Solicitor.*

UNITED STATES OF AMERICA, *State of Illinois, County of Cook,* ss:

E. T. Koch, being duly sworn, says that he is Traffic Manager of T. M. Sinclair & Company, Ltd., the above mentioned intervening defendant; that he has read the foregoing answer and knows the contents therof, and that the same is true, of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes it to be true.

(Signed) E. T. KOCH.

Subscribed and sworn to before me this 14th day of September, 1905.

[SEAL.] W. J. COLEMAN,
Notary Public in and for Cook County, Ill.

(Endorsed:) Filed Sept. 15, 1905. Marshall E. Sampsell, Clerk.

387 And on to-wit: the fifteenth day of September, 1905, came the St. Joseph Stock Yards Company by its solicitor and filed in the clerk's office of said Court its certain Petition in words and figures following to-wit:

Petition of St. Joseph Stock Yards Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

Petition.

To the Honorable the Judges of the Circuit Court of the United States for said District:

The petition of the St. Joseph Stock Yards Company, hereinafter referred to as the Stock Yards Company, by leave of court first had and obtained to intervene herein, respectfully shows to your Honors:

1. That it is and has been for many years a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, with authority by reason thereof to construct, own, maintain and operate stock yards at and near the city of St. Joseph in said state for the purpose of receiving, selling, feeding, watering and otherwise caring for, and delivering all kinds of live stock delivered to it and awaiting transportation or sale or otherwise, and to charge and receive compensation for all such services.

2. That in the year 1889, your petitioner's predecessor in interest constructed at great expense, and petitioner has since at great expense enlarged, improved and maintained, and still main-
388 tains and operates stock yards at the city of St. Joseph which have cost several millions of dollars and are now in success-

ful operation, and many extensive packing houses have been built and maintained in their immediate vicinity, all of which offers a convenient and excellent market for all kinds of live stock.

3. That the said Stock Yards Company was induced to make said investment because the proper and healthy development and growth of the country as well as reasons of humanity required that live animals be killed and manufactured into their commercial products as near the place of their production and growth as markets of sufficient magnitude could secure proper competition and trade, and transportation could be established.

4. The defendant railroad companies are engaged in the carriage of property, including live stock, from the territory west of Chicago as far as the Pacific Ocean, and have for a long time been and now are making and giving undue and unreasonable preference and advantage in the carriage of live stock from points west of Chicago to Chicago to the detriment and injury and prejudice of the city of St. Joseph, and your petitoner, the said Stock Yards Company, and subjecting your petitioner and the said city of St. Joseph and the live stock traffic thereof to undue and unreasonable prejudice and disadvantage in that they charge, collect and receive for the transportation of live stock in carloads on their respective lines from all points west of the Missouri River to the city of St. Joseph, a much greater proportional rate for the distance carried than the rate charged and collected by said railroad companies from the Missouri River to the City of Chicago. That a large portion of the rate charged for shipment of live stock originating west of the Missouri River to the city of Chicago is demanded, collected and received for the portion of the way ending at the Missouri River, and a very small portion of the rate charged is for the distance from the
389 Missouri River to the city of Chicago all of which your petitioner charges is contrary to the provisions of the act of Congress entitled "An Act to Regulate Commerce."

5. That a large number of the cattle transported by said defendant railroad companies from the territory west of the Missouri River are of the description called feeders and are taken to points adjacent to the city of St. Joseph where favorable conditions exist for such feeding that said defendant railroad companies for the purpose of inducing the owners of such cattle to ship to Chicago when fattened, instead of selling at St. Joseph, return to the owners of said cattle who will ship to Chicago a large portion of the compensation charged and received from them for shipping to St. Joseph, which is the same compensation demanded, collected and received from all shippers alike and for a contemporaneous service, thereby giving undue and unreasonable preference to the city of Chicago, and to shipments to the city of Chicago of cattle over your petitioner and the city of St. Joseph and subjecting your petitioner, the city of St. Joseph and the live stock so carried by them to unreasonable and undue disadvantage, contrary to the provisions of said act of Congress entitled "An Act to Regulate Commerce."

6. Your petitioner denies that the rates charged, collected or received by the defendant carriers for the transportation of live stock

from points in Iowa and Missouri to the city of Chicago are unjust or unreasonable as compared with the rates to the Missouri River and to St. Joseph from points west of there or from points east of there in the states of Iowa and Missouri to the city of St. Joseph, so as to subject the city of Chicago or the persons who made the original complaint before the Interstate Commerce Commission to any prejudice or disadvantage.

7. Your petitioner further answering the complaint herein admits the statement made in paragraphs 1, 2, 3, 4, 5 and 6 but
390 that as to the matters and things set forth in paragraphs 7 and 8 of the complainant's bill your petitioner has no information and knowledge upon which to form a belief further than is acquired from the allegations of said complaint, and it therefore denies the allegations in that regard.

8. As to the allegations contained in paragraph 9 of the complaint the defendant makes no allegation or claim as to the reasonableness of the rates on live cattle and hogs nor as to the reasonableness of the rates on dressed or prepared products of live cattle and hogs, but your petitioner denies that the adjustment of such rates of defendant railroad or railway companies as they now exist and have heretofore existed works an unreasonable or unjust discrimination against any one engaged in shipping or dealing in live stock, or live stock products, or slaughtering and packing the same into product, or dealing in live stock of the products thereof.

9. Your petitioner further represents and shows to your honors that the complaint filed before the Interstate Commerce Commission upon which the order set out in the bill of complaint in this action was made, was not made or filed by any person, corporation or place engaged in raising live stock or in the shipment of live stock to market or elsewhere; nor by any one engaged in the production and sale of live stock in the open market; nor by anyone engaged in slaughtering and converting live stock into its products, or dealing in live stock or its products; nor by any one engaged in the shipment of the products of live stock but that the sole complainant therein was a certain association called the Chicago Live Stock Exchange which has no capital and has no business except to make rules and enforce them against its own members in acting as the agents of people engaged in the shipping of live stock to the Chicago market; that no person or corporation engaged in the shipment of
Live stock on the rates from the Missouri River to Chicago
391 has ever made any complaint that such rates were unjust and gave any undue preference to any kind of traffic or to any person or to any place or corporate interest that no member of the said Chicago Live Stock Exchange was engaged in raising live stock or in shipping the same from the Missouri River or west of the Missouri River to the City of Chicago; nor were they engaged or interested in the shipment of live stock or its product from the Missouri River to the city of Chicago or east of the Missouri River, nor were they or any of them dealers in live stock or any of its products.

Your petitioner therefore submits to your honors that the Chicago Live Stock Exchange was not authorized under the act of Congress

entitled "An Act to Regulate Commerce" to file the complaint mentioned and the filing thereof gave no jurisdiction whatever to the said Interstate Commerce Commission and its order was without jurisdiction or authority and is null and void.

Your petitioner further alleges and shows to your honors that the rates on live stock from all points in the states of Iowa and Missouri tributary to the City of St. Joseph and from all points west of the Missouri River tributary to said city of St. Joseph, to the city of Chicago, are so adjusted and so arranged and so operated under by the defendant railway companies as to favor the city of Chicago and so as to work an unjust discrimination against the city of St. Joseph and so as to give an unreasonable preference to the city of Chicago and undue and unreasonable advantage to that city over the city of St. Joseph.

Your petitioner further represents and shows to your honors that if an order should be made by this honorable court compelling the defendant railway companies to reduce their charges on live stock from the Missouri River to Chicago to 18½ cents or any other amount, the rates charged for carrying live stock to the city of St. Joseph from all points in the state of Missouri and from
392 all points in the state of Iowa within two hundred and fifty miles of the city of St. Joseph should be reduced in proportion; otherwise such order would work an undue and unjust preference in favor of the city of Chicago to the great prejudice of the city of St. Joseph and your petitioner.

Your petitioner therefore prays that if an order shall be finally made herein requiring a reduction of the live stock rate between the Missouri River and the city of Chicago, or between the city of St. Joseph and the city of Chicago that the rates in all territory tributary to the city of St. Joseph lying east of said city in the states of Iowa and Missouri be reduced proportionally, and that a re-adjustment of the rates charged by the several defendant railroad companies from all points in the territory tributary to the city of St. Joseph be also at the same time ordered so as to render said rates just and reasonable and to prevent the unjust discrimination that would otherwise exist in favor of shipments to the city of Chicago and against the City of St. Joseph; and your petitioner prays for such orders and decrees as shall be just and proper in the premises and will protect the interests of your petitioner herein.

ST. JOSEPH STOCK YARDS COMPANY,
By BROWN & DOLMAN, *Its Attorneys.*

(Endorsed:) Filed Sept. 15, 1905, Marshall E. Sampsell, Clerk.

393 And on to-wit: the fifteenth day of September, 1905, came the St. Paul Union Stockyards Company by its solicitor and filed in the clerk's office of said court its certain Petition in words and figures following to-wit:

Petition of St. Paul Union Stockyards Company.

United States Circuit Court, Northern Division of the Northern District of Illinois.

In Equity.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

Petition.

To the Honorable the Judges of the Circuit Court of the United States for said District and Division:

The Petition of the St. Paul Union Stockyards Company, hereinafter referred to as the Stockyards Company, filed by leave of court, respectfully shows:

1. That it is and for over eighteen years last past, has been a corporation duly organized and existing under and by virtue of the law-*laws* of the state of Minnesota, with authority to construct, own, maintain and operate stockyards at the city of South St. Paul in said state for the purposes, among other things, of receiving, selling, feeding, watering and caring for livestock of all kinds and with authority to charge and receive compensation for such services.

2. That in the year 1887, your petitioner constructed at large expense, and has since enlarged and improved, and still maintains and improves, at the city of South St. Paul, Minnesota, stockyards which have cost a very large sum of money, and are now in operation and that large packing houses have been built and are still in existence and in operation at South St. Paul and adjoining said stockyards, which said packing houses offer a large market for the stock received and handled in said stockyards.

394 3. That said Stockyards Company was formed and said expenditures in the construction of its yards were made because of the large and increasing number of livestock of various kinds that were raised in the territory naturally tributary to said South St. Paul, which said stock should be killed and manufactured into their commercial products as near to their place of production as sufficient markets could be established to and from which transportation facilities were adequate.

4. Your petitioner avers that the defendant Railway Companies are engaged in the transportation of live stock from the territory west of Chicago, as far as the Pacific Ocean and in connection with other lines from various points north and west of said South St. Paul and that said defendants have for a long time, and now are making and giving undue and unreasonable preference and advantage in the carriage of livestock from points west of Chicago to said Chicago, to the injury and prejudice of the said city of South St. Paul, Minnesota, and to the injury and prejudice of your petitioner, and subjecting

your petitioner and said city of South St. Paul and the livestock traffic thereof to undue and unreasonable prejudice and disadvantage, in that they charge, collect and receive for the transportation of live stock in car loads on the respective lines of road of said defendants and their connections from all points north and west of St. Paul, Minnesota, to said South St. Paul, a much greater proportional rate for the distance carried than the rate charged and collected by said railroad companies from said South St. Paul to the city of Chicago, and that a large and undue portion of the rate charged for shipment of livestock originating north and west of St. Paul to the city of Chicago, is demanded and received for the portion of the way ending at South St. Paul and a very small portion of said rate is charged for the distance from said South St. Paul to the city of Chicago, all of which your petitioner alleges is contrary to the provisions of the Act of Congress entitled "An Act to Regulate Commerce."

395 5. Your petitioner denies that the rates charged, collected or received by the defendant carriers for the transportation of livestock from points in Iowa, Minnesota and Wisconsin, to the city of Chicago are unjust or unreasonable as compared with the rates to said South St. Paul from said points in said states so as to subject the city of Chicago or any persons doing business there to any prejudice or disadvantage.

6. Defendant admits that it is informed and believes that the allegations of the bill of complaint made in paragraphs 1 to 6 inclusive, are substantially true, except as set forth in paragraph 8 of this answer, and as to the allegations of paragraphs 7 and 8 of the complaint, your petitioner has no information sufficient to form a belief, and therefore denies the said allegations.

7. As to the allegations contained in paragraph 9 of the bill of complaint your petitioner denies that the adjustment and relation of the rates between live cattle and live hogs on the one hand and on the dressed or prepared products of such cattle and hogs on the other hand as the same are now and have been for several years last past maintained, has created an undue and unreasonable prejudice, and denies that the same operates as an unjust discrimination in violation of Sections 1, 2, or 3 of said Act to Regulate Commerce, whether as alleged in the complaint or otherwise.

8. Your petitioner further avers that it denies that the Chicago Livestock Exchange mentioned in the bill of complaint is an incorporated association, but on the contrary it alleges that it is informed and believes that said Chicago Livestock Exchange was at the date of the filing of the petition with the complainant, which is set forth in the complaint herein, and has ever since been, an unlawful combination of persons in restraint of trade and commerce in the State of Illinois, and that said Chicago Livestock Exchange was

396 organized pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the state of Illinois.

Defendant further alleges that said Livestock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission, or in the subject

matter thereof, and that no complaints were made or have been made to any of said defendant railway companies, or to the complainant, by shippers of live stock of the rates complai-ed of in said petition or of the adjustment of rates involved therein; and your petitioner avers that the said Chicago Livestock Exchange was not authorized under the Act of Congress entitled "An Act to Regulate Commerce" to file the complaint mentioned, and the filing thereof gave no jurisdiction whatever to the said Interstate Commerce Commission and its order was without jurisdiction and was without authority, and is null and void.

9. Your petitioner further alleges that the rates on livestock in territory in the states of Iowa, Minnesota and Wisconsin tributary to said South St. Paul market, and the rates from points between said South St. Paul and Chicago, are so adjusted and so arranged and so operated under by the defendant railway companies as to favor the city of Chicago, and so as to work an unjust discrimination to the said City of South St. Paul and your petitioner, so as to give an unreasonable preference to the said city of Chicago and undue and unreasonable advantage to that city over the city of South St. Paul.

10. Your petitioner further shows that if an order and decree should be made by this honorable Court compelling the defendant railway companies to reduce their charges on livestock from said South St. Paul to Chicago, the rates charged for carrying livestock
397 from points in the states of Iowa, Wisconsin and Missouri tributary to said South St. Paul to said city of South St. Paul should be reduced in proportion; otherwise the said decree would operate as an undue and unjust preference in favor of shipments to the city of Chicago and be to the great prejudice of the city of South St. Paul, and would be destructive of the property of your petitioner and of the market which has been built up and maintained for many years at said South St. Paul.

Wherefore, your petitioner prays that the complainant take nothing by its said action, and that the same be dismissed, and if your Honor shall make an order and decree as prayed in the complaint, or any order and decree requiring the reduction of the livestock rate between said South St. Paul and the city of Chicago, that the rates in all territory tributary to said city of South St. Paul lying between said South St. Paul and the city of Chicago be reduced proportionally, and that a readjustment of the rates charged by the different railroad companies from the points in the territory tributary to South St. Paul be also at the same time ordered redu-ed so as to render said rates just and reasonable and to prevent an unjust discrimination that would otherwise exist in favor of said city of Chicago; and your petitioner prays for such order and decree as shall be just and proper in the premises.

ST. PAUL UNION STOCKYARDS COMPANY,
By M. D. FLOWER, *President*,
DAVIS, KELLOGG & SEVERENCE,
Solicitors for Intervenor.

C. A. SEVERENCE, *Of Counsel.*

STATE OF MINNESOTA, *County of Ramsey:*

I, M. D. Flower, came before me personally, and being duly sworn, doth say that he is the president in the above entitled action; that the foregoing is true of his own knowledge, except as
398 to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

M. D. FLOWER.

Subscribed and sworn to before me this 13th day of September A. D. 1905.

[SEAL.] GUY CHASE,
Notary Public, Ramsey County, Minn.

(Endorsed:) Filed Sept. 15, 1905, Marshall E. Sampsell, Clerk.

399 And on to-wit: the fifteenth day of September, 1905, came The Sioux City Stock Yards Company by its solicitor and filed in the clerk's office of said court its certain Petition in words and figures following to-wit:

Petition of the Sioux City Stock Yards Company.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

In Equity. No. —.

THE INTERSTATE COMMERCE COMMISSION, Complainant,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY, Defendant.

Petition.

To the Honorable the Judges of the Circuit Court of the United States, for said District:—

The petitioner, The Sioux City Stock Yards Company, a corporation, hereinafter referred to as the Stock Yards Company, by leave of Court first had and obtained to intervene herein, respectfully represents to your Honors:—

1. That it is and has been for many years a corporation duly organized and existing under and by virtue of the laws of the State of Iowa, with authority, by reason thereof, to construct, own, maintain and operate Stock Yards at the City of Sioux City,
400 Iowa, for the purpose of receiving, selling, fee-ing, watering and otherwise caring for all kinds of live stock delivered to it and awaiting transportation or sale or otherwise, and to do all other acts appertaining to the conduct of a general Stock Yards business and to receive compensation for all such services.

2. That the said Stock Yards Company is the owner of Stock Yards at Sioux City, Iowa, as well as of extensive buildings and improvements, including railroad and switching facilities appertaining thereto, all of which have been constructed and developed at an expense of several millions of dollars. That said Stock Yards and other facilities appertaining thereto were constructed, and have been and are developed in response to the necessity and demand for a live stock market at Sioux City. That the live stock industry in the Western States, particularly in the States of Iowa, Minnesota, Missouri, South Dakota, Nebraska, Kansas, and States west, and the interests of all people engaged directly or indirectly in such industry, will be greatly subserved and prospered by the creation and building up of extensive live stock markets near and convenient to the extensive grass-producing countries, as well as near and convenient to the corn-producing country. That the interest and prosperity of the live stock industry in the west demands that the producers of live stock in small and moderate quantities be educayed and induced to market their own stock in car load quantities at large markets, and that this can only be successfully accomplished by the creation and maintenance of such markets within a convenient distance from the localities where such live stock is produced. That in response to the needs of the live stock industry and those engaged directly or indirectly therein, there have been erected and are being maintained at Sioux City, a large number of packing houses, and a live stock market exists, which, if not injured and suppressed by unfavorable railroad rates, will fulfil the demand of the territory naturally and fairly tributary to said City and market.

401 3. That the said Stock Yards Company was induced to purchase maintain and develope its said properties because of the demands and considerations hereinafter referred to, as well as for reasons of humanity requiring that live animals be killed and manufactured into their commercial products as near the place of their production and growth as markets of sufficient magnitude could secure proper competition and trade, and transportation could be established.

4. That the defendants, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Chicago & Northwestern Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Illinois Central Railroad Company have lines of railroad entering Sioux City and are engaged in carrying live stock and its products between Sioux City and Chicago; and the said Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Chicago & Northwestern Railway Company, the Illinois Central Railroad Company, and the Chicago, Milwaukee & St. Paul Railway Company, are engaged in carrying live stock and its products between points west of Sioux City and the States of Nebraska, South Dakota, North Dakota, and from points in Minnesota to Chicago; and said railroads have respectively for a long time been making and giving undue preference and advantage to the live stock market at Chicago, and to the City of Chicago, and subjecting this

intervenor, and the City of Sioux City, and tributary territory, and the live stock traffic thereof, to undue and unreasonable prejudice, in that they each charged, collected and received from the transportation of live stock in car loads on their respective lines from all points in Iowa, Minnesota, North Dakota, South Dakota and Nebraska, to Sioux City, much greater proportionate rates than for the same or like service therefrom in the transportation of live stock from the same points to the City of Chicago, contrary to the provisions of the act of Congress entitled "An Act to Regulate Commerce."

5. That the defendant, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Chicago & Northwestern Railway Company and the Chicago, Milwaukee & St. Paul Railway Company, so having lines of railroad extending into the States of Ne-
402 braska, South Dakota, North Dakota and Minnesota, which states furnish large amounts of live stock which is carried by said railroads to Sioux City, and through said City to Chicago, to be sold to packers at Chicago, for the purpose of inducing shippers of stock to ship the same to Chicago, charge and receive a much greater proportionate compensation for the transportation of live stock in car loads to Sioux City, to be there sold, than they charge for the same service in carrying live stock through Sioux City to Chicago, or to Sioux City to re-ship to Chicago, thereby giving an undue and unreasonable preference to the live stock market at Chicago, and to the City of Chicago, and subjecting intervenor, and the City of Sioux City, and the live stock market in said City, to an undue and unreasonable prejudice and disadvantage, contrary to the provisions of said act of Congress.

6. That all of said Railway and Railroad Companies, the lines of which extend to Sioux City in the territory between Sioux City and Chicago give an undue and unreasonable preference and advantage to the shipping of live stock to Chicago from points tributary to Sioux City, and within one hundred and fifty miles thereof, by furnishing special trains and schedules for the shipment of live stock from such points, by reason of which the said stock is delivered on the market at Chicago in as short a time as in Sioux City, and that by reason of such undue and unreasonable preference and advantage, a large and unnatural amount of live stock is shipped to Chicago and there sold, and that a large proportion of such stock so shipped to Chicago would, with reasonable and equal facilities, be shipped to and slaughtered at Sioux City.

7. This intervenor denies that the rates charged for the shipment of live stock from points west of Chicago to Chicago are unreasonably high as compared with the rates charged on the transportation of live stock from points on the Missouri River and
403 elsewhere west of Chicago to Chicago, and denies that the City of Chicago, or the live stock market thereat, is subjected to any prejudice or disadvantage by reason of undue and unreasonably high rates charged from such points west of Chicago to Chicago on live stock

8. And for as much as this proceeding in the main is a contro-

versy between the complainant, representing the live stock market and live stock product market interests at the City of Chicago on the one hand, and your intervenor, and like interests at the City of Sioux City, and other points on the Missouri River similarly situated, on the other hand, your intervenor is advised that it is necessary to its protection, and to the protection of such interests in the City of Sioux City, that it should be permitted to intervene and become a party hereto, to the end that it may have notice and an opportunity to be heard in behalf of its interests and the interests of the Sioux City Live Stock Market in all proceedings which may be taken herein.

Wherefore, petitioner prays that it be permitted by your Honors to intervene in this cause and be made a party hereto, and have notice of all proceedings taken herein, and that this petition be taken, until further notice of action, as petitioner's intervening petition and answer to complainant's bill, and that such order and decree be finally made in said cause as may be just and equitable, and as will protect the rights and interests of those engaged in the live stock business at Sioux City, and in the territory tributary thereto.

MILCHRIST & SCOTT,
Solicitors for Sioux City Stock Yards Company, Intervenors.

Of counsel:
WM. MILCHRIST.

(Endorsed:) Filed Sept. 15, 1905, Marshall E. Sampsell, Clerk.

404 And on to-wit: the eighteenth day of September, 1905, came the Railroad and Warehouse Commissioners of the State of Minnesota by their solicitors and filed in the clerk's office of said Court their certain petition in the words and figures following to-wit:

Petition of Railroad and Warehouse Commissioners of the State of Minnesota.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

THE INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

The petition of the Railroad and Warehouse Commissioners of the State of Minnesota respectfully shows:

1. That Ira B. Mills, Charles F. Staples and William E. Young are duly elected and qualified Railroad and Warehouse Commissioners of the State of Minnesota and constitute the Railroad and Warehouse Commission of said State, that said Railroad and

Warehouse Commission was created and its powers and duties defined by Chapter 10 of the General Laws of the State of Minnesota for the year 1887; and the several amendments to said chapter; that under and by the provisions of Chapter (10) ten of the General Laws of Minnesota for the year 1887 as amended by Chapter (106) one hundred six of the General Laws of Minnesota for the year 1891, Chapter, (67) sixty seven of the laws of said state for 1897, it is made the duty of said Commission upon complaint of any person, firm, corporation or association, that, if any part of the tariff of rates fares, charges or classifications of any common carrier filed with the Commission between points wholly within the state of Minnesota are unreasonable, to forward a copy of said complaint to said
405 carrier so complained of, and require it to satisfy the said complaint or answer within a reasonable time to be fixed by the Commission, and providing, that if said complaint is not satisfied, that the Commission proceed to a hearing and investigate the reasonableness of the rates complained of, provided, that the Commission may at any time, although no complaint has been filed with it, proceed upon its own motion to investigate the tariff of rates, fares, charges and classifications or any part thereof filed and published by any common carrier, and, if in either proceeding, upon the evidence, the tariff of rates, fares, charges and classifications are found to be unjust, unreasonable or unequal, the Commission shall by its report in writing state wherein they are unequal or unreasonable, and shall make a tariff of rates, fares, charges and classifications which shall be substituted for the tariff complained of. Such tariff of rates, fares, charges and classifications so made by the Commission shall be deemed and taken in all courts of the State of Minnesota as *prima facie* evidence that the tariffs of rates, fares, charges and classifications so made are equal and reasonable. That the State of Minnesota is a large producer of cattle, sheep and hogs, and that there is a market for the sale of said cattle, sheep and hogs at South St. Paul and at other places in the State of Minnesota, and that there are packing houses at South St. Paul and at other points in the state, where cattle sheep and hogs are slaughtered and packed.

2. Your petitioners say that they do not know and can neither admit nor deny the averments of the first paragraph of the complainant's petition as to the incorporation and offices of the defendants, but aver that they are informed and believe that said
406 various defendants are common carriers engaged in the transportation of persons and property by railroad under joint through rates, and as members of continuous through lines between points in different states of the United States, and that they have been and are engaged in the transportation of live cattle and live hogs and the dressed or prepared products of such cattle and hogs to Chicago in the State of Illinois, from Kansas City, Missouri, St. Joseph, Missouri and Omaha, Nebraska, on the Missouri River, and from South St. Paul in the state of Minnesota, and from points in the territory between the Missouri River or South St. Paul and Chicago and to other eastern points, and that in connection with other lines of railroad the said defendants are also engaged in the

transportation of cattle and hogs originating on lines west of the Missouri River and west and northwest of St. Paul to Chicago and other eastern points, and that in respect to such transportation the said companies have been, and are subject to the provisions of the Act of the Congress of the United States entitled "An Act to Regulate Commerce" approved February 4, 1887, as amended.

3. Your petitioners admit that on or about the 5th day of April, 1902, the Chicago Livestock Exchange did file with the complainant, Interstate Commerce Commission a complaint against the said various railroad companies, and that Exhibit A attached to the complaint herein is a copy thereof but your petitioners on information and belief deny that said Chicago Livestock Exchange is an incorporated association, but on the contrary allege that they are informed and believe that said Chicago Livestock Exchange was at the date of the filing of said petition with said Interstate Commerce Commission and ever since has been an unlawful combination of persons and corporations in restraint of trade and commerce among the several states, and in restraint of trade and commerce in the state of Illinois, and that said Chicago Livestock Exchange was organized
407 pursuant to an unlawful combination and conspiracy in violation of the common law and of the statutes of the United States and of the statutes of the state of Illinois, and further allege that said Livestock Exchange and the members thereof had no interest whatever in the said petition so filed with the Interstate Commerce Commission or in the subject matter thereof.

4. Your petitioners aver that by leave duly obtained they were permitted to intervene in said proceeding before said complainant Interstate Commerce Commission, and that they filed therein an answer in intervention, and opposed in said proceedings the making of the order against said various railroad companies prayed in the said complaint so filed with said Interstate Commerce Commission, and opposed the making of the order of the Commission which is attached to the complaint herein as Exhibit Q.

5. Your petitioners admit that the said complaint came on for investigation and hearing before the said Interstate Commerce Commission, at which time the parties complainant and defendant appeared by their attorneys and your petitioners also appeared; and your petitioners also admit that testimony was taken at such hearing in behalf of the parties to said proceeding; that argument was had, and that on or about the 7th day of January, 1905, the said Interstate Commerce Commission made its report in writing in respect to the matter of said complaint, setting forth its findings of fact and its conclusion based upon said facts, and that Exhibit P, attached to the petition of the complainant herein is a copy of said report, and further admit that on or about the said 7th day of January, 1905, the said complainant, Interstate Commerce Commission formulated
an order and notice based upon said findings and determina-
408 tion, and that said Exhibit Q to complainant's petition is a copy thereof.

6. Your petitioners deny that the charges maintained by said various carriers for the transportation of live cattle and live hogs on

the one hand, and their charges for the transportation of dressed or prepared products of such cattle and hogs on the other hand, whereby the rates on the former are higher than on the latter, create an undue and unreasonable prejudice and operate as an unjust discrimination in violation of Sections 2 and 3 of the said Act to regulate commerce, or otherwise, and deny that said charges result in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section 1 of said Act to regulate commerce, whether as alleged in the petition or otherwise.

7. Your petitioners further say that the said order so made by said Interstate Commerce Commission and attached to the petition of the complainant herein as Exhibit Q, is not and was not justified by the evidence adduced before said Commission on the hearing of the said complaint or by the facts, and that said order is unlawful and not within the jurisdiction and power of said Commission, and is violative of the rights of the said carriers and of the shippers of livestock to the markets for the same.

8. That the rates existing at the time of the filing of the petition in this proceeding with the Interstate Commerce Commission and as said rates now exist from Minnesota and Iowa territory to South St. Paul do not discriminate against Chicago in favor of South St. Paul or any other market, but said rates are much more favorable to Chicago than to South St. Paul and discriminate against South St. Paul in favor of Chicago; that the rates that existed at the time of the filing of said petition and that now exist between St. Paul and Chicago on packing house products or provisions, are rela-
409 tively just and reasonable with the rate on livestock from Minnesota markets to Chicago, Sioux City and other markets outside the state of Minnesota and that Chicago and other markets outside of the state of Missouri are receiving, and at all times during the existence of the rates complained of, have received, a just and fair proportion of the livestock that is raised in and shipped from the state of Minnesota and points in Iowa and other states tributary to South St. Paul.

9. That the rates made by the said carriers for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River, from South St. Paul in the state of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago at the time of the filing of said complaint before the Interstate Commerce Commission, and which have been made the subject of investigation by the said Interstate Commerce Commission, were made by reason of extreme competitive conditions existing at said Missouri River points and at South St. Paul in respect to the transportation of such products, and that at the time of the filing of said complaint by said Chicago Livestock Exchange before said Commission, there were in existence and ever since have been in existence, proportional rates on all livestock originating west and northwest of St. Paul and shipped to Chicago and other points east thereof, which are no higher than the rates on the products of livestock; and substantially all of the live cattle and hogs shipped from the Missouri River to

Chicago and points east of Chicago and from South St. Paul to Chicago and points east of Chicago are shipped on such proportional rates, which are not, and have not been in excess of the rates
410 charged for the transportation of the dressed product of cattle and hogs from South St. Paul to Chicago and points east thereof.

That long prior to the filing of the said complaint before the Interstate Commerce Commission, Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha in the state of Nebraska, Sioux City in the state of Iowa and South St. Paul in the state of Minnesota and other points in the general territory covered by said complaint had become large market towns and the natural markets for a great part of the livestock raised in the states west of the Missouri River and west and northwest of said South St. Paul and in the country round about and adjacent to said towns and that large stockyards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up, furnished with all the facilities required for the sale and handling of cattle and hogs and markets had been established, at which markets shippers of cattle and hogs could readily have their animals sold and where they received all the necessary facilities for the handling thereof; and the establishment of such stock yards and packing houses at such points and the growth and development of such market towns has been and now is of great advantage to the stockgrowers throughout said territory, furnishing them a near market for their livestock, and also giving them the benefit and advantage of a home market as compared with the disadvantages of shipping their livestock to Chicago or to more distant markets and at the same time giving them these home markets as additional markets for the disposition and sale of their livestock; that said market towns and particularly said South St. Paul in the state of Minne-
411–434 sota, have had and now have substantially as good railroad facilities as Chicago, and have railroads with their connections extending to the ports of the Gulf of Mexico, and to the lake ports of Lake Superior and Lake Michigan, as well as railroads extending to other markets through St. Louis and Chicago, whereby there has grown up and developed at each of said points, and particularly at South St. Paul, a home market for the handling and sale of livestock, from which the country around and adjacent to said cities and west of the Missouri River and west and northwest of St. Paul, has derived great advantages and upon which said portions of the country are now dependent in a great measure for their prosperity; that the stock growers and other persons interested in the maintenance and development of such market towns other than Chicago, and particularly in the maintenance and development of South St. Paul, and interested in the growth of home markets throughout all the said territory, have protested and are protesting and on their behalf your petitioners as such Railroad and Warehouse Commissioners of the state of Minnesota, protest, against any change being made in the relation between the said rates upon livestock and upon the products thereof.

CHARTS

TOO

LARGE

FOR

FILMING

Your petitioners as such Railroad and Warehouse Commissioners pray that they may be permitted to intervene in this cause, and that the foregoing petition may be considered as an answer in intervention herein; and your petitioners pray that this action may be dismissed, and the complainant Interstate Commerce Commission be denied any relief in the premises.

IRA B. MILLS.
CHARLES F. STAPLES.
WILLIAM E. YOUNG.

IRA B. MILLS,
Solicitir for Intervenors.

(Endorsed:) Filed Sept. 18, 1905, Marshall E. Sampsell, Clerk.

* * * * * * *

435 And afterwards to-wit: on the fourteenth day of October, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of October 14, 1905.

27723 & 27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Now again come the parties by their solicitors and the arguments of counsel being now heard and concluded, and the Court not being sufficiently advised in the premises takes time to consider.

436 And on to-wit: the twentieth day of November, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain Opinion by Judge Bethea in words and figures following to-wit:

(Here follows opinion, marked pages 436½ and 437.)

438 And on the same day to-wit: the twentieth day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Decree of November 20, 1905, Dismissing Petitions of Interstate Commerce Commission.

27723.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously Sued as THE OMAHA, KANSAS CITY & EASTERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY.

439 27829.

INTERSTATE COMMERCE COMMISSION

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY; THE BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; THE CHICAGO & ALTON RAILWAY COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE IOWA CENTRAL RAILWAY COMPANY; THE KANSAS CITY, ST. JOSEPH & COUNCIL BLUFFS RAILROAD COMPANY; THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY; THE MISSOURI PACIFIC RAILWAY COMPANY; THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; THE QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY, Erroneously sued as THE OMAHA, KANSAS CITY & EAST-

ERN RAILROAD COMPANY; THE WABASH RAILROAD COMPANY, and THE WISCONSIN CENTRAL RAILWAY COMPANY, Original Defendants; SIOUX CITY STOCK YARDS COMPANY; ST. JOSEPH STOCK YARDS COMPANY; ST. PAUL UNION STOCK YARDS COMPANY; RAILROAD & WAREHOUSE COMMISSIONERS OF THE STATE OF MINNESOTA; T. M. SINCLAIR & COMPANY, LIMITED, and THE UNION STOCK YARDS COMPANY OF OMAHA, Intervenors.

440 Ordered by the Court that the petitions of the Interstate Commerce Commission be, and they are hereby dismissed with costs.

441 Be it remembered that on this day to-wit: the twelfth day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of January 12, 1906, *Leave to File Substituting Petition.*

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

It appearing that the original petition filed herein on the 29th day of April, 1905, has been mislaid or lost and at this date cannot be found,

It is thereupon ordered that leave be and the same is hereby given said petitioner to file instanter a substituted copy of said petition *nunc pro tunc* as of April 29th, 1905.

442 Be it remembered that on this day to-wit: the twelfth day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of January 12, 1906, *Leave to File Substituted Petition.*

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

It appearing that the original petition filed herein on the 17th day of July, 1906, has been mislaid or lost and at this date cannot be found.

It is thereupon ordered that leave be and the same is hereby given said petitioner to file instanter a substituted copy of said petition *nunc pro tunc* as of said 17th day of July, 1905.

443 And afterwards to-wit: on the fifteenth day of January, 1906, came Interstate Commerce Commission by C. B. Morrison, United States Attorney, L. A. Shaver, its solicitor and S. H. Cowan, Special Counsel under the direction of the Attorney General of the United States and filed a certain Petition praying an appeal to the Supreme Court of the United States Which said Petition is in the words and figures following to-wit:

Petition for Appeal.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

No. 27723.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

SAME
vs.
SAME.

Consolidated Causes.

Petition for Appeal.

The Interstate Commerce Commission, being a bureau or department of the government of the United States, by C. B. Morrison, United States Attorney, and by L. A. Shaver, its solicitor and S. H. Cowan, Special Counsel, under the direction of the Attorney General of the United States, represents that in the final decree or order of said circuit court, in the above stated cases, rendered on the 20th day of November, 1905, there is manifest error to its injury; and therefore it prays for an order granting an appeal from said decree
444 to the Supreme Court of the United States.

C. B. MORRISON,
United States Attorney.
L. A. SHAVER,
Solicitor for Complainant.
S. H. COWAN,
Special Counsel.

(Endorsed:) Filed Jan. 15, 1906, Marshall E. Sampsell, Clerk.

445 And on the same day to-wit: the fifteenth day of January, 1906, came Interstate Commerce Commission by its solicitors and filed in the clerk's office of said Court its certain Assignment of Errors, in words and figures following to-wit:

Assignment of Errors.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Illinois.

No. 27723.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

SAME
vs.
SAME.

Consolidated Causes.

Assignment of Errors.

And now comes the Interstate Commerce Commission by C. B. Morrison, United States Attorney, and L. A. Shaver, its solicitor, and S. H. Cowan, Special Counsel, and say that in the decree rendered by said circuit court in the above entitled causes on the 20th day of November, 1905, and in the record and proceedings in said causes there is manifest error in this, to-wit:

1. Said Court erred in decreeing that the bill of petition of the Interstate Commerce Commission be dismissed.

2. Said court erred in not granting the relief prayed for in the said bill or petition of the Interstate Commerce Commission.

3. Said court erred in not rendering a decree for the enforcement of the order of said Commission.

4. Said Court erred in holding that the rates on live stock involved in said causes are reasonable in themselves.

446 5. Said Court erred in holding that the rates on the products of live stock involved in these causes were remunerative prior to their reduction.

6. Said Court erred in holding in effect that said rates on the products of live stock as reduced are remunerative and lawful rates.

7. Said Court erred in holding that the cost of carrying live stock is greater than that for carrying dressed meats and packing-house products.

8. Said Court erred in holding that the rates in question given to the packers at the Missouri River and St. Paul on their products were the result of competition.

9. Said Court erred in holding that the alleged competition set up in these causes justified the reduction of the rates on the products below those on the live stock.

10. Said Court erred in holding that the alleged competition set up in these causes was *bona fide* and such as in contemplation of law can justify preferences or prejudices otherwise undue.

11. Said Court erred in holding that the competition alleged in these causes can be set up as a defense under section 3 of the Act to regulate commerce.

12. Said Court erred in holding that the lower rates on the products of live stock than on the live stock has worked no injury to the shippers of the latter.

13. Said Court erred in holding that the present rates complained of in these causes are "reasonably fair to Chicago and to the shippers of live stock."

14. Said court erred in holding that the rate of twenty cents per one hundred pounds charged for transportation by defendants of dressed meats and packing house products from Kansas City,
447 St. Paul, South Omaha, Sioux City and other Missouri River points involved to Chicago, while the rate of twenty three and one half cents was, and is charged on cattle, hogs and sheep from the said Missouri River points to Chicago, did not, and does not, constitute an undue and unreasonable preference and advantage in favor of dressed meat and packing house products and the shippers of the same, and that said rate adjustment did not, and does not, subject such live stock, and the shippers thereof and the live stock market at Chicago to an undue and unreasonable prejudice and disadvantage in violation of Section Three of the Act to Regulate Commerce.

15. Said court erred in holding that the *prima facie* case made by the findings of the commission had been overcome by the evidence offered before the Court, and in effect overruling the following ultimate findings of fact made by the commission as follows:

"Based upon the foregoing, we make specific findings as follows: The discrimination against the transportation of live stock to Chicago from the shipping points in question, brought about by defendants' action in establishing and putting in force upon the products of live stock rates of transportation lower than those contemporaneously exacted by defendants for the transportation of live stock between the same points injured the live stock market of Chicago and those interested therein, is not justified by difference to defendants in the cost of transportation, and is not otherwise justified, and therefore subjects the traffic in live stock and the Chicago live stock market and those interested therein, including complainant to undue and unreasonable prejudice and disadvantage and gives to the traffic in the products of live stock and shippers and localities interested in such traffic undue and unreasonable preference and advantage."

16. The said Court erred in holding that the rate of twenty five cents per one hundred pounds on cattle, and twenty seven cents per one hundred pounds on hogs from South St. Paul and St. Paul to Chicago was just and reasonable.

17. The said Court erred in holding that the rate of fifteen
448 and seven tenths cents per one hundred pounds on packing house products and seventeen cents on dressed meat from St. Paul to Chicago, while the rate on cattle was twenty five cents and on hogs twenty-seven cents did not constitute an undue and unreasonable preference and advantage to dressed meat and packing house products and the shippers thereof, and did not subject cattle and hogs and the shippers thereof to an undue and unreasonable preference and disadvantage.

18. The said court erred in holding that the lower rate from Omaha, Des Moines, Marshalltown and Cedar Rapids, Iowa, to Chicago, on dressed meat and packing house products, than is the rate on cattle and hogs from the said points to Chicago, did not constitute an undue and unreasonable preference and advantage to the dressed meat and packing house products, and the shippers thereof, and did not subject cattle and hogs, and the shippers thereof, to an undue and unreasonable prejudice and disadvantage.

19. The said court erred in holding that the lower rates on packing house products and dressed meat from the Missouri River points in question, and from interior points in Iowa, than is charged on live stock shipped locally from the said points to Chicago, did not create in favor of dressed meats and packing house products and the shippers thereof an undue and unreasonable preference and advantage, and did not subject the live stock market at Chicago and those interested including complainant, to an undue and unreasonable preference and disadvantage.

20. The court erred in finding that:

"All the witnesses agreed in the showing that the cost of service in proportion to the value of both kinds of commodities was greater in carrying live stock."

21. The court erred in finding that it was:

"Substantially agreed by the witnesses that the risk of carriage, notwithstanding the double value of fresh meats, was not as
449 great in carrying fresh meats and packing house products as in carrying live stock."

22. The court erred in finding that the witnesses:

"All agreed that competition was the greatest factor in determining a rate.

23. The court erred in finding that:

"The average Iowa rate to Chicago was twenty one cents."

24. The court erred in finding that the Chicago market is not injured by the present rate and basing that upon the finding that:

"(The) evidence tends to show that a majority of the cattle within 150 miles from the Missouri River and St. Paul went to Chicago rather than to the Missouri River and southeast from St. Paul upon the present rates."

25. The said court erred in finding that the Chicago market fluctuated from five cents to fifty or seventy five cents in a day.

26. The said court erred in finding that:

"The evidence shows that the defendant railroad companies pay out a much larger amount in damages for losses arising from the

carriage of live stock than they do for losses arising from the carriage of dressed meats and packing house products, in proportion to the value of the product carried and more in damages per car regardless of the value.

27. The said court erred in its holding based on the quotation next above that:

"The result is that the value of the service is not such an important factor in this kind of a case as it is considered to be in ordinary cases."

28. The said court erred in finding that:

"Other railroads running south to the Gulf of Mexico also competed more or less for said business."

that is the business for transporting packing house products and dressed meats, and in taking that into consideration.

29. The said court erred in finding; that the Chicago Great Western Railway Company was the longest route from Chicago to the Missouri River points and in holding that:

"The rates were not made voluntary, but from necessity arising from competition, the necessity being that of carrying the goods at the lower rate or losing the business to which the officers of
450 said companies though they were entitled. This cutting of the rate by the Chicago Great Western Railway Company was not the origin of competition" and in basing its decision thereon.

30. The said court erred in holding in effect that because the railway companies did not make a lower rate on live stock because they did not see fit to do so as a result of competition between themselves justified the roads in making a lower rate on packing house products and dressed meats without violating the third section of the act to regulate commerce, prohibiting undue preference as between the two classes of commodities.

31. The said court erred in finding that:

"The only places where the opportunities for competition existed as to live stock the same as to packing house products were immediately at the Missouri River points and St. Paul."

32. The said Court erred in finding that:

"The present rates have not materially affected any of the markets, prices, or shipments; that they are reasonably fair to Chicago and to the shippers; that the shipments of live stock from points between Chicago and the Missouri River and St. Paul are as great in proportion to the volume of business as before the present rates were made; that the majority of the live stock comes to Chicago from points as near as 150 miles this side of the Missouri River and St. Paul, and that the lower rate given to the packers does not seem to directly influence or injure the shippers of live stock."

33. The court erred in finding that:

"That the welfare of the public, including the shippers consumers, and all localities and markets, does not seem to be materially affected by the present rates."

34. The said court erred in finding that; the law is intended only

"To prohibit unjust discriminations in the rendition of like service under similar circumstances and conditions."

35. The said court erred in finding that:

"Any fact which produces an inequality of condition and a change of circumstances justifies and inequality of charge." And in applying that mistaken principle in the decision of this case.

451 36. The said court erred in finding that:

"The cost of service to the carrier would be an ideal theory, but is not practical," and in giving effect in its decision to its findings of fact that the cost of the carriage is greater in case of live stock than in dressed meats and packing house products.

37. The said court erred in finding that:

"The amount of the product or the commodity in the hands of a few persons to ship or compete for, entitles such shippers to the lower rate of freight than one having a less quantity."

and in applying that principle to this case where the rates are based upon the unit of a car load.

38. The said court erred in finding that:

"In every case the Supreme Court has held that competition may be controlling," and that such competition applies to section 3 of the Act to Regulate Commerce with respect to preferences and discriminations as between different descriptions of traffic and the shippers thereof.

39. The said court erred in its construction of the decision of the Interstate Commerce Commission in holding that:

"The Interstate Commerce Commission, in its opinion, considered the facts as to competition and found they did not control the fixing of rates. Its opinion and the concurring opinion of Commissioner Knapp, show, however, that the majority of the Commission acting in this case (Fifer and Prouty) thought that it was not a case to which competition applied."

40. The said court erred in finding that: the same principle must apply in determining the question of undue and unreasonable preference as between different descriptions of traffic as apply to undue and unreasonable preference as between different places when it is charged that the fourth section of the Act to Regulate Commerce is violated.

41. The said court erred in holding that the Chicago Great Western Railway Company did not begin the competition and that it was immaterial if it did, and in holding that it was the duty of the officers of that railroad company to get business in the inter-

452 est of its stockholders to accomplish which that it had the right to reduce the rates on dressed meats and packing house products by the contract which it made with the Missouri River packers without being subject to the requirements of section 3 of the Act to Regulate Commerce, prohibiting undue preference to any particular description of traffic or shippers thereof.

42. The said court erred in holding that the evidence shows that

"this carrier" (C. G. W. Ry. Co.) must reduce the rate or lose the business.

43. The said court erred in holding that competition was:

"Limited to the live stock driven into the Missouri River points and St. Paul in determining whether that commodity is therein entitled to the same rate as packer's product shipped from those same points."

44. The said court erred in holding that the evidence shows that in substantially all cases the factor of competition alone controls the rate, and in holding that the Supreme Court has held that competition may be controlling, and upon that mistaken theory in finding that:

"Upon a consideration of all the evidence the court holds that the *prima facie* case made by the findings of the Commission has been overcome by the evidence offered before the court."

C. B. MORRISON,
United States Attorney.
F. A. SHAVER,
Solicitor for Complainant.
S. H. COWAN,
Special Counsel.

(Endorsed:) Filed Jan. 15, 1906. Marshall E. Sampsell, Clerk.

453 And on the same day to-wit: the fifteenth day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of January 15, 1906, *Allowing Appeal.*

27723.

INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

SAME
vs.
SAME.

Consolidated Causes.

In these causes, the Interstate Commerce Commission, by C. B. Morrison, United States Attorney, and by L. A. Shaver, its solicitor, and S. H. Cowan, Special Counsel, under the direction of the Attorney General of the United States, having made its application in writing for an appeal from the final decree therein, rendered on the 20th day of November, 1905, to the Supreme Court of the United

States, and the said Interstate Commerce Commission being a department of the government of the United States, and it appearing that the matter in dispute in said causes exceeds the sum of five thousand dollars ($5,000) exclusive of costs, it is, therefore, ordered that said appeal be, and the same is hereby granted and made returnable on the thirteenth day of February, A. D. 1906.

454 And on to-wit: the second day of February, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

FRIDAY, *February 2nd*, 1906.

Present: Honorable Solomon H. Bethea, District Judge.

Gen. Nos. 27723 & 27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.,

and

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Causes.

On motion of the United States Attorney, appearing for said petitioner, and upon good cause shown,

It is ordered that the time to file the transcript of record in the Supreme Court of the United States be, and the same is hereby, enlarged thirty days from the 13th of February instant.

455 And afterwards to-wit: on the ninth day of March, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

FRIDAY, *March 9th*, 1906.

Present: Honorable Solomon H. Bethea, District Judge.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Consolidated Causes.

On motion of Mr. L. A. Shaver, one of the solicitors for the petitioner herein, being represented by Mr. Francis G. Hanchett, and upon good cause shown,

It is ordered that the time to file transcript of record in the Supreme Court of the United States be, and the same is hereby, enlarged thirty days from the 12th day of March instant.

456 And on to-wit: the fifteenth day of March, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of March 15, 1906.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Consolidated Causes.

On motion of the United States District Attorney and upon consent of Mr. L. A. Shaver, solicitor for the Interstate Commerce Commission, and upon the request of Mr. S. H. Cowan, counsel for said

Commission, leave is hereby given Mr. L. A. Shaver to withdraw from the files of said consolidated causes the record of the proceedings had before the Interstate Commerce Commission at Chicago in the case of The Chicago Livestock Exchange *vs.* The Atchison, Topeka & Santa Fe Railway Company *et al.*, comprising two volumes introduced in evidence on the trial of said causes and filed in the office of the Clerk of this court on the 14th day of October A. D. 1905, for the purpose of having the same printed at Washington, two copies at least of said printed record to be sent to the Clerk
457 of this court, one to be included in the transcript now being prepared on Appeal to the Supreme Court of the United States, the other to be filed as a part of the record in said causes and, that as soon as such printed copies are made the original manuscript shall be returned to the files subject to the further order and direction of the Court.

458 And afterwards to-wit: on the twentieth day of March, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge appears the following entry to-wit:

Order of March 20, 1906.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Causes.

Upon motion of Mr. Francis G. Hanchett, Assistant United States District Attorney, and upon request of Mr. L. A. Shaver, solicitor for said petitioner, Mr. Edward Baxter, appearing for said defendants and consenting thereto, leave is hereby given to withdraw from the files the original testimony and exhibits in said consoli-
459 dated causes for the purpose of having the transcript on appeal to the Supreme Court printed at the Government printing office in Washington under the direction of the Department of Justice; the originals to be returned intact to the Clerk's office of this court, together with at least four copies of such printed record, one of which to be certified by the Clerk as the transcript of the record on said appeal. Before permitting such original files to be withdrawn the Clerk will prepare an index giving the pages where the

testimony of the several witnesses appear in the record together with the place of insertion of the Exhibits and other documentary evidence introduced on the trial of said causes.

460 And on to-wit: the tenth day of April, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

TUESDAY, *April 10th*, 1906.

Present: Honorable Solomon H. Bethea, District Judge.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Consolidated Causes.

It appearing to the Court from a letter from the Attorney General's office, under date of April 4th, 1906, addressed to Hon. C. B. Morrison, United States District Attorney, that it has been found impracticable to have the record on appeal to the Supreme Court in said consolidated causes printed at Washington and a copy of said printed record certified by the Clerk as the transcript on appeal to the Supreme Court as authorized by the order, entered herein in the 20th day of March, 1906, and that the Clerk will now be required to prepare and certify such transcript from the original files, testimony and exhibits remaining in his office, and a further enlargement of the time will be necessary.

461 It is thereupon ordered on motion of the United States District Attorney that the time to complete said transcript on appeal to the Supreme Court be, and the same is hereby, further extended thirty (30) days from April 12th, 1906.

462 And on to-wit: the tenth day of May, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of May 10, 1906.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RY. CO. ET AL.

Consolidated Causes.

Upon motion of Ed Baxter, solicitor for certain of the defendants as of record, and upon good cause shown,

It is ordered by the Court that the clerk immediately notify each of the counsel of record in these causes to appear before this Court at the court room in Chicago on the first day of June A. D. 1906 at ten o'clock A. M. at which date the Court will settle the record in these causes, preparatory to certifying the evidence that was taken therein; and

It is further ordered by the Court that the time to file the transcript in said causes in the Supreme Court of the United States be extended until June 5th, A. D. 1906.

463 And afterwards to-wit: on the first day of June, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Solomon H. Bethea, District Judge, appears the following entry to-wit:

Order of June 1, 1906.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Causes.

Now on this day come the parties by their solicitors, and counsel for said petitioner enters his motion to have a copy of the testimony filed herein, signed and sealed by the trial Judge as the Certificate of Evidence taken in said causes. And the defendants, the Chicago Great Western Railway Company, represented by Mr. C. A. Severance, the Chicago, Burlington and Quincy Railway Company, represented by Mr. Chester M. Dawes and the Chicago and Northwestern Railway Company represented by Mr. S. A. Lynde, enter their objections to the signing of said certificate on the ground that the term of Court at which said causes were heard has expired, and that no order was made during the term in which the decree in said causes was entered herein authorizing said petitioner to present such certificzte of evidence in these causes, or extending the time for presenting the same to the present term of this Court and that the trial judge has no jurisdiction at this time to sign and seal such certificate of evidence.

464 And the Court having heard counsel upon said objections and being now fully advised in the premises overrules said objections, to which ruling the said defendants except.

Thereupon said Certificate of Evidence is duly signed and sealed in open court by the Hon. Solomon H. Bethea the trial judge and made the record of the proceedings, evidence, exhibits and testimony taken in said causes.

1 In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

27723.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

27829.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Cases.

Certificate of Evidence.

I, S. H. Bethea, one of the Judges of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, sitting in chancery, hereby certify that on the 15th day of September, A. D., 1905, and thereafter, at the regular —, 1905, term of said Court, the above entitled causes coming on for hearing before me upon the pleadings heretofore filed herein, the following proceedings were had, and the following evidence was introduced or offered:

2 Appearances.

L. A. Shaver, Esq., C. B. Morrison, United States district attorney, S. H. Cowan, Esq., in behalf of the complainant.

Edward Baxter, Esq., associate counsel for B. C. R. & N. R'y; C. St. P. M. & O. R'y; Chicago & Alton R'y; C. & N. W. R'y; C. B. & Q. R'y; C. M. & St P. R'y; C. R. I. & P. R'y; Hannibal & St. Joseph R'y; Illinois Central R. R.; Iowa Central R'y; K. C. St. J. & C. B. R'y; M. & St. L. R'y; Omaha, Kansas City & Eastern R'y, defendants.

C. A. Severance, Esq., for the Chicago Great Western R'y Co., defendant, and the St. Paul Union Stock Yards Co., intervening petitioner.

S. A. Lynde, Esq., for the C. & N. W. R'y Co., defendant.

Chester M. Dawes, Esq., for the C. B. & Q. R'y Co.

James C. Jeffery, Esq., for the Missouri Pacific R'y Co., defendant.

Charles A. Clark, Esq., for T. M. Sinclair & Co. Limited, intervening petitioner.

Milchrist & Scott for the Sioux City Stock Yards Co., intervening petitioner.

Ira B. Mills, Esq., for the Minnesota Railroad & Warehouse Commission, intervening petitioner.

F. T. Ransom, Esq., for the Omaha Packing Co., intervening petitioner.

3 The CLERK OF THE COURT: In Nos. 27723 and 27829 there is a motion of the United States District Attorney to consolidate the cases because of their being of like nature and relating to the same questions.

The COURT: Is there any objection to that motion?

Mr. BAXTER: Yes, sir, your Honor. We have just a formal objection.

The COURT: Do you desire to argue it?

Mr. BAXTER: No, sir.

The COURT: The motion is allowed. Enter the motion in those cases (addressing Clerk).

Mr. CLARK: May it please the Court, I desire to ask leave in this proceeding to file a petition of intervention for T. M. Sinclair & Co., Limited, a packing establishment at Cedar Rapids, Iowa.

The COURT: Is there any objection on the part of anybody to this intervention?

The COURT: Is there any objection to this Mr. Cowan?

Mr. COWAN: The counsel for the government believe that strictly under the law an intervention ought not to be allowed and yet the law permits defendants to allege and prove any matter that anybody else could allege and prove, and therefore from a practical standpoint we do not care to argue, but would simply like to have the benefit of an objection to the granting of the intervention and have the record so show.

4 Mr. MILLS: I desire to present the intervening petition of the Minnesota Railroad & Warehouse Commission.

The COURT: Let the order of intervention asked by Mr. Clark be entered. Is there any objection on the part of anybody to Mr. Mills' motion?

Mr. COWAN: Just a formal objection we would like to see entered.

The COURT: It may be entered.

Mr. SEVERANCE: I desire to file an intervening petition on behalf of the St. Paul Union Stock Yards Company. It is a similar petition to the one filed by Colonel Clark.

The COURT: The same order may be entered with the objection of the Commissioners' counsel.

Mr. RANSOM: I desire to ask the same leave for the St. Joseph Stock Yards.

The COURT: The same order.

Mr. MILCHRIST: Your Honor, I desire to ask the same leave in behalf of the Sioux City Stock Yards Company.

The COURT: Enter the same order. Are there any other orders? If not, what is your next step?

Mr. BAXTER: If it please your Honor, in the case which we know as the second case, I filed a plea of former suit pending in behalf of the defendants which I insist upon. I do not want your Honor to overrule the — but in case you do take such action I have an
5–31 answer here, and wish it disposed of so as to make the issue in that case in order to go on with the testimony.

The COURT: They are combined now. There isn't much question about it. What do you say about that (addressing Mr. Cowan)?

Mr. COWAN: We think the plea is not well taken. I think the plea ought to be overruled, and certainly the cases being combined there could not possibly be any reason for sustaining the plea.

The COURT: Do you say the plea ought to be overruled?

Mr. COWAN: Yes, the plea ought to be overruled and the parties required to file answers.

The COURT: Let that order be entered.

Mr. BAXTER: Please note an exception.

Mr. COWAN: An exception may be made in behalf of all the defendants and interveners.

Mr. BAXTER: I would like now to file the answer of the companies.

The COURT: Let it be filed.

Mr. COWAN: To which answers we ask that our former replication be considered as a replication to those answers. Is that agreeable?

Mr. BAXTER: Certainly.

The COURT: Now then, you are at issue, are you?

Mr. BAXTER: Yes, sir.

* * * * * * *

32 *Complainant's Evidence.*

Thereupon the Complainant, to maintain the issues upon its part, introduced and offered the following evidence.

Mr. COWAN: We offer in evidence the certified copies of the report and findings of the Commission in the first case.

Mr. SEVERANCE: Do you offer that in both cases or only one?

Mr. COWAN: I am going to offer it in both.

33 We also offer certified copies of the order of the Commission, and we offer the same in the second case.

The COURT: Is there any other evidence you expect to offer?

Mr. COWAN: In the first case we offer in evidence the original record of testimony taken by the Interstate Commission in the case before them.

Mr. SEVERANCE: We desire to make objections to these offers, of course, at the proper time, your Honor?

The COURT: Yes. You offer the original record in the first case; do you offer that in the second case, too?

Mr. COWAN: I want to consult with Mr. Shaver before I make that offer of evidence in the second case. There is no objection to its being in but there is just a question in my mind as to whether it is admissible in the second case. (Consultation.) We will make the offer of that in the second case also, so that the same evidence is offered in both cases. I presume that counsel waive the reading of this?

The COURT: If you have offered everything you want, let them object.

Mr. LYNDE: Wouldn't it be better if the offers were made separately and objections made separately? It is very confused.

The COURT: He offers in both cases the whole record taken

34 before the Commission, original evidence, reports, findings and all that. Now, what do you object to, if anything?

Mr. LYNDE: I submit for myself, your Honor, and on behalf of the Chicago & Northwestern Railway Company, I object specially to the offers, first, of the findings and report of the Commission in the first and in the second cases, for the reason that the Chicago & Northwestern Railway Company was not a party to that proceeding, although named as such.

As to the record, the offer of the evidence taken before the Commission in the first and second cases, I do not understand yet whether that offer is made in the second case or not. Is it?

Mr. COWAN: Yes.

Mr. LYNDE: I object on behalf of the Chicago & Northwestern Railway Company, first, on the general ground that the evidence taken before the Commission is not admissible on this hearing. The statute makes the findings and the order of the Commission admissible but it does not make the evidence which was taken before the Commission admissible, and therefore there can be no basis upon which that offer is made that that evidence can be introduced, except it be found in the common law. That same question

35 was presented to this court in the case in which your Honor and Mr. Cowan, counsel for the Commission, were before his Honor, Judge Kohlsaat. I refer to the two-dollar terminal charge case. And the court ruled that that evidence was not admissible. Your Honor is no doubt familiar with the ruling. I have the copy of the record in the case here before me. It can be referred to if the Court desires it.

I object especially, however, to the introduction of this evidence on behalf of the Chicago & Northwestern Railroad Company in both the first and second cases.

The COURT: Let us dispose of that objection first. What do you say to that, Mr. Cowan, as far as they are concerned, whether or not they are before the Commission?

Mr. COWAN: Have you filed an answer in this case and in the second case?

Mr. LYNDE: I filed an answer in this case in which I set up especially that we were not served before the Commission; in the second case, the plea on file up to date is the plea of the former suit pending.

The COURT: Let the record show the demurrer sustained or whatever it is.

Mr. LYNDE: There is nothing in the answer, the joint and several answer—there is nothing in that that waives the point I make

36 in my answer to the petition in the first case.

The COURT: That point is, you were not before the Commission, that is the point now?

Mr. LYNDE: Not before the Commission.

Mr. COWAN: We will examine the record that we have here and if it appears from the record, and I have no doubt it does, as Mr. Lynde says, that the Chicago & Northwestern was neither served and did not answer nor appear before the Commission, that would, it

appears to us at first blush, necessitate dismissal as to Chicago & Northwestern. We could not expect, of course, that an order of the Commission in a case where they had not been cited and had not been served, and did not make answer, to bind them. That does not affect the second case.

The COURT: We will take that up the next time we meet, on Monday.

Mr. COWAN: We will examine the record, and your plea would supersede the necessity of objection in the second case if we should take that term.

Mr. LYNDE: We will meet that later.

The COURT: In the second case it would not make any difference whether they were before the Commission or not.

Mr. COWAN: Not at all.

The COURT: About that, so far as introducing this evidence was concerned, if they were not before the Commission, what
37 right have you to introduce that evidence before the Commission in the other case—what right have you to introduce that evidence in this case?

Mr. COWAN: I would not want to make an answer to your Honor's question at this moment, because I might answer wrong. Our position with respect to the admissibility of the evidence in the second case is dependent heretofore in our minds in discussing it, upon the fact that the same party was before the Commission in the case in which the finding was made, and if this party was not, at the first blush I am under the impression there could be no contention in regard to it.

The COURT: Pass that point for the present. What about the other point? What do you say to that, that the record itself should not be admitted in evidence.

Mr. COWAN: I do not think that is an objection that the defendant could make; we have the original here.

The COURT: He is not making that, the others, I assume, make that.

Mr. SEVERANCE: I make it.

Mr. LYNDE: I say assuming we were before the Commission.

Mr. COWAN: Your contention is that there should be certified copies instead of the original?

Mr. LYNDE: No, my contention is that the only thing that
38 is admissible is the findings and the order.

The COURT: The findings of fact, and not the testimony written out as given by the witnesses.

Mr. LYNDE: Yes, that is true, just the same as it would be in a chancery decree. You cannot produce these certificates of evidence together with the decree. The decree is the only thing that could be produced.

Mr. COWAN: I won't go into the discussion of that; that would depend entirely on the kind of a case.

Mr. LYNDE: I would call your Honor's attention to Judge Kohlsaat's ruling.

Mr. COWAN: I understand that. I am ready to answer the coun-

sel's and court's question as to the ground on which we hold that is admissible.

The COURT: All right, go ahead.

Mr. COWAN: I am not speaking now of the findings or the order, but I am speaking of the evidence taken before the Commission as shown by the record.

The COURT: Yes.

Mr. COWAN: I can find the case in which the Circuit Court at Cincinnati, that is my impression, in one of the old cases that went up to the Supreme Court of the United States held that this evidence was admissible before the Circuit Court, the Circuit Court of which Judge Jackson was the District or Circuit judge, which de-
39 cided the Kentucky bridge case, reported about the 35th or 37th Federal Reporter. He uses an expression in that case which was subsequently adopted by the Supreme Court to the effect that the Commission should be regarded as the general referee of the federal courts with respect to such cases. I do not claim that that makes this evidence admissible but I mention that. That was quoted, perhaps two or three times quoted by the Supreme Court of the United States, that was wherein Judge Jackson was subsequently on the Supreme bench and was discussing the powers and duties of the Commission and the extent of its jurisdiction and the like.

It has been the universal practice, with no exception as I am informed by counsel, who represents the Commission, and I believe I could likewise point to some of the counsel representing the defendants, if it was quite proper to do so, without exception it has been customary and the practice of the federal courts to admit in evidence the evidence taken before the Interstate Commerce Commission in the investigation made the basis of the order. Having mentioned that practice, with the single exception of Judge Kohlsaat's decision, I then desire to call your Honor's attention to the ground upon which we claim it is legal evidence.

The defendants in this case deny that it is the lawful order
40 of the Commission which we seek to enforce. The complainant must sustain the point that it is a lawful order, whether they denied it or not, as a condition precedent to your Honor's jurisdiction. Now, in the determination of that essential primary question as to whether this order is a lawful order: What does the law contemplate your Honor will do? In the first place, your Honor received as *prima facie* evidence the finding of the Commission. Turn to page 15 of the Interstate Commerce Act under Section 16 "and said court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleas and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises, and to this end the court shall have the power, if it thinks fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition." It does not pretend to limit such a pro-

ceeding as this to legal evidence under the common law rules of evidence.

The COURT: What are you reading from?

Mr. COWAN: Section 16 of the Act to regulate Commerce. It affirmatively points out that the court shall make such investigation as it deems needful. The court in fact is authorized to do
41 that in an ordinary suit in equity. The court must hear evidence which the parties present, and here the court can make every inquiry which it deems needful. Now, isn't it needful to do justice in the premises, for the court to ascertain what it was that the Commission passed upon in arriving at its conclusion? There can be no question of that. It is certainly in the discretion of this court to do it, and how can the court determine whether this is a lawful order unless it ascertain what the facts were which the Commission passed upon? It seems to me that there can be no question of the right of this court, and no question under the circumstances of the duty of the court to ascertain what the facts were before the Commission upon which the Commission determined as an ultimate conclusion that this difference in these rates constituted an unjust discrimination.

The COURT: Now, just read Section 14 there.

Mr. COWAN: Yes, that has reference now to the report and findings. I have been speaking of the evidence before the Commission.

The COURT: You do not claim that under Section 14 there would be a right to put in this record, do you?

Mr. COWAN: I do not claim that under Section 14 that the evidence before the Commission is made admissible affirmatively
42 by that section, but I do claim that under Section 14 the findings of fact of the Commission are admissible in this judicial proceeding.

The COURT: Well, they admit that.

Mr. COWAN: As to the second case.

The COURT: They admit that the Commission's finding of fact is the proper evidence, the only proper evidence, I suppose limiting their minds to Section 14. Now, there it says, "shall include the finding of fact upon which the conclusions of the Commission are based together with its recommendations as to what reparation shall be made, and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found." That is the finding of fact. That does not mean the record of evidence. Now, what part of Section 16 do you say would include the record?

Mr. COWAN: If your Honor catches the point I had in mind——

The COURT: Read that again, the part of Section 16, which you claim includes the record.

Mr. COWAN: It is opposite the second marginal note "and said court shall proceed to hear and determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as
43 to do justice in the premises, and to this end such court shall have the power, if it think fit, to direct and prosecute in such

mode and by such persons as it may appoint; all such inquiry"—not take evidence—"all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition."

Now, if your Honor please, we do not contend that under the common law rules of evidence, the evidence taken before this Commission would be admissible. No one can contend that. We do not contend that when your Honor admits it, that the evidence of any witness is *prima facie* evidence of the facts therein stated, as contained in that record, but that the record as a whole is admissible for your Honor's investigation and consideration, in order to determine whether the Commission's order is a lawful one, and in order to enable your Honor to do justice in the matter of the petition.

And as I said, it has been the universal practice, so considered, and I will produce the case to your Honor in which the Supreme Court held at Cincinnati—I believe it was at Cincinnati—that it was admissible, and I will ask Judge Baxter if he will be kind enough to tell me in what case it was held. I think he was in the case.

Mr. BAXTER: It was a case before Judge Sage. I think
44 the title of the case was Cincinnati & Chicago Freight Bureau *vs.* the Louisville & Nashville Railroad and other railroad companies.

Mr. SEVERANCE: When was it decided?

Mr. BAXTER: It must have been years ago.

Mr. COWAN: Reported somewhere about the 56th to the 60th Federal Reporter.

The COURT: You claim that this is an inquiry, is it, under this Section 16?

Mr. COWAN: Yes.

The COURT: That all such inquiries as the Court may think needful to enable it to form a just judgment——

Mr. COWAN: We think that lays down the bars entirely on the question of evidence.

The COURT: That is that I could take hearsay evidence, is that the contention?

Mr. COWAN: Yes, it lets down the bars practically, repeals the rules of evidence so far as inquiries this court may desire to make concerning those things which he believes ought to be investigated to enable him to determine or arrive at a just judgment.

The COURT: And the next clause is, "Such hearing or finding of fact and the report of the Commission shall be *prima facie* evidence."

That is all you claim amounts to anything, so far as *prima*
45 *facie* evidence, is the findings of the Commission.

The COURT: Then what is the object of putting in the record?

Mr. COWAN: The object of putting in the record is to enable the court to pass upon the question, if the court desires it—it is purely in your discretion—if the Court desires it, to see to what extent the Commission investigated these facts.

The COURT: To see whether their finding was a legal finding. Is that it?

Mr. COWAN: To see whether it was a lawful order.

The COURT: Whether it was a lawful order, that is it.

Mr. COWAN: I take it it is entirely in the discretion of your Honor, and it is not a matter that we understand under the common law rules of evidence that we could offer this evidence as affirmative evidence, but we contend that if the court desires it may consider the whole record as the Commission considers it.

The COURT: I understand.

Mr. BAXTER: My understanding is in the case before Judge Sage there had been a hearing before the Commission and a great deal of testimony taken before the Commission. He predicated his action upon the ground that any court had the right to receive testimony taken in any other court where the same question was at
46 issue and the same parties were before it. My recollection is that is the ground he put it on, not that the act to regulate commerce gave the court jurisdiction to take cognizance of that testimony at all, he was proceeding upon the general line.

Now, on the other hand, Judge Kohlsaat ruled contrary, as I understand here.

As to the other cases to which Mr. Gowan has referred, I believe without exception my friend Shaver and I have been of counsel in those cases, and for our convenience we have stipulated that there shall be read in the Circuit Court, as if it had been taken in that court, all of the testimony that was taken before the Commission. It has been a convenience to us. We have been opposed to each other in most every case I have been in, and we have acted on that principle; but there is no ruling of the court, no authority. As I understand it the question of authority before your Honor is Judge Sage on one hand and Judge Kohlsaat on the other.

The COURT: Mr. Shaver, have you anything to say about it? What do, you understand? What do you say in response to the suggestion of Judge Baxter as to the evidence put in before by agreement in all these other cases? Is that true?

Mr. SHAVER: That is true, he made a correct statement.

47 The COURT: Do you gentlemen refuse to agree that this shall go in?

Mr. LYNDE: I certainly do.

Mr. DAWES: For the Chicago, Burlington & Quincy I refuse to agree.

Mr. SEVERANCE: I refuse for the Chicago Great Western and the St. Paul Union Stock Yards, your Honor.

The COURT: Then let us settle this question.

Mr. COWAN: Judge Kohlsaat never passed on this question. It was never argued before him at all, we simply had the record there and offered it.

Mr. LYNDE: Here is the record.

Mr. COWAN: We simply had the record there and offered it and Judge Kohlsaat simply declined to admit it. We never argued the admissibility of that original record at all.

(Mr. Lynde here read from the record of the case before Judge Kohlsaat.)

Mr. LYNDE: The same point was made before Judge Kohlsaat exactly, the same objection was made and it was argued.

The COURT: There is no objection to the other evidence offered by Mr. Cowan, so that will be admitted without objection.

Mr. SEVERANCE: If the Court please, let me suggest coun-
48 sel has stated to your Honor that as to the second case the plea was improperly lodged because it was an entirely different form of action from the first case. Now, I desire to specially object to the admission of the findings of the Commission in the second case.

The COURT: On what ground?

Mr. SEVERANCE: On the ground that the first case is the one, as I understand it, I may have them mixed, as I understand it the first one is brought to enforce the order of the Commission.

The COURT: Yes, that is the first case.

Mr. SEVERANCE: I do not think by statute the findings are made evidence in the second case.

The COURT: The statute says so, doesn't it—"all other cases." The objection is overruled and the evidence is all admitted except the record and on that I will reserve decision for further argument as to both cases.

Exceptions were taken by the various defendants and intervenors to the above ruling.

Mr. COWAN: That, your Honor, makes our *prima facie* case, as to both cases.

The COURT: Yes, and I will pass later on the admission of that evidence. The next step—when do you propose to read these findings in?

Mr. COWAN: We are ready to proceed at any time that it
49 suits the convenience of the Court to hear them or we will furnish the court copies and treat them as read.

The COURT: I do not propose to do that if I can help it. We ought to dispose of them as we go along. I won't be sure about it unless you read it.

Mr. COWAN: I think you are correct. I will read the findings of the Commission.

Mr. BAXTER: Allow us to note an exception to your ruling as to their admissibility.

Mr. SEVERANCE: That is entered as to all intervenors?

The COURT: Yes.

Mr. JEFFERY: In all cases where exceptions are entered by the defendants may it be also noted as to the Missouri Pacific which I represent?

The COURT: Yes, as to everybody. Will the Court be furnished with a copy of the evidence?

Mr. COWAN: I supposed there was a regular court stenographer of the Government who would be here. Is the Court's stenographer here?

The COURT: There is no court stenographer. I am satisfied if the defendant will say they will furnish me a copy of the record.

Mr. BAXTER: We have employed a firm of reporters to
50 furnish us at 7 o'clock each evening with a report of what was done during the day and we will take pleasure in furnishing your Honor with a copy.

The COURT: That is all right.

A recess was here taken until 2 o'clock P. M.

2 o'clock P. M., September 15, 1905; Court met pursuant to recess.

Mr. SEVERANCE: I understand your Honor overruled the plea in abatement this morning and answers were filed. I have not the answer but Mr. Cowan, I understand, does not object if it is filed Monday morning.

Mr. COWAN: No.

The COURT: Mr. Cowan, what is the next?

Mr. COWAN: May it please the Court, at the adjournment, the evidence before the Commission had been offered. It may be conceded for the purposes of the argument that there is some doubt, there is always doubt about what the law is until a court of higher resort has affirmatively established it, there is about as much doubt about the law as about the facts, about what it is, at least, until it shall have been arbitrarily determined, and therefore it may be conceded that there is some doubt on the proposition as to whether in this sort of a case, and by that I mean the first case of the
51 combined cases here, for the enforcement of the Commission's order, whether the record of the evidence before the Commission is admissible, if the Court uses its discretion to admit it for the Court's consideration in arriving at a just decision in the case. My opinion is that it is admissible. As a precedent it is of very great importance. It is of great importance for many reasons.

One of the reasons is that the Court ought not to have to consider a case which was not the same case considered by the Commission when the Commission has founded its *prima facie* case upon the existing state of facts. The Supreme Court has condemned the practice of holding back testimony for the purpose of subsequently putting it before the Court. The law was that the Commission should pass on all the material facts, make full investigation, make their records with respect to everything which they do, keep a copy of everything on file which they do. Now, that is of the nature of a public record as much as is the statistical reports of the Commission.

The law makes the reports of the Commission which are published, admissible as evidence even without certification—simply the publication of the report is made evidence, not the findings of facts in a particular case but the whole report is admissible, not only
52 in the Federal but in the State court. The statute is broad and shows that general tendency and idea that the Court, when it hears one of these cases, shall have the opportunity to pass upon the facts intelligently, which means with substantially the same degree of information that the Commission obtained by making that character of investigation which it is difficult for the court to do.

And it is a matter of so much importance as a precedent that after consulting with the District Attorney and with the solicitor for the Commission we have decided to urge this court to accept it in testimony for the reason that the only decided case upon the subject decides that it is admissible evidence.

And we believe that there is good ground for admitting the testimony for your Honor's consideration so that you may indeed pass a just judgment in the premises, in the language of the act.

I desire, with the Court's permission to read from the decision which I referred to this morning. So far as counsel for the complainant know, there is no other case in which the question is discussed. It is true that Judge Kohlsaat sustained the objection. Your Honor was in that case—Judge Day was in it. I then maintained in discussion with Judge Day, and I think we all propose that the evidence was not admissible if objection was made.

53 At that time I will be frank enough to confess that I had never seen this decision. I found this decision afterwards just by the accident of running through the authorities on this subject, and we did not argue the question to Judge Kohlsaat, we simply accepted his decision. We offered it and Judge Day, I recall now, since Mr. Lynde read it this morning, said that if there is any mere technical objection that is not properly certified to, we would like to be able to correct that, and they said there was no technical objection, it was an objection going to the very relevancy of the testimony, assuming that it was properly before the Court, and we did not urge it, we did not look the subject up, and we made no argument to Judge Kohlsaat to show that that evidence was admissible. And so far as I am concerned, I am willing to confess that I acted upon the assumption that the law is as these gentlemen have stated it in their objection; but I have changed my mind about it, not because I am on this side of the case. I wanted the evidence in then—but because I understand more about the Interstate Commerce Act, or fancy that I do, than I did then. The court said in passing upon the matter now before your Honor:

(Counsel here read from the decision in Interstate Commerce Commission *v.* C. N. O. T. P. Ry. Co., 64th Fed., *Fed.* Rep., page 981.)

54 Mr. COWAN: Now, that is the only case in which the matter has been discussed and decided and that court decides apparently for good and sufficient reasons that the evidence is admissible, in the nature of a deposition, if you please, where both parties appeared and took testimony, respecting a particular subject matter that is now before the Court.

And if it shall be required that every time the Commission brings a suit to enforce its order it must again proceed to take testimony before the court, taking the time of the court and making expense for weeks, perhaps, it is a serious embargo against the Commission being ever able to prosecute one of the cases, and we deem that the precedent is important; that without very sufficient reasons your Honor ought not to decide contrary to that decision, but public policy would seem to require that that evidence which both parties

have taken before a tribunal appointed by law for that purpose ought to be admissible in evidence in a subsequent proceeding where it is applicable and relevant.

The COURT: What about the rule of the common law aside from the statute, where the parties are the same, the subject of action the same, and the right of cross examination existed before an inquisitorial body, was there not a right to review that same evidence if properly certified?

55 Mr. COWAN: Your Honor means to inquire, if I catch your question, whether it would be admissible even under the common law rules of evidence?

The COURT: Yes.

Mr. COWAN: I would not like to answer that question, since I believe it is so clearly admissible under the other; but I am disposed to think that it is not improbable that it might be held admissible as testimony taken on a former trial under common law rules of evidence.

The COURT: What is there to show that this was the evidence taken there, what is there to show that this is the evidence taken before the Commission?

Mr. COWAN: Well, I suppose that is conceded. I do not know whether there is a certificate there or not, but I can prove this fact as to that and we never supposed there would be any mere technical objection that we would have to first have it certified to.

The COURT: It is not certified to, have you it here?

Mr. COWAN: We have the testimony here. We brought the original record. It would be very expensive to copy those original records in advance for the purpose of offering them in evidence. It is part of the original record. We desire to offer the original evidence before the Court, and if the Court admits the testimony, then ask for an order of court to substitute certified copies and

56 withdraw the original paper from the files. We think there is no doubt of the right of the court to do that, and do not think counsel would raise objection that the evidence is not certified. I supposed their objection goes to the relevancy of the testimony. That is correct, Mr. Baxter?

Mr. BAXTER: To the competency.

Mr. COWAN: Competency and relevancy, and not to the mere matter of certification.

The COURT: What do you gentlemen say?

Mr. LYNDE: Our understanding of the common law rule is that such testimony is admissible only where witnesses are without the jurisdiction or are dead.

The COURT: Have you looked into the subject; where the evidence was taken before an inquisitorial body at common law was not such evidence competent when the question came up?

Mr. SEVERANCE: Only in those two cases, either where the witnesses are without the jurisdiction or had died since the preceding trial.

The COURT: What about evidence taken before the Coroner's inquest at common law.

Mr. LYNDE: That is not admissible, your Honor, at common law.

The COURT: And bodies of that character.

57 Mr. LYNDE: That is the rule expressly in this state, in Illinois—the only thing that is admissible is the finding itself of the inquisitorial body as to the death.

Now, this proceeding is not in the nature of review. If it were so the evidence of course could be brought before this court; on the contrary, it is in the nature of an original proceeding and the court sits as a court of equity and the law provides as to what force and effect shall be given to the findings of the Commission and to the order of the Commission, and those findings and that order are in themselves sufficient to make a *prima facie* case, then throwing the burden on the defendants to meet that by their proof.

There is no foundation for the suggestion counsel made that otherwise the burden of sustaining the findings affirmatively in this court would be on them, on the contrary the law is designed to avoid the necessity of that and the law makes those findings *prima facie* sufficient.

The inquiry is whether the defendants are going to be met by evidence that would not be competent in any other proceeding in a court of equity. I submit the law did not contemplate that. It certainly does not express any such idea. On the contrary the court sits as a court of equity, and the rules of evidence applicable in a

58 court of equity must apply here. It is just as your Honor stated as to the introduction of hearsay evidence. There is no reason why this should be allowed any more than evidence of rumors and hearsay that counsel might think would be pertinent or might affect the mind of the Court.

Mr. Severance suggests that so far as relates to the admissibility of depositions, or evidence that has been reserved in a certificate of evidence in a subsequent trial, we understand the rule to be that it is only where every witness cannot be produced, is dead, or is without the jurisdiction of the court, that his former evidence can be read.

The COURT: Well, you get your certificate showing that this was the evidence, or let the record show that it was the evidence by agreement, and the objection will be overruled.

Mr. COWAN: With the permission of the Court I would like to suggest to counsel, and I cannot very well do it without speaking aloud, that Mr. S-aver brought with him from the Commission's files the original record, and if that may be treated as though certified to, subject of course to all your objections except an objection to the fact of its not being certified, then we have the record ready to offer.

59 Mr. LYNDE: I don't think I understood you.

Mr. COWAN: I say, Mr. Shaver, the solicitor of the Commission, has brought with him the original record of the testimony, and if you will waive any objections with respect to its not being certified to, but preserve all of your other objections to it, then we have it ready to offer in evidence, otherwise we would probably have to return it to Washington and have it certified and sent back here.

Mr. SEVERANCE: Do I understand your Honor's ruling is that if

properly certified, that all of the testimony of the proceedings will be received here without reference to whether it is competent evidence?

The COURT: That is not until after I have heard the evidence.

Mr. SEVERANCE: But they are to read the evidence through, I understood, your Honor.

The COURT: If it is competent.

Mr. COWAN: None of it would be admissible if not relevant.

Mr. LYNDE: Do I understand you are to read that record now?

The COURT: Let us settle this proposition. Do you agree that this is the evidence taken before the Commission?

60 Mr. COWAN: We will submit it to you gentlemen. Otherwise we would have to send it back to Washington to be certified to. That is the only point there would be about it.

The COURT: What do you say? Isn't there some one man here who represents all these parties, Mr. Baxter?

Mr. BAXTER: No, sir, I don't represent them all.

The COURT: Who do you represent?

Mr. BAXTER: I represent a number of them, in connection with other counsel.

Mr. LYNDE: Just a moment. I think, your Honor, we will agree to waive the point that the record as offered is not certified, reserving, however, our objection to its admissibility, and also noting an exception to the Court's ruling.

Mr. COWAN: In the same manner is if it were a certified record.

Mr. LYNDE: As if it were a certified record on the assurance of counsel that it is.

Mr. SEVERANCE: Let the objection be entered on behaf of all defendants that it is incompetent, irrelevant and immaterial.

The COURT: Yes.

Mr. COWAN: And we will subsequently file, instead of
61 the original, certified copies of the entire record, so that is what will be in the record on the appeal of this case, if it
— appealed, will be the certified copy.

The COURT: The ruling now is that so much of that is admitted as is relevant and competent under the ordinary rules of evidence.

Mr. MILLS: That record provides that the laws of Minnesota so far as we wish to refer to them, will be considered in evidence before the Commission. Will that be the same order?

Mr. COWAN: I should say this court would take judicial notice of the laws of Minnesota.

Mr. MILLS: Of statutory laws, I do not think so.

Mr. COWAN: I think the Court would judicially consider we knew what the law was when you informed the Court what it is. We would not contest that.

The COURT: Go ahead with your evidence.

Mr. COWAN: If the Court please, it has been suggested by the District Attorney and Solicitor for the Commission that the plaintiff proceed to read the findings of the Commission and the order as a *prima facie* case, and postpone the introduction of other testimony until it shall seem necessary to introduce it, assuming that the

findings of the Commission make a *prima facie* case, we would
62 not have to go further in our opening than a *prima facie* case.

The COURT: Pursue your own course.

Mr. SEVERANCE: What is this for? Was not the offer of the testimony part of the case in chief?

Mr. COWAN: No, we did not exactly intend that should be the case, but while we had the record here we thought we would raise the question for this reason, Mr. Severance, if we cannot introduce this evidence before the Court it would necessitate the examination of a large number of witnesses and put us to a considerable inconvenience and the Government to considerable cost and we thought we would like to determine the admissibility of that evidence on a general offer without the necessity of reading it at present before we started out with the case fairly, so as to avoid the unnecessary expense and it is favorable to your client for that matter, it would be a great deal more trouble to them than it would be to us.

Mr. SEVERANCE: Do I understand that you rest your case in chief on reading the report in both cases or do you intend to read some of the testimony? The reason I ask is because it will make a good deal of difference in the time we have to have witnesses here.

Mr. COWAN: I am under the impression personally without
63 consulting with counsel that the findings of the Commission make a *prima facie* case. When we have made that *prima facie* case then we rest the case on that until other evidence is introduced.

Mr. SEVERANCE: And you reserve this old record to use in rebuttal, is that it?

Mr. COWAN: I think that is our understanding but I would not like to be absolutely bound by this suggestion.

The COURT: Go ahead and read your findings.

Thereupon counsel for the complainant read to the Court the findings and order of the Commission, in the words and figures following, to wit:

* * * * * * *

(NOTE.—See Volume of Pleadings, pages 6 to 110 inclusive.)

64 Mr. COWAN: As I understand, the defendants all admit that they have refused to comply with the order?

Mr. DAWES: I at this point desire to object to the introduction of this record unless the entire record be introduced, that no mutilated portions be admitted.

The COURT: Which, the findings of fact?

Mr. DAWES: I mean the entire opinion, which is all to be taken and embodied together as the opinion and finding of the Interstate Commerce Commission; some portions of it counsel has read and offered, and other portions he has omitted.

The COURT: What he has offered is the finding of facts.

Mr. DAWES: But he has read the opinion as well as the finding of fact, your Honor.

The COURT: If he has not read all that he should read it.

Mr. DAWES: I assert that he has not read it all.

The COURT: Then you can read the rest of it. The objection is overruled. You can read your part of it when you get to it.

Mr. DAWES: It is not our part of it. Let it appear, if it please your Honor, if that be the fact, that the complainants offer a portion of the finding of fact of the Interstate Commerce Commission, and because they offer a portion, we object.

65 The COURT: Your objection is overruled, but the Court holds, if they offer a portion, you are entitled to read the rest of it.

Mr. DAWES: We save an exception.

Mr. COWAN: For the purpose of the record we will state that we have read all of it except the dissenting opinion of Mr. Knapp.

The COURT: Is that an opinion or statement of fact?

Mr. COWAN: It is not a finding. With the understanding that we do not offer it, I am perfectly willing to read it.

Mr. DAWES: The objection does not go to your failing to read it, but to your failing to offer it.

Mr. COWAN: We do not offer it.

Mr. DAWES: The position being that you offer a portion of the finding and opinion of the Interstate Commerce Commission and not all of it.

Mr. COWAN: We state to the Court that the objection is founded upon an incorrect statement of facts, that we offer only a portion of it.

The COURT: They have got their exception. I do not suppose any exception is necessary in an equity proceeding. The objection is overruled and they get the benefit of it. What is your next move?

Mr. COWAN: I will ask the question if the defendants ad-

66 mit that they refused to comply with the order of the Commission.

Mr. BAXTER: It is so admitted in the answer.

Mr. COWAN: I thought it was admitted in all the answers. I am just saving time of hunting up the answers and finding it.

Mr. BAXTER: They admit they have not complied with it in the answer because they say it is an unlawful order.

Mr. COWAN: I believe I am correct that it is not denied in the answer that the order was served on all of the defendants.

The COURT: You can look that up later and if you want to prove it, you can prove it. Is there anything else?

Mr. COWAN: With that understanding the complainant rests its *prima facie* case.

Mr. LYNDE: Do you rest both cases?

Mr. COWAN: Yes.

The COURT: What about the Northwestern Railway Company, what did you find out about that?

Mr. COWAN: We have not had time to go through the record to see whether or not the proceedings justified the Northwestern being made a defendant in the first case.

The COURT: Let the record show that this evidence is not admitted

against the Northwestern Railway Company for the present,
67 unless it is shown they were parties in the other proceeding and had a right to come in and cross examine. If they did not have that right, I am sure it is not competent.

Mr. LYNDE: Assuming, your Honor, that we are in and that this evidence is competent to us as to others, I desire to ask counsel now whether he has offered any part or portion of the testimony of any witness or witnesses taken before the Interstate Commerce Commission?

Mr. COWAN: No, I have not. We have offered all of that testimony, but we have said we did not desire to read it at this time.

Mr. LYNDE: What portions have you offered then, please?

The COURT: Let the record show. I think counsel are entitled to that.

Mr. LYNDE: We are entitled to know what portions are in.

The COURT: Whether it is in now or whether you want to put it in in rebuttal.

Mr. COWAN: We desire to offer that testimony in rebuttal. We took the matter up for a very sufficient reason.

The COURT: Suppose there is no chance for rebuttal, suppose the gentlemen stop here?

Mr. COWAN: If they do that, the evidence has not been offered in the sense of becoming a part of the evidence in this case un-
68 less the Court sees fit to refer to it under the 17th Section of the Statute.

Mr. LYNDE: It is either in or out, and if counsel does not offer it——

The COURT: I think you are entitled to have it in or out. Of course you have got the judgment of the Court that it is competent. You have a right now to put it in or wait until rebuttal, if you have a chance for rebuttal.

Mr. SEVERANCE: If it goes in in rebuttal, of course only such portions go in as are strictly rebuttal?

The COURT: Of course. I will decide that when we get to it. I do not suppose the strict rules of evidence are held very strictly in this kind of cases.

The question for Commissioners' counsel is to determine whether they are satisfied that there are enough facts found, read to the Court, not conclusions, facts to sustain their case, and let it go upon that.

Mr. COWAN: We rest the evidence of the *prima facie* case upon the findings of the Commission, but we do that with the understanding the Court has ruled that the evidence would be admissible under your Honor's ruling this morning, but we do not know what we would want to offer and we cannot tell what part we want to offer until we see what testimony the defendants have a mind
69 to introduce, and if they do not introduce any, then we shall not ask to offer any, that is to say, we shall not ask to read it. The court passed upon its admissibility in the argument today, and we are willing to rest the case upon the findings of the Commission as read and presented to your Honor this afternoon.

The COURT: What you want is to let that make a *prima facie* case, and if they do not put in any evidence, you are willing to argue that that makes a case?

Mr. COWAN: Yes, sir.

The COURT: Then if they put in any evidence you want to put in your record there in rebuttal?

Mr. COWAN: Yes, sir.

My. LYNDE: I would ask that the order made this afternoon overruling our objection be set aside.

The COURT: We will let it stand as it is. We will see about those questions when we reach it.

Motion overruled.

Mr. LYNDE: I understand at the present it is offered?

Mr. SEVERANCE: There was a formal offer made and ruling.

The COURT: Let the record stand as counsel has stated, and your motion as you make it, is overruled. Is there any evidence on your part?

Mr. BAXTER: We have a number of witnesses we wish to
70 examine.

The COURT: Are there any motions you want to make?

Mr. BAXTER: None.

Mr. LYNDE: I would suggest, your honor, as the case goes over until Monday that the matter be deferred until Monday morning?

The COURT: Very well. Adjourn Court until Monday morning.

The further hearing of said cause was adjourned until Monday, September 18th, 1905, at 10 o'clock A. M.

70½ SEPTEMBER 18TH, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon the following proceedings were had.

The COURT: Are you ready in this Inter State Commerce case?

Mr. SEVERANCE: The answer of the Chicago and Great Western Railway Company was filed this morning.

Mr. MILLS: May it please the court, the Minnesota Warehouse and Railroad Commission, in reference to their case, I am obliged to say that I will have to go out of town and I would like to put in our testimony today if it is agreeable to court and to counsel on the other side of the case.

The COURT: What do the other counsel say?

Mr. MILLS: In the opening, I would say further that in reference to some of our schedules, we have been unable to carry them down to this date. We may be able to do so before the case closes, and if so, I would ask leave that Mr. Severance take our witness- and carry them down. Now, Mr. Cowan, have you the testimony that was taken before the Commission?

Mr. COWAN: Yes.

71 *Testimony Introduced on Behalf of the Minnesota Railroad and Warehouse Commission.*

Mr. MILLS: I desire to offer the testimony of Mr. Charles F. Staples, a member of the Commission, and the testimony of Mr. Thomas Yapp, our assistant Secretary, that was taken before the Inter State Commerce Commission, together with the schedules. Will there be any objection?

Mr. COWAN: We will enter the formal objection that the Commission of the State of Minnesota has no ground on which to offer the testimony in question. It encumbers the record with a great lot of testimony that is immaterial.

The COURT: The way to get at that would be to get his answer out, wouldn't it?

Mr. COWAN: When they offered their intervention, I made the formal objection and it was formally overruled, but the objections we have to the testimony now offered will be that it is irrelevant and immaterial to any issue in this case or either of the cases, to show what the testimony is intended to show, that is, that the relation of the rates, if changed by a reduction would reduce the rate from the Minnesota points and will require a reduction by the Minnesota Commission of the rates to South St. Paul.

The COURT: Well, the objection is overruled.

Mr. SEVERANCE: We desire to interpose the same objection to this testimony that we interposed the other day when Mr.
72 Cowan offered to read from the record of the trial before the Inter State Commerce Commission. Our objection does not go to the materiality of the testimony but to that point we made the other day.

The COURT: Objection overruled.

Mr. SEVERANCE: I understand that all of my colleagues join me in that objection.

Mr. MILLS: Mr. Cowan says that they will waive the reading of this testimony at this time and I presume that that will expedite matters and I am perfectly willing to do it and simply call your Honor's attention to it on the argument.

The COURT: That is all right.

Mr. BAXTER: We would like to have whatever is to be considered by your Honor, read in our presence. I don't know anything about the testimony.

The COURT: Oh, well, it will be read before you have a chance to argue it. You can examine it, I suppose.

Mr. MILLS: So far as I am concerned, any objection that there may be, I am willing that this testimony can be read at any time.

Mr. SEVERANCE: I understand that the court has ruled that it is only a question as to when the testimony is to be read.

The COURT: Oh, yes.

Mr. BAXTER: If this is going to be argued immediately
73 at the close of the oral testimony, I would like to know what this is that you are putting in now; otherwise, I will have to look it up at night. Is there much of it?

Mr. MILLS: Not a great deal, 15 or 20 pages.

Mr. COWAN: We will reserve, of course, the right to object to the testimony for incompetency and irrelevancy of the evidence at the time it may be considered. By waiving the reading now we do not thereby waive the objection to the competency and relevancy of the evidence when it comes up for consideration.

Mr. MILLS: Do I understand that the case is to be ready for oral argument as soon as the testimony closes?

The COURT: I think so, yes. I want to dispose of this as we go along.

THOMAS YAPP, called and sworn as a witness on behalf of the Railroad and Warehouse Commission of Minnesota, testified as follows:

Direct examination by Mr. MILLS:

Q. What is your occupation?

A. Assistant Secretary of the Railroad and Warehouse Commission of Minnesota.

Q. How long have you been connected with the Minnesota
74 Railroad and Warehouse Commission?

A. Eleven years.

Q. Do you remember a conference with the Minnesota Railroad and Warehouse Commission, that it had with the railroads in regard to the rate on live stock from Minnesota points and South St. Paul, that took place some time in the year 1901?

A. I do. It was the year 1902.

Q. 1902?

A. Yes sir.

Q. What time, do you recollect?

A. Well, it was some where about June, some where in June, 1902.

Q. Where was it held?

A. In Chicago.

Q. You may state generally what that conference was for?

A. The conference was for the purpose of readjusting the live stock rates into South St. Paul, which was caused by several complaints coming into the office of the Commission from the southwestern portion of Minnesota and also complaints received from the South St. Paul Stock Yards.

The Commission instructed me to look into the matter, and, on investigation, I found that the cattle rates from the southwestern portion of Minnesota into Chicago were much less than what the rates were on hogs, and the reverse as far as the South St. Paul markets were concerned. That is to say the rates on cattle were much higher than they were upon the hogs.

We had two conferences down in Chicago in connection with the matter, at which the traffic officials of the various roads were
75 present and it was finally agreed that a compromise should be reached and it was reached, that they would make the same rates on cattle, hogs and sheep from that territory into South St. Paul markets, if they would do that, that that would be satisfactory to our Commission or if it would be, that they would do it, and

the matter was accepted by the Commission and up to the present time, I believe, has proved satisfactory although the relations existing between the cattle and hogs is the same as it was then into Chicago, that is to say, the cattle rates are lower than what the hog rates are from all that western and southwestern portion of the State.

Mr. COWAN: We shall object to any testimony that states what the rates are, except in connection with a tariff. That is the best evidence and that is a matter of record. They are required to be published and filed.

The COURT: Objection overruled. Of course in a case where there are a great number of documents, they have a right to put an expert on to tell what the substance of them is.

Mr. MILLS:

Q. Prior to this conference with the railroad officials, you visited the southern part of our State and the southwestern portion in relation to this matter?

A. Yes sir.

Q. Now you may state what the result of that investigation was as to the amount of cattle that were being received at the

76 South St. Paul Stock Yards?

A. Well, the principal objection that I found out was in connection with the rates, that they claimed that the rates into South St. Paul Stock Yards were too high, that they could not ship them in there as against Chicago. That was the main trouble that I found.

Q. How much stock was being received from that section of the country, in South St. Paul?

Mr. COWAN: Unless this witness knows, we will object on the ground of hearsay.

The COURT: Overruled.

Mr. MILLS: You may cross examine in that regard.

A. Well, I have the figures over there.

Q. I mean prior to the adjustment, how much stock was being received there, have you the figures on that?

A. No.

Q. What did you find in regard to that?

A. Well, I found that they could not, as I say, ship the cattle into South St. Paul at the existing rates.

Q. Were there practically any cattle coming from Southern Minnesota to our Stock Yards?

A. From directly the southern part of the state?

Q. Southern and southwestern?

A. Yes, there was a little but not very much.

Q. And at some stations you would not find any?

77 A. That is so.

Q. Do you remember about this conference with the railroad companies, which is mentioned in the petition in this case which was called to the attention of our Commission through an article we saw in the Railroad Age?

A. Yes sir.

Q. What was done by the Commission?

A. The Commission instructed me to write a letter immediately to Mr. A. C. Bird, who was then third Vice President and traffic manager of the Chicago, Milwaukee & St. Paul Railway.

Q. Have you a letter press copy of that letter with you?

A. I have.

Mr. COWAN: We object to the introduction of the letter, if he means to offer it, on the ground that it is a transaction between them and is in no sense relevant here, whatever letter they might have written to the St. Paul Road.

The COURT: Is there any dispute about the general proposition, is there any dispute?

Mr. COWAN: That there was correspondence?

The COURT: Yes, and the substance of it.

Mr. MILLS: The substance of the correspondence is that we would have to readjust the rates in Minnesota.

Q. That letter is on page 971 of this letter book, is it?

A. This letter book, number 26.

78 Mr. MILLS: We offer that letter in evidence and ask to substitute a copy for the original.

The COURT: Admitted.

Mr. SEVERANCE: Don't you want to read it?

Mr. MILLS: Well, read it and let the reporter take it.

A. (Reading:)

"ST. PAUL, May 19*th*, 1902.

"A. C. Bird, Esq. Third Vice President, C. M. & St. P. Ry. Chicago, Ills.

DEAR SIR: We noticed in the Railway Age that the Inter State Commerce Commission recently met in Chicago and heard a complaint filed by the Chicago Live Stock Exchange complaining that the local rates on live stock from many points in Minnesota, Iowa and Missouri to Chicago are in excess of the proportional rates between Missouri River points and Chicago, on dressed beef and that Chicago is being injured as a live stock market and that the railroad companies interested have asked for an extension of time so as to present their present tariffs in live stock and dressed beef. It is our desire to call your attention to the fact that railroad rates on live stock were recently readjusted from points in the southern portion of this state to St. Paul, and it was the general understanding with the various railroad companies represented at that meeting that the rates into Chicago from those points affected by the readjustment were not to be interfered with, as it would lead to a further

79 investigation on our part. We do not wish in any manner to be understood as interfering with Inter State business but desire to express the hope if any readjustment of live stock rates is made into Chicago from Inter State points, that a corresponding reduction be made from St. Paul or it will necessitate a further examination by us of this matter which is to be avoided if possible in view of the fact that the present rates appear to be satisfactory to all parties interested. An early reply will greatly oblige."

Cross-examination by Mr. COWAN:

Q. Previous to that time, is it not a fact that Mr. Bird wrote a letter either to you or some one of the Commissioners, suggesting that you intervene in this case?

A. Prior to this time?

Q. Yes.

A. No sir.

Q. Subsequent to that time didn't Mr. Bird write a letter suggesting that you intervene in the case?

A. Well, I am not sure whether there was a letter but we had some interviews with Mr. Bird in Chicago here and I think the suggestion came from Mr. Bird that the only thing for us to do would be to intervene.

Mr. MILLS: That is a fact, Mr. Cowan, Mr. Bird said to
80 us that, as we claimed to have an interest in this matter we had better intervene.

Mr. COWAN:

Q. Is it not a fact that the rates of freight which are charged from St. Paul and from stations for a distance of 50 to 70 miles south of St. Paul and South St. Paul, on hogs and cattle to Chicago, are very much greater than the rates charged on dressed meat and packing house products from St. Paul?

Mr. MILLS: I object to that. I did not go into that with him.

The COURT: Objection overruled, let him answer.

A. I could not answer that question without reference to the maps and my rate notes. I would have to have them before me before I could answer a question like that because the rates differ so much.

Mr. COWAN:

Q. How are the rates in southern Minnesota to be affected by any order in this case? You have read the Commission's order in this case?

A. Yes sir.

Q. Those stations are not intermediate, are they, between St. Paul and Chicago?

A. No, not directly in the southwestern portion.

Q. They are not intermediate between Sioux City and Chicago, are they?

A. No, not directly.

Q. Well, if the rates in southwestern Minnesota are not intermediate between St. Paul and Chicago and not intermediate
81 between Sioux City and Chicago, how does the order of the Commission in this case affect those rates? It does not in terms apply to them, does it?

A. The fact of the matter is it would affect the parallel lines running right down. They come right down straight into southwestern Minnesota.

Q. What line is it from Sioux City that goes through Minnesota

and where live stock is handled, so that a station would be called intermediate between Sioux City and Chicago, that is yet in the State of Minnesota?

A. Why, it would be the Northwestern line.

Q. The Chicago & North Western?

A. Yes sir.

Q. How would an order that the rate on packing house products and dressed meat be not lower or the rates on live stock be not higher —that is to say, that they should be the same—how does that affect the rates from that district to St. Paul?

A. Well, it affects it this way, so far as the rates into Chicago be reduced.

Q. How does that reduce the rate from South St. Paul and from Minnesota points?

A. The business would go directly to Chicago instead of coming to South St. Paul.

Q. Then, is your intervention for the benefit of South St. Paul?

A. I do not know about that.

Q. The shippers do not object to lowering the rates on freight, do they?

A. To where?

82 Q. To St. Paul or any where else?

A. No.

Q. Now, why do you file an intervention here except for the purpose of still maintaining the high rate to South St. Paul and Chicago, for what other purpose do you file an intervention except that?

Mr. MILLS: That is objected to. The witness is not competent to testify on that question.

The COURT: He may answer.

A. The intervention has simply been for the protection of our own market.

Mr. COWAN:

Q. For the protection in preventing a reduction of the Chicago rate?

A. Exactly.

Q. Because if you reduce the Chicago rate then the relative rate to South St. Paul you think would be out of proportion?

A. Exactly, our Commission would reduce the rates to South St. Paul.

Q. The Commission of Minnesota, in that event, would have to reduce the rate to South St. Paul?

A. Yes sir.

Q. Now, if the rate as a matter of fact is unlawful, as charged, to Chicago, as the Commission has found, do you claim it ought to remain unlawful in order that the rate remain the same to South St. Paul?

A. Please repeat that question.

Q. If the rate from southwestern Minnesota is affected by this

decision of the Commission, as you assume it is, and if that
83 rate is an unlawful one, why would you object to it being reduced to a point that would make it lawful, except that you still want to maintain a high rate to South St. Paul?

Mr. MILLS: The same objection.

A. Well, I don't know that it affects it that way. One thing depends on the other. It don't affect the rate into South St. Paul at all any further than if one rate is reduced the other has got to be.

Q. If one ought to be reduced, what objection have you to reducing the other?

A. That is what we should do.

Mr. MILLS: I object to this, he is giving his opinion on this——

Mr. COWAN:

Q. Do you contend, as a representative of the Minnesota Commission, if the rates of freight held, the adjustment of the rates held to constitute a preference on dressed meat and packing house products, do not constitute a preference as held by the Inter State Commerce Commission,—do you contend that? In other words, do you dispute as a fact the correctness of their finding that the rate on dressed meat and packing house products ought not to be less than the rates on the live stock?

Mr. MILLS: I object to that.

The COURT: Objection sustained.

84 Mr. COWAN: For the purpose of the record, I desire to repeat the question in a little different form, without entrenching upon the ruling of the court.

Q. Is it the contention of the Minnesota Commission that the decision of the Inter State Commerce Commission in this case—that is, their finding of fact—that the existing relation of rates from St. Paul to Chicago on the packing house products and dressed meat and on the live stock (or from points intermediate) and from the Missouri River on the same, and points intermediate, constitutes an unlawful discrimination or preference? Is it the contention of your Commission that that finding of fact and decision, is erroneous?

Mr. MILLS: That is objected to.

The COURT: Objection sustained.

Mr. COWAN: I think, if the court please, as they are intervenors, your Honor can see the importance of the question when I call your attention to the fact that they are intervenors and if they are not questioning the rightfulness of the decision of the Inter State Commerce Commission, they have got no business in here.

Mr. MILLS: We do question it.

The COURT: That is a question of law and hence it is a question for their counsel to say. You can cross examine on questions of fact.

Mr. COWAN:

85 Q. You have a copy of the Minnesota Distance Tariff,
A. Not with me I have not.
haven't you?
Q. You can produce it?
A. We can.
Q. Will you tell me whether the Minnesota Commission itself makes the rates or regulates them by changing upon application, such rates as it may find wrong?
A. Yes sir.
Q. Which does it do?
A. Regulates them.
Q. Has the Minnesota Commission passed on the schedule of rates now in force in the State of Minnesota?
A. It has on several occasions when complaint has been brought before it.
Q. Has it adjusted, passed upon or approved or otherwise taken any action relative to the rates on live stock, dressed meats and packing house products carried in the State of Minnesota?
A. Carried in the state?
Q. Yes.
A. From points in Minnesota?
Q. Between points in the State of Minnesota?
A. Yes sir.
Q. Are the rates on dressed meat and packing house products higher or lower between any two given points, than the rates on the live stock?
A. Well, I could not answer that without having my records before me, I could not answer the question direct.

Q. Is it not a fact that the rates of freight from South
86 St. Paul on dressed meats and packing house products, to points in western and southwestern Minnesota are higher than the rates on the live stock from the same points in southwestern Minnesota to South St. Paul?
A. I could not answer that question.
Q. Don't you recollect the fact as to which is higher or lower?
A. No, I could not tell you.
Q. In your schedule or distance tariff, is not the rate on the live stock lower than on the dressed meat and packing house products?
A. Yes, it is.
Q. The schedule is lower on the live stock?
A. It is.
Q. Now, why is that so?
A. Well, that would be covered by the classification; I think that was the principal thing. There is no special reason for it.
Q. Do you know of any place where the rate of freight on live stock is greater than on dressed meat and packing house products, except between the Missouri River and the Mississippi River on Inter State shipments and to Chicago?
A. I cannot answer that question.

Q. Well, you can answer it whether you know of any case or not?

A. No, I do not.

Q. How is that?

A. I do not.

Q. How many years have you been engaged in your present employment as the Secretary of the Commission of Minnesota?

87 A. I am Assistant Secretary, not the Secretary. I was appointed assistant Secretary about twelve months ago.

Q. You had formally been in some position with them, had you not?

A. Yes, I was assistant to the Commissioners before.

Q. How many years?

A. Oh, ten years.

Q. Is it not a fact when you first went to work for them that all of the published rates gave a lower rate on live stock from the Missouri River and all of this intermediate territory than they did upon the packing house products and dressed meats?

A. Well, I cannot answer that question.

Q. Do you know whether or not there are any shipments of cattle from South St. Paul to Chicago upon the published local rate on cattle?

A. Well, there are very few. There is very little that goes on the local rate.

Q. On what basis are they shipped, what rate?

A. Well, let's see. Twenty cents a hundred, but then there is another tariff. I have not got figures from points west of Lakota Station, along parallel lines and other lines. There is a tariff which names rates or which makes rates between St. Paul and Chicago as low as twelve cents; in other words, that is probably a balance of a through rate.

Q. Is it not a fact that the rates on cattle from points south of St. Paul on the lines of railroad going south, and from

88 points in the vicinity of St. Paul, are twenty-five cents per hundred pounds shipped direct to Chicago?

A. That is about what it is, yes.

Q. And on distances not any greater than from St. Paul to Chicago?

A. That is so. I would like to ask that I have the map before me in order to be able to give you the exact figures. I have got one there that I can look at and refer to.

The COURT: Get anything you want in order to be able to answer the questions.

Mr. COWAN: We don't care about taking up any more time particularly with it.

The WITNESS: It is quite hard to answer those things from memory.

Mr. COWAN: It appears from the tariff on file that the present adjustment of the live stock rates from South St. Paul and from that vicinity, that it takes the same rate to Chicago on fresh meat,

the local is seventeen cents to Chicago and if destined beyond Chicago to the east, the proportional is 14 6/10 cents?

A. Yes sir.

Q. On packing house products 15.7 and the proportional on dressed meat is 14.6?

A. Now, haven't you got the thing reversed? Isn't the packing house product 14.6 and the fresh meat 15.7?

Q. Yes, that is right. Now, the rates on cattle are 25 cents and on hogs 27?

A. Yes sir.

89 Q. Do you regard that adjustment of relative rates on those products——

A. That is a question I cannot answer.

Q. But you don't know what I was going to ask you. I am just asking you if you regard it as being a proper and reasonable adjustment of the relation of rates on the two different commodities, the live stock and the products of live stock?

The COURT: What do you say?

A. Well, in my judgment I think it is possible that the packing house products are a little on the low side, that they ought to be raised.

Mr. COWAN:

Q. How is that?

A. I think the packing house products ought to be raised. I think the rates are low.

Q. The question is if they should be raised do you mean that the live stock rates should also be raised in order to still maintain that relation of rates, or do you mean that the relation between them is wrong?

A. I mean the relation.

Q. You mean the relation?

A. The relation.

Q. Have you present with you the published tariff of any of the railroads, or a printed or otherwise written schedule, showing what your rates are on live stock, dressed meats and packing house products in the State of Minnesota?

A. I have none here, no sir, not with me.

Q. Can you get a publication of the railroad tariffs? You can get that, can't you?

A. Yes sir.

90 Q. Will you get one from the principal roads that do business, the St. Paul and the North Western, and other roads in your state?

A. Yes sir.

Q. Of the local tariffs?

A. Yes sir.

Q. Or, you may call them through tariffs, but at all events a tariff on live stock on one side and packing house products on the other?

A. You want us to make up a statement for you?

Q. After I see them, I can then suggest what statement I might want made. Now, as I understood you to answer a while ago, the rates which are now in force on the different lines of railroad, which have been published there, are the rates which have been substantially agreed to by your Commission?

A. Yes sir.

Q. And those are the rates to which you referred in your letter to Mr. Bird, wherein you say that you do not want the relation of the rates destroyed?

A. Yes sir.

Mr. COWAN: That is all for the present, we want him to get those tariffs.

Examination by Mr. SEVERANCE:

Q. I understood you to state that live stock is not moved from South St. Paul to Chicago on these rates, these local rates? That is true, isn't it?

91 A. That is true.

Q. It is moved on a proportional rate?

A. On a proportional.

Q. On the balance of the rate from western points?

A. In some instances, yes sir.

Q. Is it not true that the rates upon which cattle and hogs are moved from South St. Paul to Chicago, being the proportion or balance of a through rate from Montana, Dakota and Minnesota points, varies depending upon the station of origin and that it runs as low as 13½ cents in some cases and from that to 14 or 15 cents?

A. Yes sir.

Q. So that as a matter of fact, the live stock from South St. Paul to Chicago is moved at a lower rate than the packing house rate which is collected?

A. Yes sir.

Q. Or the fresh meat rate either?

A. Yes sir.

Q. Now, your attention was directed by counsel to certain stations between St. Paul and Chicago from which the rate was—I think he called your attention to one that was 25 cents?

A. 25 cents on cattle.

Q. Now, from those points there is no proportional rate in force, is there?

A. No sir.

Q. And there is no competition at those points, is there?

A. No sir.

Q. Is it not a fact that packing house products are moved to the east from South St. Paul, to some extent, by the Lakes?

92 A. Yes sir.

Q. So that the roads meet with Lake competition on those products?

A. Yes sir.

Q. That is not true as to live stock, is it?

A. No sir.

Q. You were asked what you meant by the relation of rates that was satisfactory to your commission. As I understood what you meant was that you were satisfied with the relation between the live stock rates into South St. Paul and the live stock rates into Chicago from Minnesota points, is that correct?

A. Yes sir.

Q. As a matter of fact, a great deal of the live stock moves to Chicago from these points, does it not?

A. Yes sir.

Q. At the present rate?

A. Yes sir.

Q. Is there any other point at which live stock is slaughtered to any considerable extent, in Minnesota, other than South St. Paul?

A. No sir.

Q. That is the only place where there are large stock yards, is it?

A. Yes sir.

Q. What packers are doing business there?

A. Swift & Company and Brunsen & Company and McCormick & Company.

Q. There are none of the Chicago packers there except Swift & Company?

A. That is all.

93 Q. Isn't it a fact that the total product manufactured at those yards, of live stock, is insufficient to supply the demand of the territory north and west and in the vicinity of St. Paul?

A. Yes sir.

Q. And at the present time cattle are slaughtered in Chicago and Kansas City and the product is shipped up to supply the market in the territory tributary to South St. Paul?

A. Yes sir.

The COURT:

Q. Are there any packing houses west or northwest of St. Paul of any size?

A. No sir.

Mr. SEVERANCE:

Q. Can you state Mr. Yapp, about the proportion of live stock raised in Minnesota which goes to South St. Paul and the proportion that goes to Chicago?

A. I can up to the year 1902.

Q. What was it then?

A. I shall have to get my papers, I have it there.

Mr. COWAN: We object to the answer to the question which must be gathered from documents and information that the witness has obtained from statistics of one kind and another, and at least we desire to ask him a question or two before he offers the testimony, as to the means of his information.

The COURT: He says 1902 he can tell about.

Mr. COWAN:

Q. You have the information before you?

94 A. Yes, and this is an exhibit that was put in in the last testimony.

Q. I am going to ask you about that. You put in before the Inter State Commerce Commission a copy of the statement you now have before you?

A. Yes sir.

Q. How was that statement obtained, how did you obtain the information?

A. The figures for St. Paul were obtained from the Stock Yard Company at South St. Paul. The figures at Chicago were obtained from the railway company direct. The figures from Sioux City were taken from the Stock Yard Company.

Q. And all you know about their correctness is that they claimed they were correct?

A. Yes sir.

Mr. COWAN: Now, at the outset—I don't want to argue to the court now that this evidence is not admissible, but in order to lay a precedent on this subject at the outset I object to the testimony on the ground that it is a class of information that is secondary evidence and hearsay.

The COURT: The proposition is that the court has a right and it is the court's duty to examine everything he can. Why not put in your objections as we go along, assuming that the court will only pass upon proper evidence.

Mr. SEVERANCE:

Q. It is the duty of the railroad company under the law of Minnesota to furnish you with statistics, is it not?

A. Yes sir.

95 Q. And were these statistics furnished to you according to law and upon demand?

A. Yes sir.

Q. And kept on file in your department?

A. Yes sir.

Q. As a public record?

A. Yes sir.

Q. Now, I will repeat the question.

(Question read as follows: Can you state, Mr. Yapp, about the proportion of live stock raised in Minnesota which goes to South St. Paul and the proportion that goes to Chicago?)

A. In 1902 the total number of cars of cattle, hogs and sheep received at South St. Paul was 5,341. The total cars of cattle, hogs and sheep received at Chicago 9,305.

Q. The point of origin was in Minnesota?

A. Minnesota.

Q. In all cases?

A. That takes the points on the Great Western, the Minneapolis

and St. Paul, the Milwaukee, the North Western, the Omaha and Rock Island in the southern part of the state.

Q. That does not include shipments from South St. Paul of through stuff?

A. No sir.

Q. From western points?

A. No sir.

Q. So that those figures are the figures showing the shipments of live stock from primal points?

A. Yes sir.

Q. Where the stock is raised and collected and shipped?

96 A. Yes sir.

Q. Now, Mr. Yapp, have you attempted to make up any statement since 1902 of this same character?

A. I am endeavoring to get it up to date but I have not exceeded so far.

Q. When do you think you will have that completed?

A. Well, it all depends upon the railroad company. I presume it will take a couple of weeks any way to get the statements.

Q. How far is it from St. Paul to the southern line of the State of Minnesota?

A. About 219 miles.

Q. To what point?

A. That is to Beaver Creek.

Q. That is the southwestern corner, isn't it?

A. Yes sir.

Q. Well, in a direct line to the southern part of the state?

A. A direct line, that would be—the nearest would be the Minneapolis and St. Louis, 198 miles.

Q. How much is it by the Chicago-Great Western, straight south from St. Paul? It is not over 120 miles, is it?

A. No sir, 120 miles.

Q. In what portion of the State of Minnesota did the stock originate which went to Chicago as you have stated, from the southern part?

A. Practically south of the H. & D. Division of the Milwaukee.

Q. The H. & D. Division of the Milwaukee runs east and

97 west about thirty miles south of St. Paul?

A. It runs east and west.

Q. Well, not quite thirty miles?

A. It runs right across the state.

Q. From east to west?

A. From east to west, yes, sir.

Q. And this stock that went to Chicago went from south of that point?

A. South of those points, yes sir.

Q. What is the distance to Chicago from the southern line of Minnesota and these various points concerning which you have testified, as to south St. Paul?

A. Please name what points you mean.

Q. Well, take——

A. Beaver Creek?
Q. Beaver Creek.
A. 571 miles.
Q. To Chicago?
A. Yes sir.
Q. Over what road?
A. Over the North Western.
Q. And how far is it from St. Paul, how far to St. Paul from there?
A. 219 miles.
Q. Take a point on the Minneapolis and St. Louis that you spoke of?
A. Well, there is another point, Boyd, 158 miles into St. Paul.
Q. And how far to Chicago?
A. 571.
Q. How far is it to Chicago from the place where the Chicago and Great Western crosses the State line, which you say is 120 miles from St. Paul?
A. 368 miles. Wait a minute, please; yes, that is right, about 368 miles.
98 Q. Aren't you mistaken? Isn't the distance from Chicago to St. Paul only 420 miles?
A. It is 318 miles.
Q. As I understand you then all or nearly all of this live stock moved into Chicago over this longer distance has come into South St. Paul, although you include in receipts at South St. Paul all the receipts from Northern Minnesota none of which went to Chicago?
A. No, sir, it is a comparison between competitive territory.
Q. Well, you say something over 9000 cars went to Chicago?
A. 9305 to Chicago and 5341 into South St. Paul. Of course I have got it segregated again as far as cattle, hogs and sheep are concerned.
Q. Well, then, give it in that way.
A. The number of cattle into St. Paul, 38,574; into Chicago 68,133; hogs into St. Paul 292,451; into Chicago 372,273; sheep into St. Paul, 22,117; into Chicago 121,314.
Q. All these shipments came from this territory that you have spoken of?
A. Yes, south of the H. & D. Division of the Milwaukee.
Q. Can you tell how close to South St. Paul on any of these lines, the shipments to Chicago began?
A. Say that once more.
Q. How close to St. Paul are there any stations on these various lines from which shipments were made to Chicago?
A. That I cannot tell you from the statement.
99 Q. You cannot tell that?
A. No sir.
Q. As a matter of fact there were shipments to Chicago from nearly all of the stations south of the line you have mentioned, were there not?
A. Yes, sir.

Mr. MILLS:

Q. Have you got the information in the office, Mr. Yapp, from which you could tell how close these shipments were made to St. Paul?

A. I could find that out as soon as I get the statement from the railroad companies. As soon as I get that I will be able to give you all the information you want.

Mr. SEVERANCE:

Q. Mr. Yapp, will you state how the rates from equal distances beyond St. Paul into St. Paul, that is the portion of the through rate to Chicago from points west into St. Paul, compares with this proportional into Chicago from South St. Paul?

A. I don't quite understand the question.

Q. Take points of origin of stock, live stock, northwest of St. Paul.

A. Yes sir.

The COURT: If you will get back there and make him talk up loud, then I can hear him. Make him talk loud, that is the point.

Mr. SEVERANCE:

Q. I asked you what the relation was between the proportion of the through rate to Chicago from points west and northwest of St. Paul, accruing to the lines west of St. Paul, what proportion that
100 bears to the distance between St. Paul and Chicago. You have stated that the proportional between South St. Paul and Chicago was as low as 13½ cents in some cases and then it ran up to 15. What would the rate be on that through shipment, higher or lower?

A. Well, I would have to explain. You take a total——

Mr. MILLS: You will have to talk louder and slower.

A. (Continuing:) Now, for instance, take a point like Frazee on the Northern Pacific. The distance into St. Paul is 194 miles and the cattle rate is 16 cents.

Mr. SEVERANCE:

Q. Through rate to Chicago?

A. 614 miles, 31½ cents so that the difference between the two will be the difference between 16 and 31.

Q. Then it is 15 cents on that particular shipment from St. Paul to Chicago, 400 miles, and 16 cents from Frazee to St. Paul, 194 miles?

A. Yes, that is it.

Q. Now, is that a pretty fair sample of those rates?

A. I can give you plenty of them.

The COURT:

Q. What does that 16 cents mean?

A. 16 cents means the cattle rate into St. Paul.

Q. What is the rate from that point to Chicago?

A. It would be the difference between that and 31½ cents.

Mr. SEVERANCE:

Q. The through rate from Frazee to Chicago is 31½ cents and from Frazee to St. Paul it is 15 cents. What line of road is that on?

A. The Northern Pacific.

101 Q. Then the Northern Pacific Railroad receives 16 cents for hauling that stock into St. Paul?

A. Yes, sir.

Q. And the connecting road hauls it into Chicago, 400 odd miles for 15½ cents additional, is that right?

A. Yes sir.

Q. Give us a few more samples.

A. Take a point in the northern part of the State, take Gary, for instance; that is on the line of the Northern Pacific too. The through rate to St. Paul on cattle is 19½, and to Chicago is 35 cents.

Q. So that the 15½ and the 19½ to St. Paul—how far iss Gary from St. Paul?

A. 259 miles.

Q. 150 miles less than the distance to Chicago?

A. It is 670 miles into Chicago.

Q. Give us some more.

A. Now, here is Barnsworth on the Great Northern. The rate on cattle into St. Paul is 17¾, and into Chicago 36.

Q. In that case the rate through St. Paul to Chicago is a little higher?

A. Yes sir.

Q. How far is that place from St. Paul?

A. 219 miles.

Q. About half the distance to Chicago?

A. It is 639 into Chicago.

Q. Give us one or two more places, larger places; take Fergus Falls.

A. From Fergus Falls the rate into St. Paul is 16¼ and into Chicago 35.

Q. Where is that from?

A. Fergus Falls.

102 Q. On the Great Northern?

A. Yes, sir.

Q. And also the Northern Pacific?

A. Yes, sir.

Q. So that so far as there is any competition between the Great Northern and the Northern Pacific you have the benefit of it into St. Paul?

A. Yes sir.

Q. Take Crookston.

A. Crookston, the rate on cattle is 20 cents and to Chicago 35¼.

Q. 20 cents to St. Paul?

A. And 35¼ to Chicago.

Q. How far is Crookston from St. Paul?

A. 300 miles.

Q. And the rate is 20 cents for the 300 miles and 15¼ for the additional 400 miles?

A. 15¼.

Q. Are these fair examples that you have given?
A. Yes, and I can give you them anywhere over the map.
Q. When you go further west and get out into North Dakota and Montana the proportional lines, to St. Paul and Chicago, the proportional grows smaller, does it not, running down to the figure that you have named, 13½ cents in some cases?
A. Well——
Q. As you go further west, getting out into Montana and North Dakota the proportional between St. Paul and Chicago on freight shipments grows less?
A. It would get less, yes sir.

103 Redirect examination by Mr. MILLS:

Q. Take that other map that you have got there and state to the court what it is?
A. This is a statement showing the number of cattle and calves and hogs and sheep listed for taxation from the year 1898 to 1904, inclusive, and also the receipts of cattle and calves and hogs and sheep at South St. Paul during the same period.
Q. By counties?
A. By counties, yes sir.
As a practical illustration of the map it may be interesting if you take the extreme south eastern portion. Now, Houston County shows 26,704 head of cattle listed for taxation. South St. Paul did not get a car load, did not get a single head of cattle. Fillmore County which is next had 32,992 head of cattle listed for taxation in 1904; St. Paul got 21 head out of it. There are some counties with 31,783 listed for taxation and only 252 head came into South St. Paul stock yards. 41,000 in Freeborn County and only 318 head into South St. Paul.
The COURT: What year is that?
A. 1904.

Mr. SEVERANCE: I would like to have him put all those in.
Mr. MILLS: The map was in evidence before and it will be again.

The COURT: That is with the present rate between those points and St. Paul existing?
104 A. And that was the result.

Mr. MILLS: I don't wish to encumber the record with the map on our part excepting that I would like to have the statement made from the map and submitted to the court and use the map on argument for illustration.
The COURT: Let that be done.

Mr. SEVERANCE:

Q. You have shown that from Houston County there were no cattle sent from St. Paul?
A. Yes sir.
Q. And from Fillmore County only 21 head?
A. Yes sir.

Q. Those are counties in the territory where St. Paul is in competition with Chicago, are they not?
A. Yes sir.
Q. Is there any other ultimate market for cattle from those places except Chicago, other than South St. Paul?
A. Chicago and South St. Paul would be the principal ones.
Q. They are on lines of road running to Chicago?
A. Yes, sir.
Q. On the Milwaukee and St. Paul Road?
A. Yes sir.

Mr. COWAN:

Q. Do you attribute the fact that no cattle were shipped into South St. Paul from those counties, to the adjustment of the freight rates?
A. They certainly had something to do with it. It looks
105 very strange considering it is the very best portion of the state for raising cattle that we do not get any of them into South St. Paul.
Q. Do those people in those counties desire lower rates?
A. I never have inquired.
Q. Those are rates that were agreed upon between your Commission and the railroads?
A. Yes sir.
Q. And upon the rates you agreed upon there has not been one car load moved from one county and only 21 head from another?
A. Yes, sir.

The COURT:

Q. How far is it from this Houston County to St. Paul?
A. Well, it will be a little more than 130 miles, it will average 150 or 160 miles.
Q. How far is it from that same town to Chicago?
A. To Chicago, 320, 329 and 315.

Mr. COWAN:

Q. What is the rate from Chicago to that point and to the——
A. Shall I give you a point?
A. Well, from that county, take the average of the lines right through.
The COURT: Is Roundsville in that county?
A. No sir, that is further off. Peterson, for instance, the rate into St. Paul is 15,161 miles of road and the rate into Chicago is 21 cents, 24 and 25.

Mr. COWAN:

Q. 21 and 24 and 25?
A. Yes sir.
Q. What do you mean by 24 and 25?
A. Why, the rate of cattle, hogs and sheep.
106 Q. 21 cents is on what, cattle?
A. 21 cents on cattle, 24 on hogs and 25 on sheep.

The COURT:

Q. It is less to St. Paul than it is to Chicago?
A. Yes, sir.
Q. Well, why don't cattle go to St. Paul then?
A. Well, they don't go.
Q. Yet they have to pay a greater rate to Chicago?

Mr. COWAN:

Q. Now, you say that South St. Paul does not kill enough stuff for consumption in the St. Paul district?
A. Yes sir.
Q. That being so why is it that the live stock can move cheaper to St. Paul, that it don't go there, if it can move there cheaper? Is it because of your rate or is it because of the fact that there is very little competition at that market and practically only one concern killing cattle?
A. It is well known that there is not the competition at South St. Paul market that there is down in Chicago, and the idea is that the shippers down there, in many instances would prefer to send their stuff to Chicago because the competition is greater down there and that is about the only thing.
The COURT: Chicago is a better market?
A. A better market, yes sir.

Mr. COWAN:

Q. Is not that true of the other shipments as well? The better market is a better market for shippers from one county as well as from another county, isn't it?
107 A. Yes sir.
Q. Now is it a fact or not that packing house products and dressed meats are shipped from South St. Paul to Chicago?
A. To Chicago?
Q. Yes.
A. Well, I don't know, I can't answer that question, I hardly think so.
Q. Are they shipped through Chicago to points in the east?
A. No, they go over the Northern route principally.
Q. Have you investigated to determine whether that is the fact with this reduced rate from St. Paul for live stock products and dressed meat from St. Paul to Chicago or through Chicago?
A. No, they are shipped from St. Paul principally to supply the territory around Minnesota.
Q. I would like to know whether you have investigated to ascertain whether the railroads do in fact ship dressed meat and packing house products to and through Chicago from South St. Paul?
A. No, I have not inquired into that.
Q. You don't know?
A. No.
Q. Did the railroads supply you with data in reference to shipments of dressed meat and packing house products as well as they did of live stock?
A. No.

Q. You said they filed this data as statistics in your office?

A. Yes, that was in connection with the railroad rates and the number of head of cattle which we asked for, how many had been received in Chicago and they gave us the information.

108 Q. Are they required to furnish you information relative to their Inter State transactions?

A. Well, they do it as a matter of courtesy when we ask for it.

Q. That is not a requirement of law?

A. No.

Q. Are you certain that dressed meats and packing house products moved via the Lake East?

A. Yes sir.

Q. To what extent?

A. I cannot answer that question, I cannot answer as to how much.

Q. How did you get the information that that stuff moved by way of the Lakes?

A. Why, I got that from Swift & Company.

Q. What?

A. From Swift & Company.

Q. From Swift & Company?

A. Yes, sir.

Q. Did they give you information about the movement by rail eastward also?

A. No.

Q. Did you ask for it?

A. No, I cannot call to mind that I did. It is a long time ago and I cannot recollect what I asked for at the time.

Q. Is it a fact then that dressed meat and packing house products move out of Chicago into St. Paul territory?

A. Well, I cannot answer that either. I presume they do, that they come from Missouri territory and I presume that they come from Chicago.

Q. Are both points with respect to the movement in and the movement out that you have now defined—in reference to that

109 where did you get your information?

A. From Swift & Company.

Q. And that was only to the effect that there was a movement by lake but you don't know how much there is of it?

A. I don't know how much it was, but I know it goes that way and a large quantity of it goes into the state of Minnesota and the surrounding territory for the purpose of supplying what they do not supply in South St. Paul.

Q. Is there enough produced in Minnesota that if they should kill it, it would supply the demand?

A. Is there enough produced?

Q. Yes.

A. Yes.

Q. Is it not a fact that, because of the high rate of freight agreed to by your Commission, it moves east?

A. Well, that may be a matter for further investigation on the part of our Commission yet.

Mr. SEVERANCE:

Q. Mr. Yapp, Swift & Company you have already stated is the only one of the large packers having a slaughter house in Minnesota?

A. Yes sir.

Q. Isn't it a fact that Armour & Company, Schwartschild & Sulzberger, and the Armour Packing Company and the National Packing Company all have distributing stations at various points in Minnesota which are supplied from Chicago, Kansas City and Omaha?

A. Yes, sir.

Q. The fact is that the farmers in Minnesota raise the hogs and cattle which are shipped through to Chicago, manufactured
110 into packing house products and fresh meat and shipped back up into Minnesota to sell, isn't that true?

A. Yes, sir.

Mr. MILLS:

Q. Judge Cowan asked you the question a few minutes ago about the rate. Now, is it not a fact that the Minnesota Commission now have under consideration all the rates in Minnesota on grain and merchandise and live stock?

A. Yes, sir.

Q. And a proceeding pending before them?

A. Yes sir.

Q. St. Paul is considered only 150 miles further from the seaboard on account of Lake Superior, than Chicago, is not that a fact?

A. About 156 miles.

Mr. SHAVER:

Q. How many packing houses are there at St. Paul?

A. Do you mean slaughter houses or storage houses?

Mr. SHAVER: Well, storage and packing houses.

Mr. SEVERANCE: A storage house would not be a packing house.

Mr. SHAVER:

Q. Well, how many packing houses?

A. I can call to mind only three, Swift and Brunsen and McCormick's.

Q. How many in Chicago?

A. Well, I don't know, quite a number of them.

Q. Chicago is a much more desirable market than St. Paul,
111 is it not?

A. Well, it is a larger market and there is greater competition.

Mr. SEVERANCE: The government contended the contrary in another proceeding you have got in this court.

Mr. SHAVER:

Q. Would not the Minnesota stock raisers prefer to ship their stock to Chicago rather than St. Paul?

A. I did not catch that.

Q. Would not the Minnesota stock raisers prefer to ship their stock to Chicago rather than St. Paul?

A. Well, some do and some don't. Some think they are quite as well off.

Q. Those that do not, why do they not?

A. Some of them think they are just as well off by sending it into St. Paul, shipping it there.

Q. You say all the rates coming into Chicago are proportional rates. All the shipments practically that come to Chicago from St. Paul and that territory are all proportional rates?

A. Yes, sir.

Q. Practically none come in on a local rate?

A. No, I don't think so.

Q. Isn't that because the local rates are so high on stock as compared with the proportional?

A. Well, I don't know. It gives the people a choice between the two markets, that is the idea.

Q. Why are those local rates established and maintained
112 if stock does not move on them?

A. The proportional rate would apply from the South St. Paul market but it would not apply to that intermediate territory and the proportional rate would be too low to take it from that intermediate territory.

Q. The local rate applies to the intermediate territory between St. Paul and what point?

A. Between St. Paul and all points down south of there. It will go down to within the neighborhood of about fifty miles of St. Paul.

Q. Does any stock come from that intermediate territory on the local rates to Chicago?

A. I cannot answer that question without the statements which are being prepared and they are not now before me.

Mr. COWAN:

Q. I desire to know if you call a station in those counties which ship nothing to St. Paul, intermediate between St. Paul and Chicago?

A. No, those rates down there are very different to what they are around the territory in reference to which this gentleman asked me. When you get down to that territory you get lower rates down there, 21½ cents and 21 and then it gradually scales up to 25 and when it touches 25 it runs up as far as St. Paul.

Q. Now, a shipment from St. Paul, may it not pass down through those lines to Chicago?

A. Some of it, yes.

Mr. SEVERANCE: A shipment from Chicago to St. Paul would not go down through Houston County, would it?

A. No.

113 Mr. COWAN: I am asking if it moves through those points there. Nothing is shipped to St. Paul.

The WITNESS: Now you take the Chicago Great Western——

Mr. SEVERANCE: None of the other lines go through there.

Mr. COWAN:

Q. Do you know what the rate is on dressed meat on packing house products north from St. Paul and west thereof?

A. No.

Q. I have a tariff before me that shows that the rate on fresh meat from St. Paul to Chicago is 27. It is likely that it would move on the 27 cent rate when it can move so much cheaper?

A. I don't know, I cannot answer that question.

Q. You answered a while ago that it actually does move from Chicago into that territory, to supply it.

A. Yes, it comes up from Chicago.

Q. Isn't that in very small proportion to what comes from the Missouri River?

A. I don't know, I cannot give you the proportion.

Q. How did you come to find out that it comes that way and yet you have no idea about the relative quantity that comes?

A. I can only tell you that my information comes from Swift & Company at the time, in 1902 and 33 per cent. of their dressed beef came up to St. Paul, that they had not got from the Missouri River and Chicago markets, that they had not got sufficient

114 to take care of the local territory.

Q. And it was supplied from the Missouri River and Chicago?

A. Yes, but I cannot tell you just what quantity came from each place.

Q. Now, the rate from Missouri River points appears to be 20 cents on fresh meat and 27 cents from Chicago.

A. Yes.

Q. And it is altogether likely that the great bulk of it would move from the Missouri River to supply that territory rather than clear back from Chicago?

A. Well, I don't know. I am simply telling you what I have been informed on the authority which I got.

115 Redirect examination.

By Mr. MILLS:

Q. Just for the information of the Court, about this proportional rate, stuff is shipped in from the Northern part of the State or from Montana to St. Paul Stock Yard, and then it is shipped out to Chicago on a proportional through rate?

A. Yes, sir.

Q. Now, if that stock there that was shipped is killed in South St. Paul, why the proportional rate is filled up with other stock?

A. Generally speaking; yes, sir.

Q. That is all, sir.

Mr. MILLS: That is the case for the Commission, if the Court please, with the understanding that I may read from the Minnesota laws.

The COURT: That closes your case?

Mr. MILLS: That closes the Commission's case except additional statements to be brought down and that I may read from the Minnesota laws.

The COURT: What next?

GEORGE H. CROSBY, called as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

116 The COURT: What is your name?

A. George H. Crosby.

Mr. BAXTER:

Q. Mr. Crosby, what is your occupation?

A. I am freight traffic manager of the Chicago, Burlington & Quincy Railroad Company.

Q. How long have you been connected with the freight traffic department of railroads in the United States?

A. Since 1876.

Q. With what railroads have you been connected and in what capacities?

A. Practically all that time with the Burlington or allied lines in various capacities, clerk, assistant freight agent, agent, assistant general freight agent, freight agent, assistant freight traffic manager and as at present, freight traffic manager.

Q. During what portion of that time have your duties had relation to the making of freight rates?

A. Well, something over 25 years.

Q. And those freight rates have been made in the sectional — country in controversy in this case, have they?

A. Largely, yes, sir.

Q. I wish you would file as Exhibit No. 1 to your testimony the statement showing correctly the rates in cents per hundred pounds now charged on cattle, hogs, packing house products and fresh meats respectively, car loads, to Chicago, Illinois, from the following points, namely, Kansas City, Missouri, St. Joseph, Missouri, Atch-

117 ison, Kansas, Leavenworth, Kansas, Council Bluffs, Iowa, Omaha, Nebraska, South Omaha, Nebraska, Nebraska City, Nebraska, Sioux City, Iowa, St. Paul, Minnesota, or South St. Paul, Minnesota, Ottumwa, Iowa, Des Moines, Iowa, Marshalltown, Iowa, and Cedar Rapids Iowa, respectively.

Mr. BAXTER: Those are the points, may it please the Court, that are mentioned by the Commission in the second bill specified.

The COURT: What is the first part of that question?

Mr. BAXTER: I want him to file an exhibit showing correctly the present rates from those points to Chicago.

The COURT: What kind of rates, on packing house products and live stock?

Mr. BAXTER: Yes, sir, fresh meats and hogs—on the different commodities named by the Commission.

The COURT: Answer the question.

The WITNESS: I have the file here (producing paper), with the exception of Cedar Rapids and Marshalltown; we do not serve those points and I did not include those in this statement.

Mr. COWAN: Have you a copy you could loan us?

The WITNESS: I have only that one copy.

(The document produced by the witness was admitted in evidence and marked "Crosby's Exhibit 1.")

117½ EXHIBIT NO. ONE.

Statement Showing Rates in Cents per Hundred Pounds on Cattle, Hogs, Packing House Products, and Fresh Meats.

To Chicago From	Cattle.	Hogs.	Packing house products.	Fresh meats.
Kansas City				
St. Joseph	23½	23½		
Atchison	*b* 20	*b* 20	20	20
Leavenworth	*c* 18½	*c* 18½	*a* 18½	*a* 18½
Council Bluffs				
Omaha				
South Omaha	23½	23½	*a* 18½	*a* 18½
Nebraska City				
Sioux City	25	23½	20 *a* 18½	20 *a* 18½
St. Paul	25	27	15.7	17
South St. Paul	20	*b* 17½	*a* 14.5	*a* 15.7
Ottumwa	22	21	16	
Des Moines	22	23½	13½	

(*a*) Destined east of Illinois-Indiana State line.
(*b*) Applies on shipments originating beyond.
(*c*) When originating beyond and destined beyond the Illinois-Indiana State line.

118 Mr. BAXTER: I will furnish you a copy when I get through.

Q. State whether the rates on cattle and hogs set forth in Exhibit 1, which you have just filed, are just or unjust, reasonable or unreasonable, and state your reasons for any opinion you may express.

Mr. COWAN: I enter formal objection to that, that that invades the province of the Court.

The COURT: The objection is overruled.

Mr. COWAN: I concede the objection is a mere matter of form.

The WITNESS: I think those rates are fair and reasonable when you consider the service performed and the conditions under which the rates are made.

Mr. BAXTER:

Q. State those conditions, Mr. Crosby?

A. Well, it is a matter of competition between carriers and markets that establish these rates.

Q. How do those rates compare with rates for similar distances on other traffic than cattle and hogs?

A. Well, they are less than those.

Q. How do they compare with rates on live stock from other sections of the country to other markets for similar business?

A. I think they compare favorably, that is, they are not out of line to any extent with what prevails in other sections of the country.

119 Q. Please file as Exhibit No. 2 to your testimony a statement for the year ending June 30th, 1905, showing:

First, total freight earnings of your company;

Second, the earnings of your company from cattle;

Third, earnings of your Company from hogs;

Fourth, earnings of your company from packing house products;

Fifth, earnings of your Company from fresh meat;

Sixth, earnings of your Company from other perishable freight?

A. I have such a file here (producing paper).

Q. How does the amount paid by your Company for losses or damage to cattle or hogs and for injuries to persons in charge of cattle or hogs compare with the amount paid by your Company for similar claims in regard to perishable commodities?

A. Well, for the year ending June 30th, 1905 it paid out $28,446. loss and damage to cattle. For hogs, $7,982; personal injuries to attendants in charge of live stock $5,345; a total of $41,773.

For loss and damage to all other perishable freight, including packing house products and meats which we handle, approximately, $13,600.

Q. Are or are not the rates on cattle and hogs mentioned in your Exhibit No. 1 affected by competition, and if so, to what extent?

The COURT: Just a moment; what per cent. was that in

119½ EXHIBIT No. 2.

For the Year Ending June 30, 1905.

(*a*)	Total freight earnings of our Company.....	$43,346,403.00
(*b*)	Total earnings of our Company from cattle...	3,157,854.00
(*c*)	Total earnings of our Company from hogs....	1,661,305.00
(*d*)	Total earnings of our Company from P. H. P..	886,380.40
(*e*)	Total earnings of our Company from Fresh meats	941,331.00
(*f*)	Total earnings of our Company from other perishable freight.....	1,710,339.67

120 your last question?

A. That was about one-third on other perishable freight compared with what it cost us on live stock; that is we paid out——

The COURT:

Q. What per cent. was there on live stock, as you figured that out, on the amount of business done?

A. No, sir, that has not been figured.

The COURT: Go ahead.

Mr. BAXTER:

Q. Are or are not the rates on cattle and hogs mentioned in your Exhibit No. 1 affected by competition, and if so, to what extent?

A. They are affected by competition. They are regulated by competition, competition as between carriers and as between markets.

Q. Did the number of cattle and hogs produced in the territories affected by the rates on cattle and hogs mentioned in your Exhibit No. 1 in this case increase or decrease during the period between 1900 and 1905, both inclusive?

A. I have not been able to get any very good data beyond 1903; but I have taken the report as rendered by the department of Commerce and Labor which shows the following for the month of June, 1905:

Received at Chicago 236449 head of cattle;
42427 head of calves;
121 625,377 head of hogs;
At Kansas City, 128,272 head of cattle;
14,249 head of calves;
247,593 head of hogs;
At St. Louis 117,494 head of cattle and calves;
Hogs 227,879;
Omaha, cattle and calves, 73,306; hogs, 301,289;
St. Joseph, cattle, 29,628; calves, 2,361; hogs, 216,818.

That makes a total for those five markets for the month of June, 1905, cattle and hogs, 2,266,142 head. Calves should also be included in that.

For the same period in 1904, 2,069,108.

1903, cattle and hogs, 2,022,324 head.

For the six months ending June 30, 1905, there was received at Chicago, 1,570,597 head of cattle; 224,482 head of calves; 4,172,370 head of hogs.

At Kansas City, 750,045 head of cattle; 39,424 head of calves; 1,325,683 head of hogs.

At Omaha, cattle and calves, 426,341 head; hogs, 1,299,705 head.

St. Louis, cattle and calves, 482,373 head; hogs 1,218,802 head.

St. Joseph, cattle, 197,488; calves, 11,624; hogs, 1,011,558.

122 Total for those six months for 1905, for these five markets, cattle, hogs and calves, 12,734,492 head.

For 1904, 12,386,009.

1903, 11,459,132.

The receipts at Chicago for the six months ending June, 1903 to 1905, for cattle and calves, 1903, 1,591,902 head—that is cattle alone—calves, 140,580 head; hogs, 3,803,471 head.

For the same period in 1904 cattle, 1,570,707; calves, 157,058 head; hogs, 4,043,123 head.

For 1905, cattle, 1,570,597; calves, 224,482 head; hogs, 4,172,370 head.

These figures show an increase in the number of head, number of live stock handled at those markets, and I presume they are an index of the general condition.

Q. Mr. Crosby, I see that you give for the month of June, 1905, and for the six months ending in June, 1905, the number of cattle, calves and hogs, respectively, received at Chicago, Kansas City, St. Louis, Omaha, and St. Joseph, respectively. Have you figured out to see how much more of each class was received at Chicago than at all of the other markets you have mentioned put together?

A. No, sir, I have not made those figures.

Q. Well, that can be done. Are the through rates on

123 cattle and hogs from the points of shipment mentioned in your Exhibit No. 1 to points of final destination greater or less than the sum of the local rates between said points where the through line is made up of two or more railroads?

A. They are less.

Q. What is the established minimum car load rate for cattle and hogs, respectively, on your road and how does the loading of cattle and hogs on your road compare with that minimum?

A. The thirty-six foot cars are generally used nowadays in handling live stock, and our minimum in the territory in question, that is, in territory on and east of the Missouri River, and for that matter in Kansas and Nebraska on cattle in a 36 foot car, is 22,000 pounds to the car. Hogs in single deck, thirty six foot cars, 17,000 pounds. Our records for the fiscal year ending June 30th, 1905, as furnished to me by our auditor, show that the cattle that we handled during that period averaged 23,000 pounds to the car, hogs in single deck cars, 17,000 pounds, about the minimum.

Q. Well, do hogs move in double deck cars to any considerable extent?

A: They do, from the Missouri River market as between markets. For example, as from Kansas City to Chicago, or Omaha to Chicago, hogs would move in double deck cars, but in shipping to markets from the country, double deck cars are not used.

124 Q. What is the minimum on double deck cars?

A. The double deck car of hogs, where we have rates on double deck cars, the minimum is 22,000 pounds, the same as it is for a 36 foot car loaded with cattle, that is the minimum from Missouri River to Chicago, for example, on double deck cars of hogs.

Q. Will you please file as exhibit 3 to your testimony a statement showing comparison between the revenue received by your road on cattle and hogs, car loads, and the revenue received by your road on wheat, tropical fruit, vegetables, classified freight in car loads, selecting for said comparison some fairly representative portion of your road on which said kinds of traffic actually move?

A. I have such an exhibit.

Q. Will you please file it?

A. Yes sir (producing paper which was marked "Crosby's Exhibit No. 3 and filed with the Court).

124½ EXHIBIT No. 3.

The local rate on cattle and hogs in D. D. cars, Kansas City to Chicago is 23½ cents, when originating beyond the Missouri River, the rate is 20 cents, and when destined east of the Illinois-Indiana State line 18½ cents. These rates on cattle and hogs the latter in D. D. cars, based upon the established minimum weights of 22,000 lbs. would produce respectively the following figures per 36 foot car, viz: $51.70, $44.00 and $40.70. On hogs in S. D. cars the figures would be based upon minimum weight of 17,000 lbs., $39.95, $34.00 and $31.45, respectively per 36 foot car. Against these rates per car take the wheat rate, which from Kansas City to Chicago is 16 cents per cwt. Wheat will easily load to 60,000 lbs., and at the rate stated, would produce a rate of $96.00 per car.

The tropical fruit rate Kansas City to Chicago is 45 cents per cwt. in carloads, and a car containing 30,000 lbs. would yield the Carrier $135.00.

Vegetables pay a rate of 22 cents per cwt., Kansas City to Chicago, which at 30,000 lbs., a fair average load, is equal to $66.00 per car.

The fifth class rate Kansas City to Chicago is 27 cents per cwt. and if a car containing that class of freight were loaded to 30,000 lbs., it would produce a rate per car of $81.00.

Scrap iron pays a rate of 15 cents per cwt. and will easily load to 60,000 lbs., thus making the rate per car $90.00.

Broom corn pays a rate of 45 cents per cwt. and at 16,000 lbs. per car, the earnings would be $72.00 per car.

Q. Without taking up your time to read all of it, will you just compare the revenue on cattle and hogs with the revenue on some one commodity that you have mentioned there without mentioning them all?

A. We will take a car load of wheat, for example. The rate on wheat from Missouri River to Chicago is 16 cents.

Mr. SEVERANCE: Speak louder, please.

125 A. The rate on wheat from Missouri River to Chicago is 16 cents. The cars that we handle with live stock are cars of 50 and 60,000 pounds capacity. Take a car load of wheat of 60,000 pounds and the revenue is $96. Under our minimum rate on live stock at the local rate from Missouri River to Chicago of 23½ cents, for example, or at the proportional rate of 20 cents, the rate at the latter would be $44—and $47.40 at the 23½ cent rate.

Mr. BAXTER:

Q. How do the rates on cattle and hogs——

The WITNESS: Excuse me—$51.70 for the 36 foot car at the local rate of 23½ cents. Our rate on scrap iron from the Missouri River to Chicago is 16 cents a hundred,—or 15 cents a hundred,—we can load a stock car to its capacity with scrap iron, 60,000 pounds and receive $90 against $44.

Q. How do rates on cattle and hogs set forth in your Exhibit No. 1 compare with rates charged by other railroads in the same and other parts of the United States for the transportation of cattle and hogs from other points of shipment to other points of destination, the distance and other circumstances and the conditions being relatively considered?

A. Well, they are less in some instances and about in line with what is charged elsewhere in other instances.

126 For example, the Minnesota distance tariff for 490 miles, which is practically the distance from the Missouri River to Chicago, the distance from Southwestern Missouri River points, our distance makes a rate of $85.20 for a 36 foot car. The Iowa tariff, supposed to be the lowest tariff in the country, 490 miles, the distance tariff for the rate on cattle would be 25.23 cents per hundred weight; on hogs, 22.12 cents per hundred weight. In Kansas, for 490 miles, cattle, 31 cents per hundred weight; hogs, 39½ cents per hundred weight. Missouri has a distance *of* tariff promulgated by the Commission. The maximum distance shown is 400 miles. Their rate on cattle for that distance is 21 cents a hundred; hogs, 24 cents. If the rate was extended to the Missouri River distance on that basis, the rate on cattle would be about 25 cents a hundred.

Q. Well, if you except the rates from Chicago to New York or other Eastern points, do you know of any rates in any part of the United States on cattle and hogs, for a distance of, say, 450 miles that are as low as 23½ cents per hundred?

A. Well, I don't recall anything of that kind; I don't bear in mind anything of that kind.

Q. Have the rates on cattle and hogs set forth in your Exhibit 1 been so high as to prevent the shipment of cattle and hogs, or have

cattle and hogs been shipped with profit under such rates
127 and have they or not moved freely in competition with cattle and hogs moved to the same markets from other portions of the United States?

A. I do not think the rates have had any effect on the amount of live stock at all. In the face of the rates that are established today, new markets have sprung up, and are in existence. Markets have been established as the production apparently warranted them, and the rates I should say, have not in any way retarded the development of the industry.

Q. Is the service rendered by railroads in the transportation of cattle and hogs more or less expensive than the service rendered in transportation of packing house products?

A. I think it is more expensive—live stock is of more of a perishable character than packing house products; we have to provide special facilities for loading it and we have to provide places for, unloading it and feeding it, and taking care of it in transit; we provided facilities for handling live stock that we do not for any other class of freight.

Q. Is the service performed by railroad companies in the transportation of ordinary dead freight other than live stock products more or less expensive than the service rendered in the transportation of packing house products and fresh meats?

128 A. Well, I think the two most expensive commodities that we handle are live stock and its products. The dead freight can be handled at much less expense than either.

Q. In proportion to the service performed, is the net revenue received by railroads for the transportation of cattle and hogs greater or less than the net revenue received by them for the transportation of packing house products and fresh meat?

A. I believe we can handle packing house products under the present condition of affairs for less money than we can live stock. I believe we have less net money when we get through handling our live stock than we do with the products.

Q. In proportion to the service performed, is the net revenue received by the railroads for the transportation of cattle and hogs greater or less than the net revenue received by them in the transportation of ordinary dead freight?

A. When you consider the service, I think it is less—it is less.

Q. Are the rates on cattle and hogs set forth in your Exhibit No. 1 so low as to induce shippers to ship by rail or are they so high as to force shippers to drive their cattle to market by foot?

A. I do not think they are any cattle driven to the market from any of this territory that is covered by this investigation or hearing.

129 Q. Have the rates on cattle and hogs had the effect to restrict or extend the scope of territory in which cattle are raised?

A. I do not think it has any tendency in that direction at all.

Q. Have the rates had the effect to increase or decrease the number of markets to which cattle and hogs are shipped for sale?

A. The markets have increased. For instance, originally, they practically only had one market for this Western territory, Chicago. We have new markets on the Missouri River that have sprung up in the last ten or twenty years. They have another one at St. Paul and others in the interior of Iowa, Ottumwa, Des Moines, Cedar Rapids and Marshalltown. St. Louis has begun to be more of a factor as a live stock market in the last few years than it has been for a few years previous. The markets seem to come to life as fast as the conditions seem to demand their existence.

Q. How does the revenue on cars loaded with coal, iron or other low grade traffic compare with the revenue derived by your company from the transportation of cattle and hogs if carried in cars of the same capacity between the same points and for similar distances?

A. The revenue is greater on these commodities because you can load your cars to their capacity, you can get them loaded. Our rate on hard coal from Chicago to the Missouri River is
130 $2.50 a ton. We can load that car, if a 60,000 pound car, with 60,000 pounds and the revenue is $75, almost double what it would be on live stock.

Q. Take the case of rags, do you carry them?

A. With rags it is the same way. We handle lime between Missouri River and Chicago, and the rate is 16 cents a hundred. That is a commodity that can be loaded 60,000 pounds, $80 per car. Take paper scrap rags, these cars can be loaded 50,000 pounds. The rate is 18 cents, which would bring in a revenue of $90. I could go on and cite similar instances.

Q. Have you prepared a paper there, a statement showing those comparisons?

A. Yes, sir, that is included in Exhibit No. 4, several instances there of the difference in revenue—I mean Exhibit No. 3, I should have said there.

Q. Will you now file as Exhibit No. 4 to your testimony a statement showing the rate charged by your Company for cattle and hogs, respectively, to Chicago, Illinois, from each intermediate point on your line between St. Paul and Missouri River points on the one hand, and Chicago on the other?

A. Here are our tariffs naming the rates in all this interior country east of the Missouri River and south of St. Paul and Minneapolis to Chicago.

131 (The witness here produced a document which was marked "Crosby Exhibit 4" and filed with the Court as evidence on behalf of the defendant).

Q. Mr. Crosby, do those tariffs show the rates from Chicago to those intermediate points on the same classes of commodities?

A. Well, these rates apply between.

Q. Well then, they would show the rates each direction?

A. Yes, sir.

Q. State whether or not a reduction of the rates on cattle and hogs at intermediate points east of the Missouri River would have any effect on the revenues of your company, and if so, what?

A. A reduction such as is proposed or asked for would, I think, approximate about 2½ cents a hundred or 50 cents a ton. For the fiscal year ending June 30, 1905, we handled 382,553 tons of cattle and hogs. Fifty cents a ton on this would amount to $191,276.

Q. Now, as I understand, that would be the direct result on the intermediate territory, from reducing those rates as suggested by the Commission?

A. Yes, sir.

Q. Now, are there any indirect results that would flow from such reduction?

A. Well, a reduction might be made in these rates that would have its effect on rates from territory west of the Missouri River, such a rate could be established as would have that effect.

132 Q. For instance, if you reduced the rate from a point intermediate between Kansas City and Chicago, say it is a distance of 250 miles, if you reduced the rate from that point, what would be the effect upon people who lived 250 miles west of Kansas City, on the rate that they would want you to put in from that point to Kansas City?

A. Well, it might have an influence on that rate. It would have an indirect influence in this way: That by a reduction in the rate from this territory to Chicago we would be called upon to make reductions in rates to other markets, it would have that indirect effect, undoubtedly. There is a co-relation between all of these rates. The man who runs the Stock Yards and the packing houses at one point thinks that if the rate is reduced to his competitor, his rates should be reduced.

Q. You heard the position of the Minnesota Railroad Commission this morning?

A. Yes, sir.

Q. Have you got any roads in that part of the country that would be affected by the reductions they propose to put in?

A. Well, we would be affected slightly, the Burlington Road would.

Mr. SHAVER: The order of the Commission does not require any reduction in the live stock rate. It may be complied with by advancing the rate on products.

133 The COURT: Will you read the order again, so I will get it in my head?

Mr. SHAVER (Reading): "It is ordered that the defendants, naming them, be and each of them is hereby notified and required to cease and desist on or before the 15th day of February, 1905, from maintaining or enforcing the said unlawful relation of rates."

That is, the relation which results from making product rates lower than the live stock rates, but that unlawful relation may be done away with by advancing the product rates as well as by lowering the live stock rates, or it may be complied with by a certain advance on the product rates and a certain reduction in the live stock rates, making the two rates meet, restoring the former relation, under which they were shipped, so that the order does not necessarily require any reduction in the live stock rate.

Mr. BAXTER: The Commission quotes in its opinion the fact that a contract was made by the Chicago Great Western with the packers at Kansas City, whereby that Company obligated itself to acept these rates for a series of years, and the Commission admits under that contract the companies cannot raise it, unless the Great Western raises it none of the other companies crossing the Missouri River can raise it, there-ore we cannot raise the prod[illegible] rates, we
134 must reduce our live stock rates if we equalize [illegible].

I am trying to show now what the effect [illegible] that would be on these carriers.

Mr. COWAN: If you will permit me to suggest, I do not think Judge Baxter is exactly correct in the suggestion that the Commission admits that we cannot raise the lower rates because of the contract of the Great Western with the packers. As a matter of fact it is contended by the railroads all the way through that they cannot do that; that depends entirely on whether or not that would be a lawful contract. That they do not desire to do so is manifest. If, by making a contract they may produce an unjust relation of rates, if it results in a rate which is unlawful, or the result flowing from it is unlawful, the contract is not obligatory. But if they insist it shall be obligatory then our contention is that it carries with it the obligation to still maintain the just relation of rates so as not to produce an undue preference to one, or a prejudice to the other, and if they have made the lower rate upon a contract from which they cannot escape, or from which they do not desire to escape, it flows as one of the consequences of that act that the relation of the rates must be what would be lawful.

Previously the Commission has decided in its findings and
135 had held that the rate upon dressed meat and packing house products should not be less than upon the live stock, and the roads complied with that for a great number of years, as stated by the Commission. Now, with their eyes open, seeing that the Commission had previously held there was a certain just relation of the rates, they see fit to reduce the one—we do not think they can stand behind the claim that it would put the other below what is reasonable if they are required to maintain the lawful relation of those rates. So that by making the contract they either did one of two things: They either made an unlawful contract, that does not interfere, it being unlawful, with the advance in packing house rates in order to restore the relation of rates, or if that is a lawful contract, then one of its consequences was that if the just relation as determined by law is to be that the live stock rates shall not be higher, then the contract carried with it the obligation to do that thing, whether it would reduce it below an amount that was reasonable for the service performed or not.

Unless that were the case your Honor can readily see that by contract a railroad company could always evade the law with respect to discrimination. It would practically repeal the second, third and fourth sections of the act, if you are to hold that—because—
136 that the restoration cannot be made if it would reduce the higher rate below what is reasonable, then all the railroad

company needs to do is to make a contract for the lower rate, and then they escape that discrimination which would exist from mere publication of the rate, from that contract.

The COURT: I think I understand your position.

Mr. COWAN: Well, the Commission mentioned that the Commission does not in its decision require directly or indirectly an advance in one or a reduction in the other; it merely desires a restoration of the equality of the rate.

Mr. SEVERANCE: And that without reference to the cost of the service; that is your position?

Mr. COWAN: No, I do not say so.

The COURT: That is true if you cannot get out of the contract.

Mr. SEVERANCE: No, the Commission takes the position, or counsel takes the position, that this arbitrary relation which he says they had decreed between the one rate and the other, must be maintained irrespective of the cost of performing the service, or the risks attending upon it, and upon that we take issue.

The COURT: Your position is, that you cannot get out of the contract, but if you get out of the contract, then they say you
137 can adjust this so that you will not discriminate, against neighbors or different kinds of business, that is their point.

Mr. SEVERANCE: No, their point is irrespective of whether it costs more money to handle live stock than it does packing house products, leaving out the question of the contract entirely, they say as a complete proposition they will absolutely ignore the question of whether one is more expensive, more hazardous than another, and we have got to maintain the same relation. We say that is not a legal conclusion, that is not the law.

The COURT: I didn't understand that is their position. You can argue all that when you get to it.

Mr. SEVERANCE: That is exactly what the Commission holds, your Honor, in so many words; they emphasize it.

The COURT: Go ahead.

Mr. BAXTER:

Q. Mr. Crosby, you stated awhile ago that under the rates as existing from time to time various markets have sprung up in the West for cattle and hogs and products. Do I understand you?

A. Yes, sir.

Q. Does the existence of those markets, such as Kansas City, St. Joseph, Atchison, Leavenworth, South Omaha, Nebraska City, Sioux City, St. Paul, South St. Paul—is the existence of those markets an injury or benefit to the people who produce cattle and hogs?
138 A. They are of benefit. The producer can market his live stock nearer home. He does not have to stand the shrinkage that would ensue in consequence of a longer trip to a market five hundred miles further away, for example, and again the difference in price at these markets is not based on the difference in freight rates. For example the Kansas City market is not as much less than the Chicago market for hogs and cattle as the difference in the

freight rate. The same thing is true of Omaha or the market at St. Paul.

Q. What is it based on, then, the difference in prices offered at the different markets?

A. Why, it is the law of supply and demand, to the extent that they want the business they pay for it to attract it to their particular market.

The COURT: If there were more bidders in Chicago, you think the market would be better in Chicago than Kansas City, is that the idea?

A. Well, if they need cattle here stronger than they do at Kansas City, they will pay the price to bring it here.

Q. You think it is based on competition, do you?

A. Yes, sir.

Mr. BAXTER:

Q. On that point, is it not a fact that certain firms who own the packing houses in Chicago also own them on the Missouri
139 River?

A. Yes, sir.

Q. Then, so far as the competition at Chicago is concerned, it would be a man operating in Chicago competing with himself operating on the Missouri River, is that it?

A. Yes.

The COURT: Well, not alone, there may be more competition, there may be importers in here, or exporters in here.

A. I should modify that some.

The COURT: And there might not at Kansas City.

A. At all these markets, that is, the Missouri River market as well as Chicago, there are speculators as well as exporters who buy live stock, for speculation. They buy it for shipment and hold over and sell it. For example they may think the market tomorrow for cattle will be higher than it is today and they will buy on speculation an- hold until tomorrow and see if they can make a profit on it. Then again, even with the packer in Kansas City and Chicago, the same man is desirous for some particular business at Kansas City that may cause him to pay a price in competition with himself at Chicago, to get what he wants in Kansas City.

Q. Is it true that all of the packing house products manufactured on the Missouri River come to Chicago eventually?

A. No, sir.

140 Q. Where do the balance of them go that do not come to Chicago?

A. It goes all over the world you might say.

Q. Does any of it go for export through the Gulf ports?

A. Yes, sir.

Q. Does any of it move on direct rail lines via St. Louis and that line of communication down in to the Southeast?

A. Yes, sir, it goes all over the United States, and you might say the world. It is exported from the Atlantic, through the Gulf, and through the Pacific ports. It is shipped to almost every point

of consumption in the United States, a great many of them at least.

Q. Are there any importers who do business on the Missouri River?

A. Why, exporters of products, do you mean?

Q. Yes.

A. Well, all these packers export, the Missouri River packer as well as the Chicago man, in competition with either themselves or each other.

Q. Are there any exporters on the Missouri River other than the packing house people?

A. Of the product?

Q. Yes.

A. Not that I know of, no, sir.

Q. State what terminal or switching charges are paid by your Company on packing house products and fresh meats at St. Paul and at Missouri River points.

141 A. At St. Paul we pay $2.50 per car switching, at South Omaha $2.

Mr. SEVERANCE: On products or live stock?

A. This is the product, is it not? Isn't that the inquiry?

Mr. BAXTER:

Q. Yes, packing house products and fresh meats?

A. St. Paul, $2.50 a car; South Omaha $2.; St. Joseph, $1.50; Kansas City, $3. We pay nothing at Nebraska City, we reach the packing houses direct with our own rails. We pay at Kansas City because we do not, and the same thing is true of the other points named.

Q. Are the same terminal switching charges paid by your company on cattle and hogs coming from West of Missouri River to St. Paul and the Missouri River points?

A. No, sir, the charge on live stock is different. At South Omaha, for example, we pay fifty cents a car for switching, and fifty cents a car for unloading, the expense is therefore one dollar. At Kansas City we deliver live stock to the yards ourselves, perform that service, and we pay fifty cents per car for unloading. At St. Paul we pay $2.50 per car except on range cattle, where we pay a dollar per car, where the minimum charge of ten dollars for handling less than ten cars of range cattle is made. At St. Joseph the charge is $1.00 per car.

142 Q. Will you please file a statement as No. 7 to your testimony showing the number of cars of packing house products and fresh meat received by your Company during the year ending June 30th, 1905, from St. Paul and each of the Missouri River points?

A. I will.

(Witness here produced a statement which was marked "Crosby's Exhibit No. 7." and filed with the Court.)

A recess was here taken until 2 o'clock of the same day, September 18th, 1905.

142½ EXHIBIT No. 7.

Total number of cars of packing house products and fresh meats from the Missouri River and St. Paul for the year ending with June 30, 1905:

St. Paul	118
Omaha	9,621
Kansas City	9,906
St. Joseph	12,593
Total	32,238

143 SEPTEMBER 18TH, 1905.—2 o'clock.

Court met pursuant to adjournment.
Counsel were present same as before.

Whereupon GEORGE H. CROSBY, resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. Did I ask before adjournment for statement number seven showing the number of packing house products and fresh meats received by your company during the year ending June 30th, 1905, for St. Paul and east of Missouri River points?

A. Yes, sir.

Q. Explain the nature of the contract made by the Chicago & Great Western Railway with the Missouri River packers and state what its effects have been upon the business obtained by the other railways on packing house products from St. Paul and other points for the Missouri River and east?

Mr. COWAN: I object to the explanation of the contract.

Mr. BAXTER: Explain the effect of that contract. The contract is referred to in the opinion of the commission in this case and we have not the contract.

The COURT: Was it in evidence before the Commission?

144 Mr. BAXTER: I assume that it was because they state the substance and effect of it.

Mr. COWAN: The contract was not made a part of the record and Mr. Stickney objected to it on that ground. The complainants asked for the contract and never got it and that is the reason that it is not in the record.

Mr. BAXTER: Well, I will ask you this question. We have not the contract and cannot get it. Can the railways other than the Chicago & Great Western Railway, for any reason increase the rates on packing house products and fresh meats from the Missouri River to Chicago?

A. No sir, not if they want to engage in the business.

The COURT:

Q. Why?

A. Because there is a contract with these roads in effect, 20 cents from the Missouri River to Chicago.

Q. A contract on the part of the Western Company alone?
A. Yes sir.
Q. Why can't the other companies go ahead?
A. Well, we cannot handle business between the Missouri River and Chicago at a higher rate than our competitors do.
Q. Because when one company acts you all must act?
A. The action of one will regulate that of all.
Q. That is providing you get any business?
A. Yes, of course we can go out of business.

Mr. BAXTER:

Q. I wish you to explain what is meant by local rates on packing house products and fresh meats from Missouri River
145 points to Chicago and what is meant by proportional rates from Missouri River points to Chicago.
A. A local rate applies on a shipment from a packing house in Kansas City to a concern here in Chicago, as a local shipment the rate on which is 20 cents a hundred.
If the shipment is consigned to a point east of the Illinois and Indiana line, the proportional rate of 18½ cents applies and that *is the* 18½ cents is the portion that the line from Kansas City to Chicago expects out of the through rate to the Atlantic seacoast, or some point east of the Indiana and Illinois State line.
Q. What do you mean by local rates and proportional rates from Missouri River points on cattle and hogs?
A. Well, in the case of cattle and hogs the local rate applies on a shipment made locally from the Missouri River point to Chicago, locally. The proportional rate from Missouri River to Chicago applies on business originating west of the Missouri River or beyond and is the proportion that is expected by the line from the Missouri River to Chicago on business originating west of the Missouri River or beyond it.
Q. Do you not also have a proportional rate where the live stock originates beyond the Missouri River and is destined to a point beyond the Indiana and Illinois line?
146 A. Yes, that again is business originating west of the Missouri River destined east of Chicago, for example.
Q. I wish you to state whether said proportional rates operate in favor of or against Chicago, and explain why.
A. I do not think they have any effect on the Chicago market except in this regard: the proportional rates applying from the Mississippi River to Chicago, on business originating west of that, it will make a less rate than a combination of the local rates, and to that extent it will be a benefit.
Q. A benefit to whom?
A. If you did not have a proportional rate from Kansas City to Chicago, the local rate would apply on any business originating west. Having one, it makes a less rate on that combination.
Q. And Chicago gets the benefit of that?
A. Chicago gets the benefit of that, yes sir.
The COURT: As far as the business which originates west of Kansas City is concerned, only?

A. Yes sir.

Mr. BAXTER: Name the lines, if any, which actively and effectively compete for the transportation of live cattle and hogs from Kansas City to Chicago?

A. The Chicago, Burlington & Quincy, the Chicago & Alton, the Atchison, Topeka and Santa Fe, Chicago, Milwaukee & St. Paul, Chicago, Rock Island & Pacific, Chicago & Great Western,
147 and the Wabash.

Q. Name the lines, if any, which actively and effectively compete for the transportation of live cattle and hogs from St. Joseph, Missouri, to Chicago?

A. The C., B. & Q., the Rock Island, the Great Western and the Santa Fe.

Q. Did you mention the Chicago & Alton?

A. Well, they would not compete directly for live stock. A line could be formed by way of Kansas City in connection with the Alton Road.

Q. Name the lines, if any, which actively and effectively compete for the transportation of live cattle and hogs from Atchison, Kansas, to Chicago?

A. The same lines as from St. Joe, with the possible exception of the Great Western; they don't run into Atchison, but they could form a line.

Q. Name the lines which compete from Leavenworth, Kansas, to Chicago?

A. The C., B. & Q., the Rock Island, the Santa Fe and the Great Western, and a combination could be made by way of Kansas City with any of the lines that reach from Kansas City to Chicago.

Q. Name the lines which compete for transportation of cattle and hogs from Council Bluffs to Chicago?

A. The Burlington, the Milwaukee, the North Western, the Great Western, the Rock Island, the Illinois Central.

148 Q. Name the lines which compete from Omaha, Nebraska, to Chicago?

A. The same lines.

Q. Name the lines which compete from South Omaha to Chicago?

A. The same.

Q. Name the lines which compete from Nebraska City?

A. The Burlington has a direct line from Nebraska City to Chicago. The competition is mostly between a road which can form a line by combination with any railroad from Omaha to Chicago.

Q. Name the lines which compete from Sioux City, Iowa?

A. The North Western, the Milwaukee and the Illinois Central.

Q. Name the lines which compete from St. Paul, Minnesota, to Chicago?

A. The Burlington, the North Western, the Milwaukee, the Rock Island, the Great Western and the Wisconsin Central.

Q. Name the lines which compete from South St. Paul to Chicago?

A. The same.

Q. State the population of Kansas City, St. Joseph, Atchison,

Leavenworth, Council Bluffs, Omaha, Nebraska City, Sioux City, and St. Paul respectively, as shown by the last United States census?

A. The census report for 1900 gave the following:

Kansas City	163,752
St. Joseph	102,979
149 Atchison	15,722
Leavenworth	20,735
Council Bluffs	25,802
Omaha	102,555
Nebraska City	7,380
Sioux City	33,111
St Paul	163,065

Q. State the distance to Chicago from Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Nebraska City, Sioux City and St. Paul, respectively?

A. Well, do you refer to the short line distances or our distances?

Q. Either or both.

A. The distance by the Burlington line between Chicago and Kansas City is 488 miles, short line is 458.

Mr. COWAN:

Q. On what road?

A. Atchison, Topeka and Santa Fe. St. Joseph, 470 miles, Atchison, 491 miles, Leavenworth 510 miles (the short line is 498, that is the Santa Fe again). Council Bluffs 492, short line 486. Omaha 496, short line 490, Nebraska City 496. Sioux City 509. St. Paul, Minnesota, 431, short line 409.

Mr. BAXTER:

Q. State which of these cities are located on the Missouri River and which of them on the Mississippi River?

150 A. With the exception of St. Paul they are all on the Missouri River.

Q. Are the local rates for live cattle and hogs, to Chicago the same from all Missouri River points?

A. No sir, the Sioux City rate on cattle is 25 cents a hundred as I recollect it.

Q. With that exception are they the same?

A. How is that, sir?

Q. With that one exception are the local rates the same from all of those points to Chicago?

A. Yes sir.

Q. What has caused the rate on live cattle and hogs to Chicago to be the same from all points on the Missouri River except the cattle rate from Sioux City, notwithstanding said points differ in distance to Chicago?

A. Well, the Missouri River was made a dividing line before the railroads were built to the river. As the railroads were built, roads from the east terminated at the Missouri River. Then railroads were

constructed west and through rates were made on a combination of the rates to the river and from the river east.

As the railroads increased in the western territory, railroads were built from Omaha, for example, that competed in territory with Kansas City and *vice versa*. The railroads were run in territory tributary to Omaha by one railroad that might not reach Omaha at all. They would naturally force a rate through their Mis-
151 souri River crossing in combination with a road above. All these Missouri River towns to a greater or less extent draw from the same territory and it is practically impossible to have, especially with what we term the lower Missouri River points, to have a different schedule of rates from one point than another.

Q. Do the local rates on live stock and hogs to Chicago from any point between St. Paul or the Missouri River, on one end, and Chicago on the other, exceed the local rates to Chicago from St. Paul or the Missouri River?

A. No sir.

A VOICE: Mr. Crosby, do you know what the rate into South Omaha on live cattle and hogs is from say a point say 75 miles east of the Missouri River?

A. No, I could not tell you that off hand.

Q. Well, do you know what it would be 100 miles east of the river?

A. Not to give you the exact figures, no.

Q. Or 125?

A. No.

Q. Could you, if you were here tomorrow morning, if your testimony is not concluded this afternoon, be prepared to state that?

A. Yes, I can give you that information very readily.

Q. Then I guess I will defer what questions I want to ask till Mr. Crosby is prepared to answer them.

152 Cross-examination by MR. COWAN:

Q. The rates which apply to South Omaha from interior points in Iowa are the Iowa Commission rates to Council Bluffs plus the bridge charge, are they not?

A. They are in some instances, and in other instances they are not.

Q. What is the basis of the rate to Omaha, South Omaha, from the Iowa points?

A. My recollection of the basis of the rates that we have in effect there is that we use the Iowa Distance Tariff to Pacific Junction concerning the minimum distance and add the bridge charge to that. That does not have exactly the same effect of making the combination to Council Bluffs with the bridge toll added.

Q. In other words, to ascertain what the rate would be from any Iowa point to Omaha, it would be safe to take the Iowa Distance Tariff, where that is in effect on a railroad, to Council Bluffs and add to it the bridge toll?

A. I say that is the general rule, but we happen to make an ex-

ception in our business. We do not haul that business by way of Council Bluffs.

Q. You haul it by way of Pacific Junction?

A. Yes sir.

Q. Do you have a rate from Pacific Junction to South Omaha or do you simply charge bridge toll from there?

153 A. Our basis is the Distance Tariff to Pacific Junction plus the bridge toll.

Q. If the Iowa Distance Tariff were to be reduced, that would make a corresponding reduction in your rates to South Omaha, or, if that was advanced it would make a corresponding advance?

A. Yes, it would work either way, that is it would be possible to change those rates by a change in the Iowa Distance Tariff.

Q. Now, what amount of business moves under those rates to South Omaha?

A. What is that?

Q. What amount of business moves under those rates to South Omaha?

A. Well, there is a considerable *distance* that moves. I cannot tell you what it is as compared with the whole but there is a constant movement of business from Iowa points to Omaha and various packing points on the Missouri River.

Q. Has that business been increasing or diminishing in recent years?

A. Well, I think it has been on the increase.

Q. Do you know whether or not the relative amount of the live stock shipments in a zone 150 miles wide this side of the Missouri River, which is shipped to the Missouri River towns or to Chicago, whether there is a greater or less propo-tion of it moving to either one place or the other than there formerly did?

154 A. Well, I could not give you any adequate idea of that. Where it goes to depends entirely upon the condition of the market. I have seen the stuff moved from Iowa to the Missouri River markets where there was scarcely any difference in the rate between that point and Chicago.

Q. What are the factors which, in your experience and observation and judgment formed from your years of experience, which determine where the live stock will go for slaughter? What are the factors which to your mind operate to change or to direct the course of the traffic?

A. Well, the condition of the market at these various places seems to be one of the principal factors. I have talked with men in my experience in the past in regard to handling live stock to these various Missouri River markets, where they have seemed to have a prejudice in favor of some particular market or against it, although the people who operated in that market will claim that it is just as good a market as there is any where and other people will claim it is not. It seems to be more or less a matter of prejudice, although I should imagine it would be more a question of the price.

Q. Does the rate of freight have anything to do with directing the course of the traffic?

A. Well, that is another question that is open. The prices, you can take them any day at the Missouri River markets
155 and compare them with those in Chicago and they do not depend on the difference in the freight rate apparently. The freight rate may show a difference of 20 or 15 cents, yet the market may be five, or ten or fifteen.

Q. And the difference in the freight rate may make a difference to the men because they come from points where the balance of the through rate is different by two or three cents a hundred?

A. That may be but we don't as a rule handle business, or we handle very little of it under what is termed the balance of the rate.

Q. I did not catch that.

A. I don't think that there is but a very small portion of the business handled under the balance of the rate.

Q. All the business that you bring into Omaha, which you carry on to Chicago you move on the balance of the rate, don't you?

A. Well, you do and you don't. For example, the rate on cattle from Hastings, Nebraska, to Chicago is 34½ cents and the rate from Hastings to South Omaha is 14½. A man can have the privilege of consigning live stock to Chicago and taking the privilege of the Omaha market. He starts it from Hastings consigned to "John Smith, Chicago, stop at South Omaha."

He unloads the live stock at South Omaha and if the market suits him, the stock is sold, and he pays a rate of 14½ cents
156 per hundred, and it is delivered there as marked in the consignment. If he wants to go on to Chicago, the original way bill from Hastings follows the shipment to Chicago and the charge is collected here of 34½ cents. The difference is 20 cents.

Q. Well, take a shipment from Denver or from points that take the Colorado rate over your road to Omaha, your rate is 32 cents?

A. I have forgotten whether it is 33 or 34.

Q. The rate to Chicago is 49 cents so far as the through rate—that would be 16?

A. If those figures are correct that is the balance.

Q. Isn't it a fact that practically all of the western country, practically all of Colorado, that the difference in the rate is on the Colorado common point rate—the balance is 16 cents?

A. It varies all the way from 20 down to 12.

Q. Your balance of the 12 cent rate then, that is from the Black Hills territory?

A. Yes.

Q. You ship from the Black Hills territory to Chicago and it does not have to move by Omaha?

A. No, sir, all this business that wants to come to Chicago has to go via Omaha. We don't attempt to force it that way but if it goes via Omaha when consigned to Chicago, it is at the option of the shipper.

Q. What is the direction of your live stock traffic out of
157 the Missouri River? Do you ship to markets to slaughter, west bound from the Missouri River?

A. No sir, the only business we have west bound from the Missouri River is stock cattle going into feed lots.

Q. What is the direction of the principal traffic in live stock products and dressed meats from Missouri River points?

A. Well, that is east bound and south bound. The largest percentage of it moves east, I think, so far as we are concerned at least.

Q. To what territory do these shipments go? You are shipping out of Omaha ten or twenty cars of dressed meats, and to what destination principally does that move, to points east of the Mississippi River?

A. Yes, I think most of it is for the territory east, that is of the live stock products.

Q. Have you records or statements showing the amount of packing house products and dressed meats which you shipped from Missouri River points which pass through the Mississippi gateway?

A. That is that our railroad has handled, or the total?

Q. Yes, say that your railroad handles or any other railroad if you happen to have it?

A. From south western Missouri River points for the year 1905 there were shipped to and through the Mississippi River gateway 808,067 of fresh meat and packing house products.

158 Q. Are the two separated in the figures there, the packing house products from the dressed meat?

A. Yes.

—. How much of each?

A. Fresh meat 458,221, packing house product 349,846.

Q. Have you the number respectively of car loads of each in the figures before you?

A. No sir, I have not.

Q. Now, is that statement the shipments over your road?

A. That includes all the roads reaching from southern points to the Mississippi River and beyond.

Q. Taking in Sioux City?

A. No sir.

Q. You denominate from St. Joseph down the river to Kansas City, inclusive, as southwestern points?

A. Yes sir.

Q. Have you a statement of the shipments from Omaha, Nebraska City and Sioux City, through the Mississippi River gateway?

A. Omaha, for that period 198,708 tons of fresh meat; 172,537 tons of packing house products. Sioux City 29,308 tons of fresh meat, 42,554 tons of packing house products.

Q. For what year now was that?

A. That is the fiscal year ending June 30th, 1905.

Q. Do you know whether that represents a large increase since this case was heard before the Inter State Commerce Commission, in

the shape of packing house products and dressed meats east bound through the Mississippi River gateway?

159 A. The best way to answer that is to give you the comparative figures.

Q. Well, please do that, produce the figures that you have there.

A. Southwestern Missouri River points for 1904, the fiscal year, the shipments were 453,357 tons of fresh meat and that is a falling off of practically 8,000 tons; packing house products 325,085 a falling off of 24,759 tons.

Q. Now for the previous years to '04.

A. Well, 1903 fresh meat from southwestern Missouri River points 436,385 tons; packing house products 278,009.

Q. How much for the year previous, have you got 1902?

A. No sir, I have not, I don't go back of 1903.

Q. Where are these statistics kept?

A. Those figures were compiled in Mr. Mahoney's office. He has a record of the business that moves from these points to and through the Mississippi River.

Q. Have you had occasion to reduce it to car loads?

A. No sir, I have not.

Q. On what basis would you reduce that to car loads, packing house products and dressed meats?

A. Well, our figures as furnished to me by our auditor show the loading of fresh meat that we handled for the fiscal year ending June 30th, 1905, it shows that we averaged 12.3 tons to the car for fresh meat. On packing house products 16.2. Taking those fig-

160 ures as a guide I would feel warranted in dividing this tonnage by those figures per car to get the result.

Q. Now I was careless enough not to notice the date that those figures covered for the averages on your road in the car load.

A. The fiscal year ending June 30th, 1905.

Q. Do you know whether that was greater or less than the general average or have you any reason to suppose that it is greater or less?

A. Well, I think heretofore we have considered the fresh meat shipments to be about 11 tons to the car, that is my recollection, and the packing house products about 15.

Q. The loading during that year happened to be heavier than it was the year previous?

A. It seems to have been.

Q. Do you know any reason for that?

A. I do not unless it was the possibility of the shortage of cars requiring them to be loaded heavier. That is one method of making up for a shortage of equipment.

Q. Does that have that effect in the business?

A. I think it has, yes sir.

Q. Now, you stated in your testimony that you had taken the average of the loading of cattle per car load and that showed 23,000 pounds per 36 foot car. Possibly you said 23,000 and a fraction. Was that estimate made by taking the total tonnage and dividing it by the total number of car loads?

161 A. For the year 1905 we handled 791,981 tons of cattle and they were loaded in 68,738 cars.

Q. What year was that?

A. 1905. The average is 11½ tons, using those as factors.

Q. Now, if you do estimate on the basis that the compensation was always paid up to the minimum, it would make the amount of cattle paid on in the car load, somewhat greater than those figures would show?

A. I don't quite catch that.

Q. Well, there were some cars in that 700,000 tons, there were some cars that would load less than 22,000?

A. In all probability because this represents tonnage on which we collected the charges.

Q. So it did not embrace then the actual rate but it embraced the tonnage on which the freight was paid?

A. Well, that was the minimum, 22,000 for a 36 foot car. That is what we charged for whether there is that weight in the car or not, and therefore in computing the weight of 22,000 pounds, that is the minimum even in case the actual weight was any greater.

Q. Now have you in your mind, or any figures before you which will show what percentage of the total output of the packing houses on the Missouri River is shipped east bound through the Mississippi River gateway and what percentage is disposed of otherwise?

A. I could not answer that question.

162 Q. Do you know of any records to which resort can be had to show the total receipts of the railways at the Missouri River for packing house products and dressed meat?

A. That is what the railroads have received from the packing houses there?

Q. Per annum?

A. The only way you could get at that would be to get it from each individual road.

Q. How much did your road receive at the Missouri River, at the different points and what proportion thereof did you carry through the Mississippi River gateway?

A. I think I have some figures on that but I am not quite sure. You asked me a while ago if I had any information as to the number of cars we handled, or was that question as to the number of cars handled by all the roads?

Q. Well, I had both in my mind.

A. I have the number of cars that we handled but I have not the number of cars for others. For example, out at Kansas City for the year ending June 30th, 1904-1905, we handled 446 cars of packing house products and fresh meats destined to the south. We had 8311 destined to the east. Now then, as far as the cars—so far as we were concerned, these would pass through the Mississippi River because that is our route to the south, that would be through the St. Louis gateway and so would also these 8311 cars so far as our railroad is concerned, there is 12,757 cars of packing house products and

163 fresh meats from Kansas City which we handled through the Mississippi River gateways.

Q. What was the total number received by you at the Missouri River or at Kansas City?

A. At Kansas City that was 9916 cars for that year

Q. Over 90 per cent. of it so far as you are concerned passed through the Mississippi River gate way, that you received in Kansas City?

A. Practically that.

Q. Now, at Omaha, from which place you have a line reaching to the Pacific Coast, can you give us the figures there, the proportion of the total receipts that passed through the Mississippi River gateway and what proportion did not?

A. I cannot divide that so well at Omaha as I could at Kansas City because from Omaha to the south and southeast we have two outlets; one through the St. Louis gateway and the other through Kansas City. We had out of Omaha for the last year, that is the fiscal year ending June 30th, 1905, 3783 of packing house products and fresh meat to the south. Probably 85 per cent. of that passed through the Mississippi River gateway. In the case of Kansas City the only outlet we would have would be through the Mississipi River crossing but at Omaha we have got two.

Q. What were your total receipts at Omaha?

A. 9621 cars.

164 Q. What amount of that went west on the B. & M. line?

A. 1960.

Q. So there would be something like 80 per cent. of your total output that would move probably through the Mississippi gateways?

A. Yes sir.

Q. And 20 per cent. for the other points?

A. Yes sir.

Q. Now, is it a fact or not that a large amount of dressed meat and packing house products which goes to towns in Minnesota would move from Missouri River points rather than from Chicago?

A. Well, there is quite a movement from Missouri River towns, but I don't know to what extent the Missouri River towns supply that trade.

Q. Does your road haul any packing house product and dressed meat to St. Paul from Chicago?

A. Yes sir. From Kansas City we do, Kansas City and St. Joseph.

Q. You don't haul any from Chicago to St. Paul?

A. Well, I could not answer that question, I don't know.

Q. Considering that the rate of freight from Chicago to St. Paul is 27 cents and 20 cents from the Missouri River points, it would naturally move from the Missouri River to St. Paul instead of from Chicago?

A. Well, I would naturally say that it would, yes. There

165 might be some special conditions though that would change that.

Q. Now, Mr. Crosby, would any one be able to determine to what extent the market conditions, the conditions of the crops and the feeding for the production of meats and the condition of the ranges

and the relative rate adjustment, would any person be able to determine to what extent either one of those factors would affect the direction of the traffic and its movement?

A. Well, I think they would all have more or less effect on it.

Q. How can any one—can any one determine to what extent a particular factor would affect it, could he?

A. Well, one particular factor that would affect the price I think, without any question is that if there were more cattle offered for sale than anybody wanted, I think it would have a very material effect on the price.

Q. You did not quite understand my question. Here are a number of markets on the Missouri River to which live stock moves from various points and likewise to Chicago and St. Paul. Now it has a tendency to move to one market or the other and would any one be able to tell to what extent the various factors I have mentioned would create that tendency of the movement in one direction or the other?

A. Well, I think they all have some relation to each other.

Q. The rate which the packers can receive on the products which they ship out from the Missouri River would affect their
166 ability to supply the markets in the east as compared to their supplying them from Chicago, just in proportion to the freight rate, would it not, Mr. Crosby?

A. Well, I don't know about that. If Chicago drew all of its supplies from the same territory that Missouri River did I think that that would put a different construction on things, but Chicago does not depend on the Trans-Missouri territory for its supply wholly. It is only one of the factors.

Q. The lower the rate of freight, the greater the opportunity to supply a given market to which that rate applies, would not that be the case?

A. Well, the lower the freight rate the less the cost, there is no question about that. If you could get a rate from the Missouri River that was better in proportion to anything that they had in Chicago, it would undoubtedly have its influence as to where they would ship their stock.

Q. In determining whether or not the cost could be more perfectly—well, we will take this for an example. In determining whether or not hogs might be more profitably shipped to Chicago and slaughtered, we will say from Fort Dodge, Iowa, or shipped to a Missouri River market, where the product would finally be sold at Cincinnati, that would depend on the total cost of the transportation, from where the stock was fattened, to the one market
167 or the other, wouldn't it?

A. I don't know. I don't think when a man buys a hog in Chicago or at the Missouri River he knows whether he is going to ship it to Cincinnati or New York or any other place. Take any place at all, I don't think the packer when he buys a hog knows what he is going to do with the product and he don't figure on what the market is.

Q. If he can ship it five cents a hundred pounds cheaper from the

Missouri River than the hog man can ship his hogs, the tendency would be to direct the traffic to the Missouri River in the live stock and the product out, would it not?

A. I don't know that that would follow, no.

Q. Do you know any place in the country where the packing house product and the dressed meat rate is lower than the live stock rate, except the adjustment between Missouri River points and Chicago and St. Paul and Chicago?

A. Right off hand I don't recollect. I thought I had some figures here that indicated that but I don't know that I can find it, no sir.

Q. Is it not a fact that the published rates from Missouri River to Chicago, up to the year 1902, for many years, did not show a lower rate on the packing house products and dressed meat than on the live stock?

A. The local rate you mean?

Q. Well, these rates that are complained of here, yes, the local rate?

168 A. I have not got those figures fixed in my mind. I would not like to say either yes or no for that reason. I have not charged my mind with it at all.

Q. The tariffs on file with the Commission would be the best evidence?

A. Certainly, they speak for themselves.

Q. What does it cost to haul a car load of cattle from the Missouri River to Chicago?

A. Well, I cannot answer that question, I don't know. It depends entirely upon the conditions and the circumstances under which it is transported.

Q. What does it cost to haul a car load of fresh meat or packing house product?

A. It is the same proposition exactly. It is all owing to the conditions and the circumstances under which it is transported as to what the cost is.

The COURT:

Q. Is there any way of getting at that approximately?

A. Not till after the transaction is over with. If you hitch on to a car at the Missouri River, or a train of cars and pull them to Chicago, you could tell what it cost to do that.

Q. Well, judging from your records and from what you know about it in the past, can you answer the question?

A. I could not off hand answer it because the conditions that prevail today may not prevail tomorrow.

Q. What has it cost?

169 A. I could not answer that question.

Q. Can you hunt it up and find it out?

A. I don't know whether we have records that show that or not. If we have, I take it the information will be given.

Q. How do you get your basis for making charges if you don't know what it costs?

A. We assessed our charges based on what competition would

permit us to get. We could not make our charges on the basis of what it cost.

Q. That is you charge all the traffic will stand, is that the idea?

A. Well, we charge what we can get.

Q. That is the same thing.

A. Considering the circumstances. The competition fixes it. We cannot make our rates independent of other people; they fix the rates for us.

Mr. COWAN:

Q. Mr. Crosby, I will ask you if it is not a fact that traffic men generally hold to the opinion that they can not determine what it costs to move a given car load or train load of a given commodity?

A. Yes, you can not tell.

Q. You answered in the affirmative, did you, to that question?

A. Yes.

Q. And that grows out of the fact that no two different trains or two cars are handled in precisely the same way or under the same circumstances, does it not?

A. We had a train the other day of freight that went into
170 the ditch and wrecked about fifteen car loads of freight. It cost us probably over $15,000 or will before we get through with it. We do not know when that is going to occur again. It may never occur again but that is an element of cost that we do not know anything about.

Q. Taking the total operating expenses and dividing that by the total train mileage comes as nearly furnishing you with the average of what it costs per train mile as any other way you can get at it?

A. That is what it has cost, yes.

Q. You cannot tell for certain that that is going to be the rule for the future?

A. No, sir, we cannot tell, the volume of traffic would have an effect upon it and what it cost depends on that as well as on the other expenses actually laid out.

Q. The increase in the volume of traffic, that is to say the density of it, the number of car miles per mile of road, or number of car loads per mile of road, the tonnage or train loads per mile are all facts which affect the cost per unit, that is per car or per train in the transportation service, does it not?

A. Yes sir.

Q. As the density of the traffic increases, the expense per unit of that traffic is decreased?

A. It ought to be.

Q. That is assuming that your operating expenses remain
171 the same or on the same ratio?

A. There may be some other expense to take the place of that, an increase in something.

Q. What does it cost your road per train mile on an average for hauling a freight train or all kinds of trains if you estimate it that way?

A. Our annual report, I believe, gives that information. I don't recall what the figures are.

Q. Have you a copy of the annual report?

A. Not here, no sir.

Q. I wish you would kindly furnish those figures from the annual report if you can.

A. That is the cost per train mile?

Q. Instead of doing that I want to read you some figures and ask you to verify them from your annual report in your auditor's office or in your own office and ascertain if they are correctly made out. In the Cattle Raisers' case where the cattle rates from the west were in controversy I made up from the annual reports of the different roads filed with the Inter State Commerce Commission or I had made up by the auditor's office the following statement which I will ask you to verify and I will hand you the brief which contains it.

Average load of cars per train for the year 1898, 16.

For the year 1904, 18.

172 Average number of empty cars per train for the year 1898, 6.

For the year 1904, 7.

Average tons per train mile, for 1898, 104 tons.

For 1904, 284 tons.

Tons per loaded car mile for the year 1898, 10.

For 1904, 15.

Revenue per ton mile for the year 1898, 9.84 mills.

For the year 1904, 8.58 mills.

Percentage of empty cars to the total car mileage for the year 1898, 28.37 per cent.

For the year 1904, 28.54 per cent.

Freight earnings per train mile for the year 1898, 1.60.

For 1904, 2.44.

In cents per car mile, earnings for 1898, 9.64.

For 1904, 12.87.

Now, if you have a copy of my brief in that case, those figures appear in table A 1 in the back of the brief opposite C. B. & Q. Railroad.

A. What is the number of the page?

Q. It is not paged but it is an appendix to the brief and is table A 1. I wish you would kindly look and see if you can verify those figures and of course if you can get at it for any intermediate years you can do that.

A. If I am able to get that information, where do I file it?

Q. What is it?

173 A. If I am able to get that information shall I appear with it in court or file it?

Q. Possibly you may have to return. I don't want to put you to any trouble except to file it as a part of your statement if you verify that information. It was taken by the auditor of the Commission from your annual report and furnished to me in the shape that I put it in there and I suppose it is correct. Is it not a fact, Mr.

Crosby, that the number of car loads in trains carrying both live stock and packing house products has increased in recent years?

A. Well, we have increased the capacity of our power and we are able to handle more business. It has increased for that reason. If we had the same engines now that we had in olden times we would not be able to haul any more than we did then.

Q. Are you able to state whether or not you haul a heavier train, that is to say more loaded cars in trains handling live stock than in a train in which you carry packing house products and dressed meat?

A. That is a question that I think our operating people can better answer than I can. It is a matter I have not charged myself with and I would not ordinarily be charged with it. I get the business. It is their business to get it over the railroads.

Q. By the operating department do you mean the general managers and superintendents of transportation?

A. Yes sir.

174 Q. Was Mr. Delano your general manager at the time this case was up before the Commission?

A. Yes, of the lines east of the Missouri River.

Q. He would know better about the relative cost in the performance of the service than you would?

Mr. SEVERANCE: I object.

Mr. COWAN: He said the operating department could tell better about it.

The COURT: Objection sustained.

Mr. COWAN:

Q. Do you know as a matter of fact whether it costs you more money or less money per car to handle the live stock which you haul from the Missouri River to Chicago, than the packing house product or the dressed meat which you haul from the Missouri River to Chicago?

A. I don't just know exactly what the difference in cost is.

Q. In answer to Judge Baxter's questions you said that you thought it was more profitable at the same rate, as I understood you and I suppose you meant that, to haul packing house products than it was live animals from the Missouri River to Chicago?

A. I told him that I thought we had more money left, if there was any left at all, meaning if there was any left at all, in handling the packing house product and fresh meat than the live stock.

175 The packing house products and fresh meats come to us practically an unknown quantity. We can handle it on schedule trains and we still do the balance of our business without interference, in handling it.

The live stock comes to us as a class that calls for special service. It either moves in large quantities or comes to us in train loads from the range or it is picked up by local trains. The business that comes to us at the Missouri River generally comes to us with the request and the demand in fact, that we make fast time from the Missouri River to Chicago. It necessitates our making time that is faster than our schedule trains make, and we have to perform

special service. In order to give special service either to live stock or anything else, regular business has got to step one side for the track has to be kept clear to give it the right of way.

In addition to this we have to go to the extent of providing facilities not only at the starting point but at intermediate points for looking after the live stock. If anything happens we have got to provide a place to feed and water them and sometimes it is practically impossible to do it.

In the case of handling fresh meat or packing house product all we have got to do is to keep it under ice. If it is under ice, the length of time does not cause any extra shrinkage nor claims
176 for damages which is true in the case of live stock where we have all kinds of claims for shrinkage and loss in value and that makes the business very much more expensive. The 28 hour law also makes an additional expense.

Q. What is that?

A. We have to provide yards especially under the 28 hour law where we can unload the cattle and sometimes the enforcement of the law requires additional facilities where the yards as at present established would not take care of the business. The 28 hour law requires us to stop and feed and water the live stock in transit, after they have been in transit.

Q. For how long?

A. Every 28 hours.

177 Mr. DAWES:

Q. How long?

A. Five hours.

Mr. COWAN: That does not apply to amount to anything to the shipment to points on your line intermediate between Missouri River and Chicago?

A. We have had instances where we had to do it, and have shortened up our time practically to get inside of the 28-hour limit.

Q. Isn't it a fact you carried dressed meat and packing house products at as great a rate of speed as you do live stock?

A. If we did, we wouldn't have had to shorten up the time on live stock from the Missouri River to Chicago.

Q. I mean, if it is not a fact, that the facts require you to go that speed?

A. We have no train from Missouri River to Chicago that handles dressed meat in 28 hours.

Q. On what train do you usually move live stock products?

A. We have a train that handles that business that leaves the Missouri River at one o'clock every day.

Q. One o'clock in the afternoon?

A. Yes, sir.

Q. And according to your schedule what time is that train due in Chicago?

A. I think about six o'clock.

The COURT: The next morning?

A. No, sir, the next afternoon, the next night.

178 Mr. COWAN:

Q. What live stock trains do you run from Western Iowa that makes it in any less time?

A. Our live stock trains from Western Iowa do not get the live stock from Western Iowa in solid trains the same as we do from Missouri River, where it comes to us in train loads, all we have to do is to take hold of it and run it to its destination.

Q. I am not disputing that. I am asking you now what live stock trains you run from Western Iowa points which reach Chicago in any quicker time than the packing house product train that leaves the river there at one o'clock?

A. At the present time our train schedule from Western Iowa is entirely different from the packing house train. We aim to make here in the morning and we make the schedule, I don't know exactly what the time is, because I have not charged myself with it, but we have a schedule from Western Iowa that enables a man there to load today, for example, and make his market day after tomorrow. I do not know the exact hours to get that, but between stations I am inclined to think that that train must necessarily run a good deal faster than our meat trains do.

Q. That is, between stations?

A. Yes, sir.

Q. Between what stations?

A. Between the stations where they take the live stock up.

179 Q. But after you have got a train load of the live stock?

A. Well, you may be half or three quarters of the way over the railroad before you have got a train load of it.

Q. Well, in actual practice does it happen that way, Mr. Crosby?

A. Well, I don't know. These stations sometimes get one car, sometimes two, sometimes three, or four or five.

Q. Isn't it a fact that you generally fill out a train in a division?

A. Our operating people can answer that better than I can, because they come right in contact with it.

Q. Isn't it a fact that some year and a half or two years ago there was an extension of the time in the schedules of live stock trains reaching Chicago from Iowa points at six o'clock, so that they were required to load earlier in the day in order to make the following day's market in Chicago, than they formerly did?

A. I believe there was some change in the schedule because they found they were running the trains too fast, they could not undertake to do it, but just what it was, I do not know.

Q. What is the rate of speed at which you reach this market from Missouri River on the average, taking your live stock trains?

A. Well, with a live stock train from Missouri River to Chicago now, we try to make it within, and succeed in making it

180 within the twenty eight hours. If we do not have to stop for anything you can figure what the average is. It would be a little more than 18 miles an hour.

Q. You expect to run twenty miles an hour exclusive of the time at division points changing engines?

A. We expect to make it within that time, make every endeavor to do so.

Q. Isn't that just about 18 to 20 miles an hour for your trains that haul fresh meats and packing house products?

A. No, it is not, because on fresh meats and packing house products to Chicago it does not make so much difference.

Q. You say you leave at one o'clock in the afternoon and get there at six o'clock the second evening. That would make 29 hours instead of 28?

A. About 29 hours, but 28 hours to Chicago, Mr. Cowan, as you know, means a good deal less than 28 hours local schedule. We have got to stick on an hour or two to make delivery here in Chicago.

Q. I know that.

A. We do not have to calculate that in making the run on the product.

Mr. DAWES: Finish your answer.

The COURT: Finish your answer.

Mr. DAWES: Say what actual time you average, or what difference that would make?

181 A. The idea I intended to convey in handling live stock here inside of 28 hours is you would have to make better time than 28 hours because you have to calculate for two hours' time in Chicago, so our running time is less than 28 hours.

Q. Say 26. What about packing house products?

A. In packing house products we make 29 hours or even 30 hours. We do not have to make that for a market. If we do not get it in here until 10 o'clock at night instead of six o'clock, there is no shrinkage, no bill to pay, because they missed the market and haven't disposed of it to the best advantage, and so forth, and expect the railroad company to pay the bill.

Mr. COWAN:

Q. You have got to be prompt with fresh meat, haven't you?

A. But there is not the consequent shrinkage and claims for damages in case we are not. We want to be on time with our dead freight, for that matter.

Q. I wish you would give us a statement to be made, or make it up yourself which you can verify and file to show how much damages you have paid on fresh meat and packing house products covering the year 1905 ending June 30th, shipped from Missouri River points to Chicago, with the total number of cars, and how much damages you paid on live stock shipments from Mis-
182 souri River points east thereof for damages which occurred this side of the Missouri River, and the number of cars.

Mr. DAWES: Is that very important? That is a very difficult undertaking, together with the other little items of information you have asked for.

Mr. COWAN: It is of this importance, Mr. Dawes, that it was claimed on the hearing before the Commission by the representa-

tives of several roads which extend west of the Missouri River that there was substantially no difference in the amount of damage claims paid on one or the other, so far as applies to shipments beyond the Missouri River.

Mr. DAWES: We are trying this case now. If it was claimed here it might become pertinent, but these things which you casually ask for, and in a spirit of all courtesy we desire to furnish you, require a great deal of time and a great deal of money to supply, the time of a great many clerks. If this is very important we will give it to you but there has nothing developed, it seems to me, to require it.

Mr. COWAN: There is nothing of sufficient importance to cause me to give you any trouble. Perhaps Mr. Crosby can answer now.

183 Q. Mr. Crosby, are you prepared to say it is a fact that it costs you more money per car load if averaged by the car loads of live stock for damage claims occurring this side of the Missouri River than it does per car load on the dressed meat and packing house products shipped from the Missouri River to Chicago—are you prepared to testify that it costs more money for damage claims one way than the other?

A. More money in dollars and cents, do you mean?

Q. No, per car?

A. Well, your live stock business is ten times the amount of the other, and if I paid an equal amount of course your packing house product would be entirely out of proportion to the live stock. If I paid a dollar a car on the fresh meat and packing house products, that would only be $9,000, but if I paid a dollar a car on live stock I would be paying thirty or forty or fifty, it don't seem to me that that would give any idea of what you are trying to get at. I could not answer that question because I would have to charge my mind with the amount of money we have paid out, and I do not know.

Q. You are not able to say whether it costs more per car for one than the other as estimated by the car load?

A. No, sir.

Q. Now, with respect to the matter of the terminal charges and the expense of handling dressed meats and packing house products,

184 is it not a fact that it costs you more on the average per car for your dressed meats and packing house products for your terminal and switching charges than it does on your live stock net?

A. Where?

Q. At the terminal switching charges at Missouri River for receiving and delivering at Chicago?

A. Now, you take the Missouri River, for example, at Kansas City, the packing houses are located on the tracks of connecting railroads, other railroads, that are in competition with us for the carrying of that product, and we have to pay their switching charges, and in the case of South Omaha and St. Joseph the packing houses are located on the tracks of railroads operating in the stock yards.

Q. Well, in the case of Nebraska City, that is something that you have to pay?

A. But we have to pay it, competition forces us to pay them.

Q. Whatever it is that forces you to pay it, you have to pay it?

A. Yes, sir, that is a result of competition.

Q. When you come into Chicago how much do you pay in the way of switching charges on the packing house products which you deliver to the Union Stock Yards?

A. I have forgotten exactly what the figure is; I would not venture to say.

Q. It was stated by Mr. Miller before the Interstate Commerce Commission as $2.50?

A. I don't believe the figure has changed any since then.

185 Q. In the case of live stock, you collect back $2. of what you have to pay out?

A. Yes, sir.

Q. In the case of packing house products and dressed meats you pay one cent per mile on the cars moved both ways, do you not?

A. Well, if it is a private car we do. It is not all moved in private cars.

Q. You pay that to the packers, to their car lines, do you not?

A. We pay, where a private car is used, we pay one cent per mile, yes, sir.

Q. Now, in the case of the live stock you pay six mills per mile for the car used?

A. I don't know whether the rate for private cars is six mills. It is on a mileage basis, yes sir.

Q. A mileage basis of six mills. So that the difference you pay for the use of a private car line, the difference would be four dollars per car on the basis of a thousand miles movement from the Missouri River here and return, that would be a thousand miles, it would be six dollars for the live stock car and ten dollars for the packing house products car?

A. Yes, sir.

Q. Since 1901 and 1902 there has been a very substantial increase in the amount of shipments of dressed meats and packing house products eastward from the Missouri, has there not?

A. I believe there has been some increase, the same as there

186 has been increases in live stock. Now, for example, from Omaha in 1902 there was practically ten thousand cars of packing house products shipped. In 1904-5 there is 9600.

Q. Have you got the 1901 there?

A. No, sir, I have not.

The COURT: Just repeat that again.

A. For 1902 and 3 there was practically ten thousand cars shipped; for 1904 and 5, that is the fiscal year of that, 9600. That shows the decrease for this year as compared with it three years ago.

The COURT: That is the way I understood it?

A. Yes, sir.

Mr. COWAN:

Q. How is it as compared with 1901?

A. I haven't got the 1901 figures, Mr. Cowan.

Q. Those figures can all be obtained from Mr. Mahoney, can they not?

A. Yes, sir.

Q. I will not trouble you with it, then. Has there been any increase in shipments of live stock, that is, cattle and hogs from points in Iowa which take the 23½ cent rate and which is scaled down coming eastward to Chicago?

A. I have no figures on that and therefore I am not prepared to answer the question. There is no use of making a guess at it; I don't know whether there has or not.

187 Q. In speaking of export by way of the Gulf, you had reference practically to packing house products and not dressed meats, did *not* not, Mr. Crosby?

A. Yes, sir.

Q. The dressed meat, because of the heat in the Gulf and the unpreparedness of the boats is not so much exported from the Gulf ports?

A. No, I don't think there is any fresh meat.

Q. That is practically all exported through the Atlantic seaboard points?

A. Yes, sir.

Q. What is included in the term "packing house products"?

Q. Box and loose meat, lard, tallow, hides, stearine, oleomargerine, canned meats, bacon, sides and all that.

Mr. COWAN: And the packing house products exported through the Gulf ports is comparatively a very small per cent. of the total, is it not?

A. I think it is. I have never seen any figures on it.

Q. Have you examined the Government reports with respect to it recently?

A. No, sir, I have not.

Q. It appears from an exhibit on file here that it is for the year ending June 30th, 1900, it is one-half of one per cent. exported through New Orleans and Galveston?

A. That is changed, I think, since then considerably.

Q. Are there a greater number of buyers of cattle and hogs which are shipped out of the market at Chicago than there are at Kansas City or Omaha and St. Louis?

188 A. I don't know, Mr. Cowan, I should say in a general way it is true that there is a greater number here, because it is a greater market. There is room for more people, more to be done, consequently more people to do it.

Q. This is a more desirable market from the standpoint of having the wider opportunities in competition and selling than either one of the other markets, is it not?

A. I should imagine it was, yes, sir.

Q. Do you know what per cent. of live stock sold in Chicago market in shipped out?

A. Shipped out, no, sir.

Q. When hogs are sold at Kansas City to be shipped to Cedar Rapids or to points where there are packing house, Ottumwa, perhaps and some others, do they move on a local rate from Kansas City to those points?

A. I do not know that there is anything of that kind done. There is no other way of providing a rate for it than the local rates.

Q. It is a fact, is it not, that feeders when they are bought on the market at Missouri River are shipped out to the feed lots at 75 per cent. of the local beef actual rates?

A. Well, they have two propositions on that. They are shipped out at 75 per cent. of the fat cattle rate, and sometimes they preserve their identity in the billing and take the through rate, to
189 the feeding point.

Q. To the feeding point?

A. Yes, sir.

Q. Is it not a fact that when cattle are shipped from the range country or other points west of the Missouri River through Missouri River, that they are nearly always billed to Chicago from the point of shipment?

A. Yes, sir.

Q. If they are sold at Missouri River the rate paid will be the local rate from point of shipment to the Missouri River?

A. Our rule is if the party wants to try the benefit of the Missouri River market, the Missouri River market is an intermediate point with us, if he thinks he has any idea of going from Chicago with the stuff, to consign to Chicago to start with.

Q. Yes.

A. Then he gets the benefit of the through rate in case he decides to go through.

Q. Suppose it don't go through, but he sells it to somebody who does ship through, do they always get the benefit of the through rate?

A. Well, the transaction so far as the railroad knowledge goes probably does not show any change in ownership, we don't know anything about it.

Q. Well, from a practical standpoint, is it not true that live stock originating west of the River, when it does move on to Chi-
190 cago, moves on a balance of the through rate?

A. Yes, sir, practically so.

Q. Is there any live stock shipped which is re-billed out of the Missouri River to Chicago on the local 23½ cent rate, or the proportional 20 cent rate?

A. Well, there is live stock that moves at the 20 cent rate.

Q. Yes, but is it re-billed on that proportional rate?

A. Yes, sir.

Q. What would be the use of that?

A. Well, there is some live stock originates in some territory where there are no through rates in connection with certain lines via. Kansas City.

Q. That would be a very considerable amount, would it not?

A. Well, I don't know. We are a pretty fair feeder of the Kansas City live stock market and we have no through rates west of the Missouri River via Kansas City to Chicago.

Q. Do you not make through rates in connection with other lines via Kansas City?

A. No, sir.

Q. If I should ship from the Indian Territory, from points on—say Vinita on the M. K. & T.?

A. We have through rates, but I mean our own territory. When I say "our own" I mean the territory the Burlington Road itself serves beyond the Missouri River. We do not publish through rates from that territory by way of Kansas City.

Q. For the reason that would be a very long distance to
191 come around?

A. Yes, sir.

Q. Now, if you shipped down to Kansas City from Denver, say, and the party wanted to ship on to Chicago, would you allow him the Denver to Chicago rate?

A. Via Kansas City?

Q. Yes.

A. I don't think we would get his business Denver to Kansas City, but if we did we would have to put ourselves on a parity with the other roads.

Q. Yes. And that would be to allow the same rate allowed over your road by way of Omaha?

A. Yes, competition would fix it for us.

Q. Are you able to testify that you shipped any live stock at all which is billed on a proportional rate, or the local rate from either Omaha, St. Joseph or Kansas City, to Chicago where it originates west of the Missouri River?

A. Well, there is live stock hauled from Kansas City at the 20 cent rate that originates west of the Missouri River. Via Omaha the entire territory is covered by the system of through rates. There is no proportional rate from Omaha.

Q. The proportional rate is only published in Kansas City?

A. Yes, sir, that is all, and St. Joseph.

Q. Do you say that live stock is shipped on the 20 cent rate from Kansas City?

A. Yes, sir.

Q. But my question was, whether they are rebilled on the
192 proportional rate?

A. The 20 cent rate is the proportional rate as published by us.

Q. That was the balance of the through rate of 20 cents, would be a 20 cent rate. Well, do you ship any on that basis from Kansas City? Are you able to testify that you know that you ship a single car?

A. Well, from my personal knowledge, I have seen billing for cars hauled at 20 cents originating west of there from Missouri River to Chicago, yes.

Q. Well, it is a very small amount of the shipments, is it not?

A. Well, I don't imagine it is any very great per cent.

Q. Isn't it a fact that taking from all the Texas, Indian Territory, Oklahoma Territory and East of New Mexico, that the balance of the rate from Kansas City on to Chicago is on the basis of 16¼ cents?

A. Somewhere in that neighborhood.

Q. There would be no motive on the part of the shipper to pay twenty cents?

A. Not on that basis.

Q. Take Colorado common points territory, and stations in Colorado east thereof, is that not on the basis of 16 cents?

A. It is my recollection the difference in the rate is 16 cents.

Q. With the exception of some stations in Nebraska from which it may move by way of points on the River north of Omaha
193 do you know of any stations where the 20 cent rate applies as the balance of the rate to Chicago over Kansas City?

A. Why, the rate from Hastings, the balance of the rate, is 20 cents, and from Grand Island the balance of it is twenty cents.

Q. I am saying except from places in Nebraska, take the country south of the Nebraska line?

A. Do I know of any points in Kansas for example that the proportion east is 20 cents?

Q. Yes, take New Mexico, Indian Territory, and so forth?

A. I am not familiar with those rates to know what the balances are. I haven't paid any attention to it for years.

Q. The reason I am asking about it is I am in a general way familiar with those tariffs, as you know and I have known no such rate anywhere in the country?

A. I have been, but I am a little bit dull on it now. I could not answer that question.

Q. Now, there is another proportional rate that is shown up in the publication here on live stock originating at Missouri River and destined to points east of the Indiana—Illinois state line. Do you know of any such shipment being made by way of Chicago?

A. Yes, very frequently—not frequently—Eastern packers will go to Missouri River and buy certain classes of hogs and
194 certain classes of cattle that are shipped East sometimes for export where the rates are based on the Missouri River.

Q. But that is live stock that is going to points east of Chicago?

A. Yes, sir.

Q. And that is the proportion of the rates which the road west of Chicago gets out of the total charges?

A. That is the proportion they accept, yes, sir.

Q. Now, are there any through rates on live stock to points east of the Indiana-Illinois state line from the Missouri River?

A. None except the combination. There is no through rates published beyond the Mississippi River or Chicago.

Q. And the rate is made by combination?

A. Combination of the rate either from the Mississippi River or Chicago, whichever would make the less rate.

Q. They are based on Mississippi River or Chicago?

A. Yes, sir.

Q. Whichever would be the cheapest?

A. Yes, sir.

Q. Now, isn't it a fact that in shipment of packing house products and dressed meats from points like Cedar Rapids and other interior packing towns in Iowa, to points in Ohio, Indiana or any other Eastern point that the rate would be made up of the proportional rate from that point to the Mississippi River and the rate
195 from the Mississippi River to the destination?

A. It may be or it may be made on Chicago. I am rather inclined to think that the combination is on Chicago at present.

Q. Well, if it is, it would be because it is as little or less?

A. It is practically to equalize through either gateway, equalize to the Mississippi River or from here.

Q. Do you recall now what the proportional rate is from Cedar Rapids, for example, for shipment to a place like Cincinnati or Indianapolis from the Mississippi River crossing?

A. I do not; the C. B. & Q. is not a Cedar Rapids line.

Q. The Mississippi River basis is five cents a hundred pounds higher than Chicago, is it not?

A. I think that is correct. It is 116 per cent., as I recollect it, Chicago is 100 per cent., represents 100 and Mississippi River is 116.

Q. Now, the proportional rate on dressed meat and packing house products of 18½ cents Missouri River to Chicago, is the rate on which most of the shipments is made, is it not?

A. Either that or 13½ cents to the Mississippi River.

Q. Yes, and that would amount to the same thing if the
196 difference is five cents?

A. Yes, sir, the same thing.

Q. Mr. Crosby, from your examination of the subject and your knowledge of it, what proportion of the shipments of dressed meats and packing house products which you carry from the Missouri River through the Mississippi River gateway are on the basis of the twenty cent rate to Chicago, and what proportion on the basis of the 18½ cent rate or the 13 cents to the Mississippi River?

A. I could not answer that question on anything like an intelligent figure; it is something I never thought about, never took any interest in, never cared to ascertain.

Q. You are satisfied that very much the larger proportion moves on the lower rate?

A. Yes, sir, there is no question about that.

Q. Do you know whether the packing house products and dressed meats put up on the Missouri River are consumed to any considerable extent in the City of Chicago, or does that stuff which comes here go on and finally reach eastern destinations?

A. Oh well, the Cudahy people, for example, have several plants here in Chicago, at which they handle their Missouri River products and I do not think there is a packer that has a house at the Missouri River but what disposes of more or less of his product through
197 retail or wholesale houses that he has here in Chicago. They ship certain classes of meat from Missouri River to their market to be disposed of here.

Q. Well, is that not manipulated somewhat like the live stock business is on the Missouri River, and that they ship out so as to get the benefit of the 18½ cent rate?

A. No, sir.

Q. A great number of those cars go east after unloading them?

A. If they do they pay the twenty cent rate to Chicago. We have nothing to do with that. There is no proposition of that character, milling in transit in packing house products here in Chicago.

Q. To what point do you actually haul cars of packing house products and dressed meats when you come to Chicago with it, passing through Chicago?

A. The bulk of this stuff that moves to the Atlantic seaboard moves through outside junctions; for example, if we have meat that is destined East in connection with the three I road, we make delivery to them at Zearing, Illinois. That is the first station west of Mendota. If it moves in conjunction with the Chicago Junction Railway we bring it to West Grossdale. The through consigned packing house product and dressed meats generally take some outer belt line instead of passing through Chicago.

Q. And that takes a basis of 18½ cent rate to Chicago?

198 A. Yes, sir.

Q. There is no through rate from the Missouri River to the Atlantic seaboard on dressed meats and packing house products?

A. No, the rate is made up by the combination on the Mississippi River rate.

Q. In the same manner as the live stock rate is made up as explained?

A. Yes, sir, in fact we publish no through rates from Missouri River on anything to the Atlantic seaboard.

Q. It is all based on combinations?

A. It is all based on combinations either through the Mississippi River gateway or Chicago.

199 Q. What is the rate on dressed meat and packing house products, Chicago to New York?

A. I have got them right here. Packing house products Chicago to New York is thirty cents, fresh meat forty-five.

Q. What is it on live cattle?

A. 28 cents from Chicago to New York on live cattle.

Q. What is it respectively to Buffalo and Pittsburg from Chicago?

A. I haven't got those figures.

Q. Seventeen cents on the live stock, isn't it?

A. I don't know. I am not prepared to say.

Q. It appears in the record here that the rate on live stock from the vicinity of St. Paul to Chicago is 27 cents a hundred, which makes it twenty-five on live cattle, a distance of 400 miles. You have testified in answer to Judge Baxter that the live stock rates in question were reasonable. Do you claim that that is a reasonable rate, Mr. Crosby, considering the density of traffic and the number of roads?

A. Yes, sir.

Q. Do you know what it costs to haul a carload or a trainload from St. Paul to Chicago?

A. No, sir.

Q. Do you know how much profit there would be in hauling a car load or a train load from St. Paul to Chicago?

A. I couldn't tell if I didn't know what it cost to haul it.

Q. In your opinion as a traffic man ought the rates on dressed meat to be lower than the rates on live stock, which come in
200 competition with that dressed meat?

A. I think the dressed meat rate and the packing house rate ought to be advanced, and should be higher than it is.

Q. My question was do you think, is it your opinion as a traffic man that the rates of freight on dressed meat and packing house product ought to be less than on the livestock which comes in competition with that dressed meat or packing house product?

A. Well, that would depend upon the conditions surrounding the transportation of the commodities.

Q. Well, what facts in your mind would justify a lower rate on the packing house product and dressed meat than on the live stock coming in competition with such product?

A. Competition might force it down so that you couldn't get any more—couldn't get as much.

Q. What competition?

A. Competition between carriers for example.

Q. Ought competition to force it down so that it would be cheaper on the dressed meat and packing house product than on the live stock which comes in competition with it?

A. Well, that is a matter of opinion.

Q. That is what I am asking you for, your opinion?

A. I don't think competition ought to go so far as that.

Q. What is that?

A. I don't think competition should be so severe as that.

Q. In your opinion ought the rates of freight on dressed
201 meat and packing house products be less than on the live stock?

The COURT: Leaving out the question of competition.

Mr. COWAN: I am just leaving it to his opinion. Ought it to be so?

The COURT: He said that would be a matter of competition.

The WITNESS: I answered that question I thought.

Mr. COWAN: He said competition would do it, but I am asking him whether it ought to be so or not.

The COURT: I think he has answered that, that it ought not to be. Now, you are asking the question, leaving out competition, as to what it ought to be. Let him answer it that way.

Mr. COWAN: If the Court please, there must be some way of determining what is a just and proper rate.

The COURT: Well, I am asking him that. Answer that, leaving out the question of competition.

A. That is a question surrounding the transportation of the two commodities, or the three?

Mr. COWAN:

Q. What are the other conditions, besides competition?

A. My idea is that the rate on packing house products such as

fresh beef, ought to be higher than it is to-day between the Missouri River and Chicago, but we can't get any more, and we can't help ourselves.

Q. What about the disparity of rates, leaving out competition?

A. That is one of the conditions under which live stock
202 itself is transported. There might be conditions warranting both having the same rate, or one having a higher rate than the other.

Q. In 1901 the Interstate Commerce Commission held that the rates ought not to be higher on live stock than on the product and the railroads complied with that order and established that basis of rates, which continued in force substantially for many years—continued in force in fact until the change was made that is complained of here. Is it your opinion that that adjustment of rates as it existed at that time is right or not?

A. Well, under the conditions existing at that time we accepted that ruling, or rather adjusted our rates in accordance with that.

Q. And that was according to your judgment?

A. Well, their ideas were followed out. I don't know whether that adjustment was a rate made in consequence of that decision or not. I don't remember when the rates were adjusted on that basis, as a matter of fact.

Q. But you do know that for many years they were the same?

A. Yes.

Q. And the railroads voluntarily published and put in force those rates?

A. Yes, sir.

Q. Now, is it not a fact, Mr. Crosby, that during a portion of that time, beginning back a few years ago, and extending a few years previous to the date of the Great Western contract,
203 which was in 1902, that some of the roads were in the habit of shipping the packing house products and dressed meat on a rebated rate below the published rate?

A. I believe there is some evidence to that effect that has been introduced before the commission, but I want to say that at that particular time I had nothing personally to do with the business east of the Missouri River. I was in charge of the railroad west of the Missouri River, and had nothing to do with the packing house or other products moving east of the Missouri River to Chicago. I was not acquainted with what was going on in that section at all.

Q. With the exception of the fact of the existence of rebates, if it be a fact, and with the exception of the Great Western contract, what factor has made a change in the conditions as they existed previous to that time and as they existed in August, 1902, when these lower rates were put into effect?

A. Well, there is the existence of this Great Western contract.

Q. I say, what other factor besides that, any other one?

A. That brought these rates down to where they are?

Q. Yes; any other competition except that?

A. Well, that was what established this basis of rates today; it

was a matter of competition between the Great Western and all these other routes that stepped in and made this contract.

204 Q. And when you state that you have been unable to get more on account of competition, you mean the competition established by that contract?

A. Yes.

Q. What is the rate to St. Paul generally on classed goods, and commodities, to the Missouri River from Chicago?

A. The first class rate for example between Chicago and St. Paul is sixty cents, but for manufactured merchandise between Chicago and the Missouri River it is 80. There is no fixed relation between the two.

Q. Is it not true that as a general thing the railroads endeavor to adjust them on the basis of St. Paul taking eighty per cent. of the Missouri River rate?

A. No, sir; I don't think so.

Q. How is that?

A. I don't think so, no sir. The St. Paul rates are fixed largely by Lake competition from the east and Chicago.

Q. Isn't it a fact that they are based on about that difference?

A. About eighty per cent. of the Missouri River rate would make their rate 64. Their rate is sixty, I think.

Q. Do you know of any instance in which the St. Paul-Chicago rate is higher than the Missouri River rate, except this rate on hogs and cattle?

A. You mean Chicago to St. Paul *versus* Chicago to Missouri River.

Q. Or St. Paul to Chicago?

A. I don't recall anything; the scale of rates is less.

205 Q. Mr. Crosby, you estimated a loss of revenue of $190,000 or something like that. Was that it?

A. Yes, $196,000.

Q. Upon what do you base your idea that there would be a loss in revenue if you reduced the live stock rate from Western Iowa?

A. It would reduce the rate and would not stimulate the business. There wouldn't be anything to make up the difference. We wouldn't have any increased business; they wouldn't raise any more cattle or hogs or sheep in western Iowa nor would they ship any more to the market, so there wouldn't be anything to take the place of it.

Q. Would they ship any more to Chicago?

A. I don't think they would ship any more or any less.

Q. Is it your opinion then that it would affect the receipts of the St. Paul market if that relation were disturbed, as claimed by Mr. Mills and the Missouri commission?

A. There are certain sections of Iowa that are tributary to St. Paul and Chicago, and if a change was made in the rate from that territory to Chicago undoubtedly a similar demand would be made for a change of rates to St. Paul and Minneapolis. There is a good deal of jealousy between these various markets. All they ask for is fair treatment, but they want the best one.

Q. Isn't it a fact that you assume that you would be losing

revenue to the extent of $196,000 because you assume it
206 would not change the amount of traffic on either of the roads?

A. For example the rate was in effect to-day and there was no change made in the rate to other points, other markets, if there was no increase in the business the loss in revenue would be whatever was taken off the freight rate.

Q. But suppose you increased your shipments to Chicago on a twenty cent. rate, whereas the other would be on a twelve cent rate to Omaha, wouldn't that more than compensate for the difference in the rate in the actual receipts of your company?

A. If the result of that was to divert a percentage of the business to Chicago that otherwise would not go there, it might possibly result in that condition of affairs.

Q. Then I say your figures were based on the assumption that it would not increase the amount of traffic, but would result likewise in the reduction of the rates to those other points?

A. I think it would have that result, and we would be out money on all of them.

Q. Do you know of any other factor which justifies the difference between live stock rates and packing house and dressed meat rates, except the competition existing, as you call it, by reason of the Great Western contract?

A. Do I know of any other factor that makes a difference in the rate?

Q. No, that justifies a difference or the difference between
207 the live stock rates and the packing house product and dressed meat rate, except that difference brought about by the Great Western contract?

A. As I said, I think that under the present adjustment of rates we can handle meats and packing house products and have more money left, if there is any left, than we can live stock. A change in the rates, it seems to me would not change that condition any.

The COURT: If it was right a few years ago to have them alike, what is the reason for the change?

A. This element of competition.

Q. What other elements? Is there anything else besides competition?

A. Nothing else except that possibly we can handle this,—you might say dead perishable freight to a little better advantage, or at a less figure than live perishable freight.

Q. Can you do that now any better than you could three or four years ago?

A. I don't think we can. I have shown by the way that the fresh meat and packing house product loads more to the car than live stock, so that it means more revenue per car.

Mr. COWAN:

Q. Now, you speak of a sixteen cent rate on wheat. Did you ship any wheat from Omaha on which you received sixteen cents?

A. No, I hardly think there is any local wheat shipped from

Omaha. I don't think there is any raised there. I never saw any wheat from there.

208 Q. What do you mean when you say the rate is sixteen cents from the Missouri River on wheat?

A. I mean that is the local rate.

Q. That local rate is simply the basing rate, not used in actual shipments?

A. It is from some Missouri River points.

Q. Where?

A. Plattsmouth is a Missouri River point; farmers bring it in from the country and they ship it from there.

Q. Where is that?

A. Plattsmouth; that is on the Missouri River.

Q. I thought it had been very well determined that the Missouri River basis of rates on wheat had been ultimately established as a proportional rate of seven cents on the Missouri River plus 12.5 on Chicago, making twelve cents to Chicago?

A. No, the difference is only three. What is understood to be the normal proportional rate on grain from the Missouri River or Mississippi River to Chicago is nine cents to the Mississippi River and twelve cents to Chicago.

Q. Making three cents difference?

A. Yes, but you take the twelve cent rate on 60,000 pounds and it makes the rate on a car $72.

Q. To haul that car they have to haul a considerably heavier load than in the case of packing house products or dressed meat, don't they?

A. The contents of the car weigh more, but we haul it a good deal slower, consequently as we run faster with the more perish-

209 able freight we can't hold the gross tonnage.

Q. Now, Mr. Crosby, suppose that you were shipping and you wanted to ascertain the shipments through some division point, what your trains were composed of, the make-up of your trains, how would you go about that? How would you find it out?

A. That is, what the consist of the trains were?

Q. Any train on your road coming out of Omaha?

A. I would go to the Superintendent of transportation and ask him what he was handling out of there on a certain train.

Q. At what time do you carry the most livestock,—in what month do you carry the most livestock through to Chicago?

A. I couldn't answer that question off-hand, but I can get the information.

Q. What division point have you this side of the Missouri River, the first one this side of Pacific Junction?

A. We have one at Creston, we have one at Ottumwa, Burlington, Galesburg and Aurora.

Q. Well, where do your trains from Kansas City, Omaha, St. Joseph and Leavenworth all come together?

A. Galesburg.

Q. Not before they reach Galesburg?

A. No, sir.

Q. I wish you would have made up, Mr. Crosby, and furnish it to us, a statement of the actual train consist showing dressed meat and packing house product and the number of live stock cars in each train and the total number of loaded and empty cars in each train passing through the first division point this side of Pacific
210 Junction, for fifteen days in two different months of the year. You can select the months now.

A. Well, the packing house product, fresh meat and live stock; that is, in trains containing shipments of packing house product, fresh meat and live stock you want to know what other freight was in those trains, if any.

Q. I want the consist of all of the trains for fifteen days, and the only cars I care to have designated as to what product is in those, is the packing house product, dressed meat and live stock.

A. Passing Creston. That is the first station east of Pacific Junction.

Q. Would that be representative of the shipments coming out of the Missouri River?

A. It would from Omaha, but it wouldn't from the southwestern Missouri River at all.

Q. What place would be representative of Kansas City?

A. Probably the most representative junction point you could have to cover Kansas City and St. Joseph would be Brookfield, Mo.

Q. All right, give us those.

A. I suggest that the two be separate, because the consist of the trains will be different.

Q. Well, now, does Burlington catch both of the s-ipments?

A. No, sir; Burlington is on the Mississippi River; it would catch the business that crosses the State of Iowa only.

Q. Well, you had better take Burlington then as being
211 more representative?

A. Instead of Creston.

Q. Instead of Creston, is that the one you mentioned?

A. Yes.

Q. Now, what months will you select, Mr. Crosby?

A. I don't think it makes very much difference from our standpoint. Any month that would suit you would suit us.

Q. Suppose you take April and October. We have similar statements made up for other cases covering April and October, on other products. Take the first fifteen days in April and the first fifteen days in October of the year 1904.

Cross-examination by Mr. SCHAEFER:

Q. Mr. Crosby, you named a number of carriers that compete in the transportation of products from Kansas City, St. Joseph, Omaha, Sioux City and St. Paul to Chicago. Don't those same carriers compete in the transportation of live stock?

A. No, sir. The Wabash Road for example would compete with us for packing house product from Omaha to Chicago, but I don't believe they would undertake to do it with live stock. They might try it but I don't believe the shippers would stand for it.

Q. All these roads transport live stock, do they not, from Missouri River points and St. Paul to Chicago?

A. Why, you take it from Minneapolis and St. Paul they don't compete for live stock.

212 Q. Why not?

A. Their route is too long. They could compete, themselves and their connections, for the product.

Q. They compete on the product but not on the live stock?

A. Yes, sir.

Q. Wouldn't their length of route deprive them of the product as well as the livestock

A. They go the same route, but there is a difference between live perishable freight and dead perishable freight. A railroad may be able to compete for the dead perishable freight, but would be unable to do so in the live perishable freight.

Q. That is one of the roads that competes on the product?

A. Yes, sir.

Q. How about the balance of them

A. Well, you take the Missouri Pacific road for example out of Atchison, or even take the St. Joe & Grand Island out of St. Joe in connection with the Chicago & Alton railroad, they could compete with us and do compete with us for the products of the packing houses at St. Joe, but they don't for the live stock.

Q. None of these roads compete for the live stock with each other?

A. That is, all these routes that can get them, and the longer routes that are all under one set of rails, you might say, would not ordinarily——

Q. These different routes do transport live stock, you say, from Missouri River points to St. Paul and Chicago?

A. No, sir; I say they don't. I say they compete for the product but not for the live stock.

213 Q. Didn't you say the local rates on the live stock were the product of competition?

A. Yes, sir; I mean to say the adjustment of the live stock rates as they stand to-day is the result of competition.

Q. And by competition you mean that those carriers also compete for the transportation of the product?

A. Yes.

Q. The proportional rates, Mr. Crosby, are much lower than the local rates, are they not?

A. Yes, sir.

Q. For example the local rates on cattle from Kansas City, St. Joseph and Omaha to Chicago are 23½ cents and the proportional rate 18½ cents, five cents lower? Do these lower proportionals pay anything in excess of the cost of transportation?

A. I think they do. A proportional rate, you understand, is a division of a rate. The party or shipper who has live stock originating west of there gets that as a proportion of a rate.

The COURT: That only applies to stock that originates west?

A. Yes, sir.

Mr. SCHAEFER:

Q. But these proportionals are five cents less than the locals and pay something in excess of the cost of transportation, so the locals must pay very much more, do they not, in excess of the cost?

A. Well, if the rate is higher it pays more, but one is a pick-up proposition and the other is a through consignment.

214 Q. Are not through rates over through lines composed of several carriers as a rule much lower than the sum of the locals?

Mr. DAWES: I object to that.

The WITNESS: What is the question?

(Question read.)

Mr. DAWES: I think he should confine himself to this particular subject we have under inquiry here, and not question him as to a habit of some of the railroads.

The COURT: I think I will sustain the objection.

Mr. SCHAEFFER: Mr. Baxter asked the question if the through rates were not lower than the sum of the locals, intending to prove thereby that these through rates were reasonable. I ask if it is not a rule to make through rates lower than the sum of the locals?

The COURT: He has answered that. The only question is whether there are a number of other companies, other carriers included.

Mr. SCHAEFFER: Where there is a through line, each line has its local; but my object is to prove that they make the through rate less than the sum of the locals, hence the fact that the through rate is less than the sum of the locals is no evidence that it is unreasonable.

The COURT: I don't think that makes any difference.

Mr. SCHAEFFER:

Q. Are not through rates over a line composed of several carriers, which are less than the sum of the local, considered a commercial necessity?

215 A. Well, the fact of their being composed of several carriers does not alter the situation. You take the general adjustment of rates between the Mississippi River and Chicago, and the territory west of the Mississippi River, the through rates are the combination of locals on the Mississippi River as a rule, whether the lines are composed of half a dozen railroads or whether it is one or two or three.

Q. Where it is not more than one road there could be no combination of locals?

A. Well, there can. We have a rate from Chicago to Hastings, Nebraska, for example, direct, over our own rails. If the rates on merchandise from Chicago to Hastings——

Q. It is on the same system?

A. Yes.

Q. Now, the rate from the Mississippi River to New York, where the line is composed of several different roads, each having their locals, wouldn't a rate made up of the sum of those locals be prohibitory in the movement of the traffic?

A. I don't know that it would necessarily be prohibitory, but it would be a good deal higher than for example the Pennsylvania, which has its own rails from St. Louis to New York.

Q. Wouldn't it be an excessive rate?

A. Not necessarily. It might be and might not.

Recross-examination by Mr. COWAN:

Q. In Exhibit No. 3 you specify what the rates are on
216 tropical fruits to Chicago from Kansas City. Is there any fruit hauled of that sort from Kansas City to Chicago?

A. Well, the rate is the same on strawberries, for example, that class of fruit. We have hauled that.

Q. Has there ever been a time when the packing house rate was based on strawberries, or vice versa?

A. No, there are a great many rates based on the packing house rate, or the beef rate.

Q. There never has been any relation existing between live stock and fruit?

A. The information was what we got for transporting other classes of freight.

Q. You have told what you got. Now, my question is whether that means anything after you have told it.

The COURT: That is a matter of argument, isn't it?

Mr. COWAN: I don't know, if I find out whether these rates, in the custom of railroads, one is based upon the other, I think it is material to show they are entirely foreign.

Q. Is it not a fact that the rate on fruit and live stock are entirely foreign to each other, and that neither is ever based upon the other?

A. Certainly.

Q. Now, in scrap iron it is the same thing?

A. Yes.

Q. And old rags?

A. The question that that is an answer to is simply a reference to the revenue we receive for hauling other commodities as compared with what we receive for hauling live stock.

Q. Isn't it a fact you can go through a tariff sheet and
217 make up innumerable statements that will show all sorts of differences?

A. I could take almost any commodity and I think we get more money for it than for handling live stock.

Q. And then you could take a great many other commodities and show you get more for handling live stock than the other commodities?

A. There wouldn't be a great many, no. That could be shown in some instances, but not in a great many.

Q. Now, we will take shipments of tropical fruit from California. How much do you get on a carload for your proportion from the Missouri River to Chicago?

A. On a car load of oranges we get about 18¾ cents a hundred.

Q. From the Missouri River to Chicago?
A. Yes, sir.
Q. And what do they load?
A. Oh, they load 26,000 pounds to the car.
Q. Yes?
A. My recollection is it is 24,000 pounds, or may be 26,000; I don't know, but it is more than the rate on live stock.
Q. Is it not a fact that tropical fruit is shipped on a basis of practically a dollar per car mile from Los Angeles to Chicago?
A. Well, I don't know. I never understood that any computation was made that way. It may be that the distance would approximate that.
Q. I don't mean a dollar per car mile. I mean ten cents per car mile. It figures out exactly that way from the Missouri River?
A. Well, it simply happens to be a coincidence.
218 Q. You have named a number of articles here. Are you able to say that the rate on live stock is in no case based upon the relation of the live stock shipment, or the rate, to these articles you have mentioned in your Exhibit No. 3, except packing house products and dressed meat?
A. Well, that statement is made there, Mr. Cowan, in line with the proposition that live stock does not pay its fair proportion of the cost of transportation as compared with other commodities, and we give that information to show what we earn on other commodities that we handle.
Q. What are your average earnings per ton mile on all commodities, including live stock?
A. I have forgotten the figure. It is eight cents and a fraction.
Q. Eight cents and some odd mills; eight and a fraction per ton mile?
A. Per ton per mile. That is so much per ton for each mile.
Q. Is it not a fact that these live stock rates pay considerably more than the average rate per ton mile on your system?
A. In some instance they do, and in other instances they do not.
Q. It is easy to figure out from any place; take the distance and rate and how much it would be per ton mile for minimum weight?
A. Yes, that is a simple matter.
Q. Isn't it a fact that on the average earnings per loaded car mile on your system it would prove out less than the earnings
219 per car mile on the live stock under the rates in question?
A. I don't know whether it will or not.
Q. Now, when you give the figure that cattle pay less than they ought, less than their proportion, what do you mean by that? Less than what the average freight pays?
A. I think in view of the risk attendant in the handling of that business it ought to pay more than the average rate. It is a special insurance, a special risk. You can't go anywhere and get insurance for special risks at the ordinary rate of insurance. We are insurers of this live stock.
Q. Do you think it ought to pay any more than the average earnings per ton per car mile, including the local freight?
A. Including what?

Q. The local, less than car load rate?

A. Do you mean that live stock should pay a rate equivalent not only to other carload freight, but also the less than carload, is that what you mean?

Q. Yes, that is the way you ascertain the average car mile?

A. It includes everything we carry, the high as well as the low. As I remarked before, it seems to me that live stock is the most expensive proposition we have to handle. We have to give it special service, it is perishable, and it seems to me it ought to stand more in proporition than the general average of our business.

Q. Including your local freight?

A. Yes, sir.

The COURT: Now, what other point do you give to sustain the fact. You furnish passes to men in transporting them?

220 A. Yes, sir.

Q. What else?

A. We carry less weight per car than we can on almost any other commodity; we have to hurry them through.

Q. There is more danger from wreckage?

A. Yes, more danger from wrecks, we have to run faster, and if we are delayed with them we have got to provide means to feed and water them, and we have got to give them special attention in every respect that we don't have to give to anything else, and transportation for the employés in charge, and we have to build special pens for unloading and taking care of them.

Mr. SEVERANCE: You have to spray them?

A. In the case of hogs we have to water them in transit.

The COURT: Just make a little statement of those things and bring it in in the morning, embodying all those points.

Mr. COWAN:

Q. Mr. Crosby, one other question: Are rates of freight and relative rates of freight based on the cost of carriage, or are they based upon various factors and circumstances including cost of carriage as one of them?

A. The cost of carrying is a consideration. Of course we cannot tell until after we have carried it how much it costs, and if we find out we attempt to haul it for too little we couldn't collect anything more.

Q. And the rate or the schedule of rates is adjusted on the basis of comparative cost of carriage between the one article and the other?

221 A. No, sir.

Examination by Mr. DAWES:

Q. Do you know any reason why packing house products, or products of beef and the live animals should be carried at the same rate?

A. No, sir.

Q. Is there any relation between the two articles such as to make it either necessary or desirable so to do—necessary so to do?

A. I don't think so.

Q. Is there any more intimate relation between the products of animals and the animals themselves than there is between lumber and furniture?

A. Well, one is the manufactured article; it is the raw material in both cases, that is about all the difference there is.

Q. Lumber competes with furniture in this market, does it, in a remote way?

A. Yes, sir.

Q. Then except by the mere assertion, and the acquiesence of the railroads in that assertion, there is no reason why the packing house product and the live animals should be carried at the same rate?

A. No, sir.

Q. The methods of hauling and all these elements that enter into the transportation question differ in the two?

A. Yes, sir.

222 Examination by Mr. SEVERANCE:

Q. Mr. Dawes has inquired with reference to furniture and lumber on the one hand and packing house products and live stock on the other. Now, in the case of furniture and lumber, the manufactured product is much more bulky than the raw material?

A. Yes, sir.

Q. In the case of packing house products the reverse is true?

A. Yes, sir.

Q. And live stock take up a great deal more space in proportion to the weight than the packing house product or the fresh meat?

A. Yes, sir.

Q. Now, take flour and grain. Which is the most bulky?

A. The flour. You cannot load your cars as heavy.

Q. And as a matter of fact nearly every manufactured product is more bulky than the raw material from which it is made, except packing house products, isn't that so?

A. As it flashes through my mind, I would say yes.

Q. Now, take structural iron.

The COURT: Which has the higher rate, flour or grain?

A. They take the same rate.

Mr. SEVERANCE:

Q. Now, you speak of having to pay a switching charge at Kansas City and St. Joe on cattle?

A. We pay none at Kansas City.

Q. None at Kansas City?

A. No, sir.

Q. But you do at the St. Joseph yard?

A. Yes, sir.

223 Q. Now, the fact is that the situation of the River roads at these different Missouri River points is different as to each road?

A. Yes, sir.

Q. One road has to pay a switching charge and the other hasn't, at one place, and the reverse may be true at another place?
A. Yes, sir.
Q. But at the points you are competitive you have to make the same rate?
A. Yes, sir.
Q. So the fact that you have to pay a switching charge at St. Joseph and another road does not is your misfortune, and you cannot take that into account in making your rate, is that true?
A. That is true. At Kansas City we go to the stock yards with our own trains and don't have to pay anything, but we don't get to the packing houses with our own engines.
The COURT: Why is it that in the past the finished product of meat costs as much to carry or more than the live stock?
A. Conditions were such that they could get it.
Q. There has been a time when it has been considerable more?
A. Yes, sir.

Mr. DAWES:

Q. Isn't it a fact that flour from Minneapolis and St. Paul to Chicago takes more than grain?

A. The flour local rate to Chicago I think is just the same
224 as on wheat, but the flour that moves east is all handled on through rates.

Mr. SEVERANCE: Practically all the flour is handled on the export rate, Atlantic seaboard rate?
A. Yes, sir.

Mr. SEVERANCE: I would like to examine the witness a little further when he brings in that list that your Honor asked him about, in the morning.
The COURT: If no one has any other questions to ask we will adjourn until tomorrow morning, and I think we will meet in this case in Judge Kohlsaat's room in the south wing.

An adjournment was thereupon taken until the following day, September 19th, 1905.

225 SEPTEMBER 19TH, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Present same as before.

Whereupon GEORGE H. CROSBY, resumed the stand for examination by Mr. Dawes:

Q. Mr. Crosby, at the request of the court made yesterday, he requested that you formulate the particular reasons why it costs more to handle live stock than it does packing house products or other similar freight. If you have done so, will you be kind enough to give the reasons in detail, and file for the benefit of his Honor a detailed statement.
A. First, yards have to be built at shipping points in order to pen and load the live stock.

Q. How considerable an item of expense is that?

A. That is a very great item of expense. I think our people estimate that the yards on the Burlington Lines cost something like a million dollars and that it cost in the neighborhood of $100,000 a year to maintain them. We also pass an attendant in charge of the live stock, something that is done with no other class of traffic that is handled.

226 Q. A pass for how many cars?

A. Two cars or over in the case of cattle and hogs.

Q. Have you any general notion how much in fare that would figure up for the year, or did figure up for the last year?

A. No, I don't believe I could give you a fair idea of it.

Q. Well, it would figure up into twenty thousands or thirty thousands of dollars, wouldn't it?

A. Yes, it would figure up into the hundreds. A return pass is given to the attendant and we have to provide a different caboose to attach to the stock train or trains handling stock.

Q. Pardon me. That return pass is given on what kind of trains?

A. Passenger trains.

Q. So that the equivalent of a first class fare from Chicago or from the terminal point to the place of shipment or origin is given to each shipper for every two cars of stock that he ships?

A. Well, the rule is one man with two cars and two men with five cars or over and so forth. That transportation is given on first class trains, to return. A specially equipped caboose is used attached to these trains for the convenience and comfort of the attendants in charge of the live stock. Some of them are equipped with bunks.

Q. And other conveniences?

A. And other conveniences.

Q. Toilet rooms, toilet appliances?

227 A. Yes. That class of car is not used on the ordinary freight train.

Q. Would such a caboose as that be required at the end of an ordinary freight train, or is it so used?

A. No sir.

Q. Where live stock is in transit——

A. Where live stock is in transit 28 hours it is necessary to provide special feeding and resting yards for the cattle.

Q. Are those in addition to the yards which you spoke of the first time?

A. Yes, and they are more extensive and larger yards.

Q. How many of those have the Burlington on its road, if you know?

A. Let's see, we have eight, as I recollect them.

Q. How extensive are those yards? Mr. Crosby?

A. They will hold from fifty to one hundred and fifty cars of live stock.

Q. Sheep or cattle?

A. Sheep, cattle and hogs.

Q. How many attendants, if you know are required for those yards?

A. We keep a corps of attendants there, whatever is necessary to handle the business that is offered or is brought there at different seasons of the year. For example, when the range cattle are moving we require more attendants than we do on the ordinary run of live stock.

228 Q. Well, water has to be provided, has it not?

A. Yes, water and feeding facilities.

Q. Water is a costly commodity, is it not, for this purpose?

A. Yes sir.

Q. And we have to make contracts to pay for the water or sink our own well, do we not?

A. Or sink our own well, yes sir.

The COURT:

Q. Have you any estimate of that additional cost in figures?

A. No sir, I have not.

Q. There should be some way of getting at it, I should think.

Mr. DAWES: That is — a matter, of course, in the auditor's office and I have not had the schedule prepared, but I would like to produce that, your Honor, and have it verified.

The COURT: In doing that, get what it costs to ship the products to market so that I may have the comparison. Give the court some data on which it can arrive at a conclusion.

Mr. DAWES: This is for the purpose of showing, without regard to the actual cost of the transportation, the difference in the items of cost. These are additional items of cost necessitated in the handling of live stock as distinguished from the cost of handling the product. Now, proceed, Mr. Crosby.

A. In the matter of the hogs, during the hot weather, we
229 have to wet them down at convenient points, run them under the water tanks and wet them down with a hose and water from the tanks. In handling live stock we are expected and in fact required to make better time in transit than with ordinary freight. In consequence we cannot get the maximum use of our power as faster speed means less tonnage.

Q. And additional expense?

A. And additional expense. Where, for any reason, we fail to make the market, we are confronted with claims for damages which are generally settled.

Q. What do you mean by making the market?

A. Arriving in time. If, for example, we bring live stock into Chicago today, we are expected to have it in the market not later than eight o'clock. If we get it in at 10 or 11 or 12, or 2 o'clock we are generally confronted with a claim for shrinkage on account of the extra time in transit and the probable difference in the market.

Q. If the market has fallen the next day, we are required to pay the difference?

A. Yes, we are required to pay the difference and the same thing

is true in case of rough handling in transit of live stock. They claim that rough handling will cause shrinkage. If for any cause there is a delay or anything unusual happens, something that the railroad cannot prevent or cannot foresee, if in the mind of the shipper his live stock is damaged, we are expected to pay for
230 it. The same thing is true in case of animals that injure each other. If a car load of cattle which are loaded at a given point, arrive at destination with one down or crippled, with a broken leg or possibly dead, a claim is presented to the railroad.

Q. In reference to those claims that you speak of, are those claims adjusted and paid as a matter of fact?

A. Yes. All claims that are presented are not paid. Any more than is the case with any other claim presented on another class of freight.

Q. Well, are there a considerable amount of these claims of such a nature that we are compelled to meet them and pay them?

A. Yes sir.

The COURT:

Q. Don't you have such claims on dressed meat?

A. No, sir, the dressed meat is not sold on a market, for example, it is not necessary to get it in between certain hours.

Q. Don't you have claims for damages on dressed meat and packing house products?

A. Not in the ordinary course of transportation, no sir.

Mr. DAWES:

Q. Well, why, Mr. Crosby, if you will explain to his Honor.

A. Well, it is perishable freight, but as I attempted to explain yesterday there is dead perishable and live perishable freight.
231 In the case of the live freight there are damages, either real or imagined, by shrinkage and so forth. In the case of the dressed meats, undoubtedly if there was an unusual delay to the contents of the cars and the cars were not properly protected by icing and so forth, there might be some damage.

Q. But the only damage aside from the failure to properly refrigerate the car, would arise in the case of wrecks to the dead freight?

A. Yes sir.

Q. But there are many other causes of damage which occur frequently in the ordinary handling of a train of live freight?

A. Yes sir.

Q. Other than wrecks?

A. Yes sir.

The COURT:

Q. Isn't it true that this dead freight as you call it, that they make claims for damages in reference to that for not getting through on time and in making the market and all that? Isn't it true that the railroad companies do that, pay such claims and have been paying them?

A. We have had claims for unusual delays of freight, other perish-

able property than live stock where we have failed through our own neglect to properly protect the property.

Mr. DAWES:

Q. It is true, is it not, Mr. Crosby, that what we are calling "dead freight" packing house products, etc. is not shipped to a definite, particular market?

A. No sir, it is not.

232 Q. But that all live stock is?

A. Yes sir.

Q. In other words, there is no claim asserted against this meat product for mere delay unless the delay has caused a damage to the property; that is true, is it not?

A. That is it exactly. We are not required in bringing in packing house products and fresh meat, to get it here between the hours of 5 o'clock in the morning and 10 o'clock in the morning. In the case of live stock if we get it in at 10 o'clock and the shipper's commission man tells the shipper if he had been in at eight he could have done better with it, sold it for five or ten or fifteen cents more a hundred pounds, he promptly puts in a claim to the railroad for that difference. That would not occur with the fresh meat.

The COURT:

Q. Do you claim that those packers have not presented claims against your railroad or other roads?

A. Those claims are not paid as a rule unless I know of it.

Mr. DAWES:

Q. Have you met with any claims from packers in the handling of this freight, the product of live stock, except claims for such delays as has resulted in specific damage to the property transported?

A. No sir, we have not. We would not entertain a claim of that character.

Stopping to feed and water and rest means the loss of the
233 use of our equipment for a period of from five to twelve hours. The cars that are taken into these points have to remain there, or, if taken away, other cars must be brought in to take their place. This means an extra expense. There is no other class of freight we handle that it is necessary to unload in transit. It is not necessary or incidental to business of handling any other commodities that we should load and unload them in transit.

Live stock trains are given preference over all other freight trains, and that means an extra expense. When we take a long train of live stock at a speed of 20 or 25 miles an hour, everything else has to stand to one side and that means delay, which means extra expense in handling that train as well as additional expense to those trains set aside. Then again there is a possibility of injury to the attendants while in charge of the live stock.

Q. In every case the freight which we are talking about is accompanied by an attendant. Now, is there any other class of freight which we transport which is accompanied by an attendant?

A. No sir.

Q. At our expense?

A. No sir. Then again there is the possibility of injuries to attendants in riding on these freight trains. They are not equipped,—they are not handled as a passenger train is.

234 Again, the live stock interests, in order to handle those shipments properly have to have a special class of equipment. It is a special car built to handle live stock. If there was not any live stock shipments made at all we would not have to have this class of car at all that we use for that purpose.

The COURT: What kind of a car would you use, a cheaper car?

A. No, we would have a box car or other class of equipment that we have to take care of our other business outside of live stock.

Q. It has to be a special car for dressed meats, does it not?

A. Yes sir, but we can handle any other perishable freight in that same car or we can use that car for merchandise.

Mr. DAWES:

Q. Why can't you handle other freight generally in live stock cars?

A. Well, stock cars have to be open for ventilation and that would necessitate the shipments being exposed to the weather and to theft. Stock cars have to be bedded before they can be shipped to load and that is an expense on the carrier and then after they are shipped, after they have been used they have to be cleaned again and re-bedded for for another use.

235 There are various regulations issued by the United States Government from time to time by the Bureau of Agriculture, requiring cars to be disinfected. That means additional expense.

At various seasons of the year cattle are moved from quarantine sections where they are. Special yards have to be provided to take care of those cattle; they can not be mixed with the others.

Q. That is a matter of law, isn't it, government regulation?

A. Yes sir. Then there are attendants in charge of the live stock in transit. Their welfare has to be looked after in the matter of meals at various points and times. In fact, as a rule we carry stockmen from our depot to an eating house, by a conveyance of some kind in order to have them get something to eat quickly.

The COURT:

Q. You mean at stations along your road?

A. Yes sir. Then at our yard limits, we stop the train at extreme distances, we provide conveyances to take them from where the train stops to some other section of the yard rather than have them cross the tracks.

Then again, when stock gets down in the cars as frequently happens, trains have to be stopped and that means the delay of the entire train. Then again the stock may be down in such shape where the train or the car has to be switched to some stock chute to unload and get them in the car properly.

236 Mr. DAWES:

Q. Is it a common occurrence for stock to get down in the cars?

A. That occurs more or less and that is one idea in having the attendant in charge. The stock shipper thinks that he ought to have somebody there in his interests to look after the live stock. That means a delay, of course, and a delay means expense.

Q. In such cases as that do the train employés assist?

A. Oh, yes.

Q. So we are not relieved of the necessity of caring for those cattle ourselves?

A. No sir.

Q. Now, Mr. Crosby, these conditions which you have enumerated, are they all substantial matters or are they simply——

A. I think every item that I have enumerated there is a substantial matter; it is a matter of fact, it is not a theory.

Q. And a matter which involves us in largely additional cost in the operation of this particular kind of traffic?

A. I think so. It is not true of any other class of traffic that we handle. If we take a car load of fresh meat from one end of the road to the other, there is nothing to get down in it or to get hurt or nothing to happen to it.

Q. Will you be kind enough to file that memorandum and mark it?

(The paper referred to is marked Crosby Exhibit A, September 19th.)

236½ CROSBY EXHIBIT A.

SEPT. 19, 1905.

What the carrier does and is expected to do in the matter of handling live stock, that is not required or expected in the handling of other traffic:

1. Yards must be built at shipping point so that shipper can pen and load hi*d* stock.

2. Attendant is passed in charge to look after the stock.

3. Return pass is given to starting point.

4. Specially equipped caboose car is attached to train for convenience and comfort of attendants, generally provided with sleeping bunks.

5. Where stock is in transit, or liable to be twenty-eight hours or longer, feed yards have to be provided for feeding, watering and resting.

6. In the case of hogs, they are wet down with water at convenient points in transit during hot or warm weather.

7. The carrier is expected, in fact required, to make better time in transit than with ordinary freight, in consequence cannot get maximum use of its power, as faster speed means less tonnage.

8. In case of failure to market, claims for damage are made.

9. In case of delay from any cause, or rough handling, claims for shrinkage are made.

10. If animals injure each other, get crippled or killed in transit, claims are made.

11. Stopping to feed, water and rest, means loss of use of cars and engines for period of five to twelve hours. Means cars have to remain at feeding point, or if moved away, other cars have to be provided which means extra expense not incurred with any other class of freight.

12. Live stock trains are given preference over other freight trains, which means other business is put to one side and entails expense.

13. Injuries to attendants.

14. Requires special class of equipment.

237 Examination by Mr. SEVERANCE:

Q. Mr. Crosby, in hauling dressed meat and packing house products, you have to haul the car, of course, as well as the contents?

A. Yes sir.

Q. And that is also true in transporting live stock?

A. Yes sir.

Q. Now, you receive no pay for that haul with the exception of the freight on the contents of those cars?

A. That is true.

Q. Is it not true that the proportion of pay freight that you get for the weight for hauling this car, to the contents, on live stock is less than the proportion of pay freight on a car of dressed meats or packing house products and its contents?

A. Well, I think it is according to the record we have of the loading of those cars.

Q. That is a fact, isn't it, that you haul more weight with your engines in proportion to the weight upon which you receive compensation in the case of the live stock than you do in the case of packing house products?

A. Well, I don't know that I exactly understand that.

Q. Don't I make my question clear?

A. No.

The COURT:

Q. It takes more loads of live stock than it does of dead freight?

Mr. SEVERANCE: That is my point. That is when you get
238 it together the weight of the car and the weight of the contents, that the weight of the car bears a larger proportion to the total weight in the one case than in the other?

A. Yes, I think that is true.

Q. And that is an additional reason, is it not, why the rate per hundred weight upon the contents of a car of live stock should be greater than the rate per hundred weight the contents of a refrigerator car or ventilated car carrying packing house products or dressed beef?

A. That is correct, if you want to get more money for the hauling of one car as compared with the other.

Q. Well, in order to get the same rate per ton that is actually hauled?

A. Yes sir.

Q. Because it takes just as much power in the engine?

A. Yes, it takes just as much power to pull a ton of live freight as it does a ton of dead freight.

Q. And vice versa?

A. Yes sir.

Q. Have you got the figures so you can show those proportions?

A. No, I have made no figures on that at all.

Re-examination by Mr. BAXTER:

Q. On cross examination you spoke of a certain proportion of packing house products and fresh meats carried by your line which passed through the Mississippi River gateways, that came to
239 Chicago and certain other proportion that passed through the Mississippi River gateways that did not come to Chicago. Are you able to state what proportion from across the Mississippi comes to Chicago and what proportion goes south to other parts of the country?

A. No sir, I could not answer that question, I have no information on the subject at all, and I have not undertaken to analyze the business so as to know.

Q. I understood you to say that in order to ascertain the cost per freight car mile, you divided the total operating expenses by the total freight car mileage. Did you state that?

A. I don't recollect that question being asked. I gave some testimony where I used that term in the matter of arriving at the average weight of live stock and packing house products but I do not recollect that question in regard to the other.

Q. Well, if the report of your testimony should show that that is so, I will ask you if you would not first divide the operating service between the passenger service and the freight service before you would divide the total operating expenses?

A. That is the method of arriving at those results.

Q. I understood you to say that the actual cost from Texas, Indian Territory, Oklahoma and Colorado and probably some other portions of the western country, as a matter of fact, was only about
240 16½ cents from the Missouri River points to Chicago, is that correct?

A. I think that is the proportion, about that figure.

Q. Does that correctly describe the territory from which that rate obtains; Texas, Indian Territory, Oklahoma and Colorado?

A. There are some other sections of the country, Colorado, Wyoming and western Kansas and Nebraska where the balance of the rate would figure. It would vary very much, there is no fixed balance of the rate.

Q. It is about 16½?

A. Some where in that neighborhood.

Q. I want to know what proportion of the total shipments from

the Missouri River to Chicago pay only about 16½, I mean shipments of live stock?

A. I could not tell you that without looking up the origin of all the live stock we have handled.

Q. Could you approximate it?

A. I could not, no sir.

Q. In your cross examination you were asked to show the consists of certain trains for a certain period or number of days in certain months. I wish in the same statement that you would show the percentage that the gross tonnage of the train containing live stock, what the percentage was of the tonnage to the locomotive hauling said train and the percentage of the cars of freight, what that was of the locomotives hauling those trains. I will give you this
241 memorandum.

Mr. SEVERANCE: You were interrogated yesterday at some length with reference to the balance of the rate, the proportional rate and all that. I will ask you this question: What would be the result if the rates in western Iowa were placed at the same figure as the proportional from the Missouri River to Chicago? What would be the result as to traffic we will say at an equal distance the other side of the Missouri River?

A. That would mean a reduction in the rate from the Iowa point. It would make it harder for the western man to compete and he would pay more in proportion than the man in eastern Iowa. It would advance the cost of transportation to him as compared with his competitor and as you get further west that cost would enhance and the result would be finally that you would eat up his product in order to get it to the market.

Q. Now, the farmer in western Iowa within a distance say of 150 miles of the Missouri River is a competitor in the market with the farmer living the same distance west of the Missouri River, isn't he?

A. Yes, sir.

Q. And the railroads take that into account and substantially equalize the rates, do they not, from this whole section?

A. They attempt to make a fair adjustment so that the
242 western man can live in competition with his eastern neighbor.

Q. But if the rate, the proportional rate which has been spoken of as 16½ cents (it is immaterial what it is, but considerably less than the local rate) should be put in force from this Iowa shipping point to Chicago, it would work a great discrimination against the farmer living a few miles further west, the other side of the Missouri River who was a competitor in the same market?

A. I think it would.

Q. And under ordinary conditions, practically put him out of business if he had no market but the Chicago market?

A. Yes, he would probably feel that he could not compete.

Q. Those farmers in Iowa are given access to the Omaha market on substantially the same terms as the farmers who are located the same distance away on the other side of Omaha, are they not?

A. Practically, very near alike. There may be some difference.

Q. And that same rule would be applicable at other Missouri River points, would it not?

A. Yes, sir.

Q. And the same results would f-low if the change was made as I suggest?

A. I think it would naturally follow.

Recross-examiantion by Mr. COWAN:

Q. Name some cattle shipping point on your line this
243 *this* side of the Missouri River from which you ship live stock to the Missouri River and also to Chicago, that is the 23½ cent belt?

A. I have forgotten just how far east the 23½ cent goes, but, for example, take Red Oak, Iowa.

Q. If a farmer (and everybody seems to be looking out for him) ships his cattle or his hogs from that place into Omaha, can he ship out on the balance of the through rate?

A. No.

Q. Can he ship out on the proportionate of 20 cents?

A. No.

Q. What does he have to pay?

A. He has to pay the local rate.

Q. 23½. If a farmer ships from the same distance, a point west of Omaha into Omaha, can't he ship out on the balance of the through rate?

A. Well, he——

Q. You know whether he can or not.

A. Wait a minute. There is a difference as to what the balance of the through rate is. You take it for our railroad for example, take a man equally distant west of the Missouri River, shipping to Chicago. There is no such thing as the balance of the rate, it is all one railroad and we charge him from his point of shipment to Chicago.

Q. Name a point the same distance west on your railroad, west of Omaha?

A. Well, about an equal distance west of Omaha with Red Oak would be, I think, Lincoln.

244 Q. What is the rate from Lincoln to Chicago?

A. I could not give you that figure off hand.

Q. Well, there is a rate from Lincoln to Chicago, isn't there?

A. There is a rate from Lincoln to Chicago, it is in this file.

Q. There is a rate published from Lincoln to Chicago?

A. Yes, sir.

Q. Now, has not the shipper from Lincoln the privilege of stopping his cattle at Omaha and trying the market and if he don't sell there, of carrying him on to Chicago, if he don't sell there?

A. I explained that all yesterday. The man at Lincoln can consign his live stock to Chicago and feed it at Omaha. He can offer it for sale at South Omaha or not, just as he chooses. If he sells he pays the local rate into Omaha. If he don't sell but concludes to send them on through to Chicago as originally started, he pays

the rate from Lincoln to Chicago just the same as if he had not gone into Omaha or ever dreampt of Omaha.

Q. So that he can ship to Omaha and then ship on at a much less rate than the man this side?

A. Yes, because Omaha is a point intermediate with his destination. In the other case we would be performing a double service, a greater service.

245 Q. Do you perform any greater service to carry in 100 miles into Omaha from the east than you do to carry 100 miles from the west?

A. One is in the direction of the market and the other is where you double on yourself.

Q. But you said you performed a greater service?

A. What?

Q. You said you performed a greater service?

A. We certainly do.

Q. Well, you say it is a greater service and I would like to see where that comes in.

A. If we haul live stock from Red Oak to Omaha, and then from Omaha to Chicago, we double on the line between Red Oak and Chicago.

Q. The total distance hauled then is the distance from Omaha to Chicago plus the distance from Red Oak to Omaha?

A. Yes.

Q. If you take an equally distant point on the other side——

A. In our rate from that point 45 miles west of Omaha, it would be equal to the combination of the rate into Omaha and out again.

Q. Take the rate from Lincoln to Chicago, do you know what it is, do you recollect?

A. If you had that exhibit that I had here yesterday, that shows it. I don't recollect what the figures are, but I will take some other point where I do recollect. The rate from Hastings, Nebraska, is 34½ cents to Chicago on cattle. Now, what do you want to know?

Q. What distance is Hastings?

A. 150 miles from Omaha.

246 Q. What point is 150 miles distant this side of Omaha, name some point there?

A. I have got it right here, I think. Well, Russell, Iowa, for example, or Woodburn, Iowa, is 150 miles from Omaha by our line.

Q. What is the rate into Omaha?

A. 14.58 per hundred.

Q. What is the rate from there to Chicago?

A. I cannot answer that question.

Q. Well, that would make the total cost to him then of about 39 cents if he shipped to Omaha and then shipped on to Chicago?

A. Yes.

Q. And it cost the other man 34½?

A. You have not got your figures right. 37 cents.

Q. Well, a little over 38?

A. 38.08.

Q. It would make a difference of about four cents a hundred.

How long have you been in your present position where you have to do with the lines east of the river?

A. I have been connected with the lines east of the river since the first of December, 1902.

Q. Yesterday evening in asking you the questions relative to the actual cost of the loss and damage per car load, I understood you to say that you were not able to state that it cost any more per car, if you estimate it on the basis of the totalc car load, to pay the loss and damage which you do pay on live stock, than it does to pay the loss and damage which you do pay on the packing house
247 products and dressed meat?

A. I stated that I could not tell you how much it amounted to per car and I did not think that the per car basis was the proper basis as I had already shown that we handled out of Kansas City 9,000 cars of packing house products. Now if I paid $9,000 damage, that would be $1 per car. I handled 60,000 of live stock and if I only paid $9,000 damage it would be only 15 cents per car. In that case the live stock damage would have been 15 cents per car.

Q. Well, whether you think that is proper or not, the court may. Are you able to state now whether it costs you more per car *and* that estimate on the total number of cars of live stock or on the total number of cars of packing house products?

A. I have not attempted to make any figures on it at all.

Q. While you have not made figures, I want you to give from the figures that you have made, if you are able to state, that it does cost any more per car in the one case than in the other.

A. Well, for example, I have testified that I did not know how much we paid for damage on packing house products and fresh meat. I stated on live stock we had paid a certain amount of money and on all other perishable property including fresh meat and packing house products we had paid so much, but as to what proportion of that $13,000 was packing house product and fresh
248 meat, I don't know.

Q. In your statement this morning I understand you to put in as one of the items of extraordinary expense of live stock not incurred in other freight, the loss and damage paid on live stock. I want to see if there is any difference when you estimate it on the basis of the total number of cars of each class of freight.

The COURT: Why, Mr. Cowan, he says he don't know. That is your answer, isn't it?

A. Yes sir.

Mr. COWAN:

Q. What is the rate from some of your principal stations in the Black Hills district, to Omaha?

A. Well, we don't ship cattle out of the Black Hills. The rate from Morcroft, for example, which is just west of the Black Hills country, it is in competition with Bellefouch on the Elkhorn and another station is Gillette, and still another is Sheridan. They run

along all in competition with the Elkhorn road and our rate to Omaha is 36.

Q. What is it from the same station to Chicago?

A. 48.

Q. And that makes the difference between the Omaha revenue and the Chicago revenue of 12 cents per hundred pounds?

A. Yes, I testified yesterday that that was the case.

249 Q. You estimate one of your items of expense to be the expense of hauling the men that travel taking care of the stock, from the station to their meals. That is a new item to me in all of these cases and I would like to know where you do that and how much you ever paid out for that?

A. I think Mr. Rice can tell you more about that than I can.

Q. Well, you are the man that is testifying to it.

A. I know that that exists but just how much money is paid out for that purpose and just where it is done I don't recall.

Q. You say you know it exists. Name then where it exists?

A. We have done it at Lincoln, we have had a man to pilot men through our yards and see that they kept clear of the tracks and so forth; in other words, show them how to get around.

Q. And you paid this man for doing that?

A. The men are in our employ and they are paid.

Q. Just because you happen to show them through the yard?

A. I am perfectly frank to say that it is a cheaper proposition for us to furnish a guide than to pay for a man's leg.

Q. Whose hotel are you showing them to?

A. That is not an instance of taking them to a hotel, but I venture to say that Mr. Rice will be able to give you information to that effect.

250 Q. You have testified a great many times in these live stock cases?

A. Yes sir.

Q. Did you ever mention that as an it-m of expense before?

A. *O* don't think I did. I might not have been aware of the fact, I might have overlooked it, but I know that this transaction at Lincoln has been ther- for years.

Q. Of course that is not involved in the rates in question in this case?

A. No. But that is the only place that you have referree to.

Q. Name some place east of the river where you haul men from the station to their meals*a?*

A. I have stated that I cannot name the place. I understa-d that there are such places, I *i*have been so info-med by people who have those things in charge.

Q. You don't personal-y know that such a thing was ecer done?

A. I have never attended to it personally, no sir.

Q. You have never seen it done personall*t?*

A. No sir.

Q. And you have never audited a bill for it, have you?

A. It would not come under my charge to audit it or approve of

it. I have never appr-ved a coal bill for the railroad, yet I understand that they use coal.

Q. You know they use coal?

A. I don't recollect seeing anybody shovel it into the fire-box.

Q. How many years have you been in the service?

A. I have not made it a practice to ride on the engine,
251 but I understand that they use coal to get them over the road.

Q. You don't r-ally know and you cannot testify that they ever paid a dollar for hauling men to their meals?

The COURT: He has stated that, I think, Mr. Cowan. He only knows by hearsay.

Mr. COWAN:

Q. What were the total nu-ber of carloads handled, of live stock, into Chicago by your system in the year ending June 30th, 1905?

A. I think I have that information here. I cannot give it to you in cars but for the year ending June 30th, 1905, we brought into Chicago 742,663 head -f cattle, 20,577 head of calves, 1,241,057 head of hogs.

Q. The Stock Yards report here would show the number of cars that you brought it, would it not?

A. Yes, but that is the calendar year and not the fiscal year. Your inquiry was as to June 30th, 1905.

Q. Have you a statement there for the calendar year so as to get at about how m-ny live stock you delivered in Chicago?

A. Yes, here is the Official Report of the Stock Yards Company, the r rec-, and that shows that the C. B. & Q. brought into Chicago 55,365 carloads of live stock.

Mr. DAWES:

Q. In what year?

252 A. The year 1904, and for the year 1903 56,255.

Mr. COWAN:

Q. Now you stated yesterday the amoun- of the loss of damage claims which you paid altogether on live stock and attendants in charge of live stock. I have forgotten the figures, but, for the purpose of calling it to the court's attention at this tim-, can you repeat that?

A. Forty one thousand and some odd dollars.

Q. Forty one thousand and something, a little over forty thousand?

A. It is a little over forty one thousand.

Q. That is the loss and damage paid on the total live stock business, not only into Chicago but into all other markets, was it not?

A. No sir, that is the live stock damages paid by the C. B. & Q. proper. That is the inquiry.

Q. You mean by that——

A. That is the line east of the Missouri River.

Q. You mean that don't include the li-s west of the Missouri river?

A. No sir.

Q. And don't *li*clude the loss or damage that happened west of the river?

A. No. It includes damages that cover live stock shipments to Chicago and it might have been live stock shipments to other places. We handle live stock east of the Missouri River to other markets than Chicago.

253 Q. Did that include the damage to shipments that came into St. Joseph, Kansas City and South Omaha?

A. No.

Q. You are certain of that?

A. Yes.

Q. I wish you would get a statement showing what it was that was paid for the lines west of the river.

A. During the same period?

Q. Yes.

Mr. DAWES: You mean showing that that is the loss and damage on this 50,000 cars?

A. Yes, that we have paid.

Q. Forty one thousand dollars on some 50,000 cars?

A. Yes, that is we have paid that. We might have other claims that amount to $50,000 that we have not paid.

Q. You have already paid eighty cents -r thereabouts a car?

A. Yes sir.

Mr. COWAN: I would like you to make up a statement of the total amount of loss and damage claims paid by your system of railroads, known as The Burlington System and let that cover a period of a sufficient number of years to show what the average ought to be, and, opposite the number of carloads that you handled, the total carloads handled during that same period.

Mr. DAWES: I object to that, your Honor.

The COURT: You want *jim* to furnish it, don't you?

254 Mr. DAWES: I object to it for the reason that it involves us in too much labor.

The COURT: Well, that is a matter that you need not discuss here. You need not furnish it if you don't want to*o*.

Mr. COWAN:

Q. Didn't you testify before the Inter State Commerce Commission in the Cattle Raisers' case against various railroads, including your line, that the total loss and damage claims for the year 1904 for your system of road, paid and that you expected to pay were $47,000?

A. Well, I don't remember what the figures were. That was true of the -ondition of affairs, whatever was testified to there at that time. Those figures were obtained from our records.

Q. Your total traffic in live stock runs almost into the hundreds of thousands of cars altogether on your system, does it not, per year?

A. East and west?

Q. Yes.

A. Well, it does and it don't. Now, there is a good deal, in arriving at those figures, there is a good deal of duplication. For example, live stock that is shipped from points west of the Missouri river will go into Omaha and it will be counted as an Omaha shipment, but it may pass on from Omaha to Chicago -nd it is in there twice.

Q. What percentage of the shipments you ship into Omaha
255 from the west, do you also ship out as live stock going out of Omaha?

A. Do you mean as to what percentage of live stock we take in that moves through there?

Q. Well, take the Stock Yards Report. Have you got the Omaha Stock Yards Report?

A. No, I have not. I have never calculated on that at all and I would not care to make an estimate; I have not studiee the f-gures at all.

Q. Among other things that you put into the expenze of handling this business, is the unloading at yards for the purpose of feeding. Is it not a fact that that does not apply on these shipments in question from point- this side of the Missouri River except where there is some accident or another?

A. Well, we have quite extensive feed yards at Galesburg and people from Iowa have fed their cattle there right along at Galesburg. Galesburg is 163 miles from Chicago. These people have fed there right along, for reasons best known to themselves. It is not to our interest to encourage these stops for feeding. When we pick up a man's cattle or hogs in Western Iowa we would much prefer to take them to Chicago instead of unloading and loading them up again at intermediate points.

Q. Do you know what percentage of the live stock that comes from Iowa to Chicago stops to feed at Galesburg?

A. No, I do not.

Q. Isn't it a very small percentage?
256 A. I don't know.

Q. Don't you know that it is a fact that the live stock shippers of Iowa are clamoring for service that will put their stock into Chicago without stopping to feed?

A. Some of them are and others are not.

Mr. DAWES:

Q. Are you paid for that service?
A. We charge for the feed that is furnished.
Q. I mean for the service of loading an- unloading?
A. No sir.

Mr. COWAN:

Q. What do you charge per car for feeding?

A. We don't charge per car. I don't recollect what the feeding charges are but we charge so much per ton for the hay. I don't know whether it is $15.00 a ton or higher or lower. That varies somewhat with the market for hay.

Q. Are you able to state that it is not a fact that the profit in the

feeding is equivalent to taking care of the unloading in the feeding at Galesburg?

A. I don't know whether it is or not, I never have made any figures on it. Whether we made money out of it or lost we would have to provide the facilities.

Q. Y-u made the statement that you had to do without the use of equipment while you stopped to unload and feed?

257 A. Well, I think that is a self evident fact. We could not have the cars standing on the side track at Galesburg, for example, and have them moving to Chicago at the same time.

Q. These feeding yards are at division points, are they not?

A. Yes sir.

Q. That is the end of the run for the crew and for the engine?

A. Yes, for the crew but not necessarily for the engine, and it is not the end of the run for the cars at all.

Q. Do you know whether or not when you stop and unload one train and are ready to load another, whether you retain there the very cars out of which the cattle are unloaded?

A. It is all owing to the conditions prevailing whether we would do that or not.

Q. Sometimes you load them into the same cars and sometimes into others?

A. Whatever we consider to be the most economical proposition.

Q. Now, you say that one of the items of expense is the extra speed that you have got to run your trains at, to pick them up and run them along at twenty or twenty five miles an hour. If you do that thing, then you certainly are not liable for any damages in such a case, arre you, and you don't pay any damage?

258 A. We might be running a train at 25 miles an hour with live stock and some train ahead of it not loaded with live stock, something might happen to it and our live stock train would be paid out, and, if it was, we would have a claim for damages right away.

Q. The total of the risk incident to the character of the traffic is embraced in what you have to pay for it in the way of loss and damage claims, is it not?

A. I should say so, yes.

Q. Do you know what the actual cost of the train service is for hauling a train from South Omaha to Chicago?

A. No sir.

Q. How is that?

A. No.

Q. Do you know whether as a matter of fact it costs you any more or any less for train service for trains in which packing house products and dressed meats are hauled than a train in which live stock are hauled?

A. I have not made that the subject of any investigation at all, so I am not prepared to say.

Q. Mr. Baxter asked you if, in ascertaining the cost per car load (and I suppose the same ruling would apply per train load) you divided the expense between the passenger and the freight service.

Are you certain that your company keeps an account that shows a division of expense between passenger and freight service?

259 A. I don't know about that. It is something that does not come under my jurisdiction and it would have nothing whatever to do with my making rates or considering rates, it would have no bearing on the question at all. It is simply a matter of bookkeeping for the auditor. I would not change a rate whether he divided the expense between the freight and the passenger or whether he did not.

Q. Do you make rates of freight or adjust them with a view to a particular profit out of a particular class of traffic?

A. No, you cannot do it, because you don't know what the class of traffic is going to be or the volume of it or how it is coming to you or any thing about it.

Q. In your experience has there ever been any rule adopted or in use whereby rates are made with a view to giving a particular profit on any particular class of traffic, among other railroads?

A. I never heard of anything of that kind, and I don't see how it would *ge* practical or possible. If I found we were hauling live stock to-day for less money than we should have, how could I change my rates? If I discover, for example, that instead of 23½ cents from the Missouri River to Chicago on live stock, I ought to have thirty cents, how am I going to get at it?

Q. You would have to search me.

A. Some of you gentlemen that ask these questions might

260 try to answer some of them.

The COURT: You mean that the competition prevents you.

A. Certainly, I cannot change my rate; I have either got to go out of business or do it at the going figure. It is a question of a choice between those two things.

Mr. COWAN:

Q. When those rates were established or at any time when those rates were changed, was it done with a view to produce a particular profit out of the business or because of competitive and other conditions which brought about the changes?

A. In order for me to accomplish anything of that kind or to calculate anything of that kind, I would have to be able to read the future, and, if I could do that I would not be Traffic Manager of the C. B. & Q. Road for two seconds.

Q. You stated yesterday that you did not know what it cost to haul a train or a carload from the Missouri River to Chicago, and I suppose that would apply as between other points. How are you able to determine, not knowing that, what is a reasonable rate?

A. We consider that traffic, along with everything *eose* that we handle, we consider the general results. We cannot say that we are going to have so much live stock business and therefore our rates on live stock will be so much, or, that we are going to have so

261 much lumber business or meat business or grain business. We don't know anything about it. Our rates are adjusted in line with the conditions that prevail, and, as I stated a moment ago,

we have either got to stay in at the going prices or quit the business.

Q. Not knowing the cost of the service, are you able in fixing the rates or adjusting them or changing them, to determine what a reasonable rate is from the cost of the service or the profit in the transaction?

A. I do not know that I understand that question if I have not already answered it. We don't know anything about the volume of any particular traffic that we are going to have. We cannot say that our rate on live stock is going to be so much and that we are going to have so much live stock and that the live stock shall produce so much gross revenue. We will not be able to tell anything about it. We cannot tell what the business of a railroad is going to be for the simple reason that we don't know what the traffic is going to amount to at all. One year twenty per cent. of our business may be live stock and the next year ten per cent. of it might be live stock and fifty per cent. of it some other commodity. The conditions change with every hour and every day and year.

The COURT:

Q. Suppose you had all this business yourself, couldn't you get at a basis?

262 A. I don't know how I could. How do we know what we are going to have?

Q. Couldn't you base it on last year's experience?

A. I don't think we could. I think even if we had it all ourselves, I don't know really what we would do. It is the conditions which govern us, and we endeavor to fix our rates on what we consider a reasonable basis to-day. Some of them we think are reasonable in themselves and some of them are unreasonably low, less than they should be.

Q. What your experience has been, I suppose is that the competition is really what controls the situation?

A. That is it. If we don't want to do any class of business to-day we can quit, we can say that we don't want it. If I put in a rate that is higher than any other carrier's rate, that is equivalent to saying that we don't want it. Nobody pays us a premium for doing business.

Mr. COWAN:

Q. Are the rates as they exist to-day on the various commodities, adjusted on the basis of the cost of the transportation? You mentioned several commodities.

A. The cost is not the only element that enters into consideration in adjusting those rates.

Q. And that never has been the case?

A. No, there are other elements. The principal element in the fixing of rates everywhere in this country today is the competition, either one kind or another.

263 Q. You speak of the competition; what competition is there in the district of country this side of the Missouri River which affects the amount of the rate, take that territory in which the 23½ cent rate prevails.

A. What do you mean?

Q. What competition is there which affects the amount of the rate?

A. That is what competition is there that makes the rate 23½?

Q. Yes.

A. I can remember a time when the rate in the same territory was $75.00 a car, and everybody thought it was an extremely low rate.

Q. From where?

A. From all through this country where the 23½ cent rate applies.

Q. When was that?

A. That was probably twenty years ago or fifteen.

Q. Don't you remember a time, too, when it was lower than it is to-day?

A. As I say, all these figures are the result of competition of various kinds and in various forms.

Q. Haven't those rates been substantially fixed and varying very little now for ten or fifteen years from that territory?

A. There was a time when the rates were less than they are to-day, as you say. I don't recollect at any time when they were any higher within that period, although when you go looking back 12 or
264 15 years, my recollection as to the condition of affairs in the interim is not quite clear. I have so many figures in my mind that I cannot picture to myself the rate of this year with another, etc.

Q. In considering the changes of rates that take place now in that territory from points in that territory to Chicago, is it not a fact that the railroads have an asociation called The Western Traffic Line Committee, which association gives them an opportunity to meet through their respective traffic men and consider such matters?

A. It is absolutely necessary for the conduct of the railroad business of today, both in the interests of the shipper as well as the railroad, for them to confer with each other as to the conditions, and as to what can be done. One interest is so interlocked with another that one cannot act without affecting the other. We cannot make a rate from Western Iowa, from a local point in there, in Iowa—for instance, our road reaches Creston, Iowa, and yet if I undertook to adjust the rate from there I could not do so without interfering with my neighbors on either side of me.

Q. That is with the other lines?

A. Yes sir. I cannot do that. I can create a condition there that will upset their business, and they can create a condition
265 there or somewhere else that will upset mine.

Q. You find it necessary as a business matter to confer together with respect to it?

A. We talk this situation over at times, and sometimes we don't. I very frequently take up a report from Washington indicating that someone of my neighbors is taking an action about which he has failed to say anything to me.

Q. Has there been any material reduction in those rates for the past ten years?

A. I have given this matter of the rates east of the Missouri River practically no attention whatever for that period. Previous to 1902 I was in charge of the territory west of the Missouri River, and I am not familiar in my mind with the detail of all these figures.

Q. You have not given any attention to these rates then that are in question here from points this side of the river?

A. As to what they are as compared with what they were fifteen years ago. There have been material changes and I have not taken the time to look into it, see just what has been done there.

266 Q. The competition which you speak of is simply the competition, then, to get the business, is it not, Mr. Crosby?

A. Well, that is the only kind of competition that I know of between carriers, is one endeavoring to get it away from the other.

Q. And that has not reached the point of the reduction of the rates in this territory mentioned to Chicago?

A. Well, it has not—it has resulted in the establishment of the existing figures. There has been no competition that forces a change in them, that has forced a change in them.

Q. Do you know about a general advance in the hog rates to 23½ cents from 22 cents from all that territory in 1894?

A. No, I just stated that—I notice this, however, that we are getting less revenue for hauling a car of hogs to Chicago than we are of cattle, although our service is practically the same.

Q. Are you able to name any conditions which warrant a difference — adjustment and relation of the rates between packing house products and dressed meat and live stock from St. Paul to Chicago than from Missouri River to Chicago?

A. Well, the St. Paul competition changed that basis of rates up there to a different scale; that is the result of competition. We have competition at St. Paul that we do not have at the Missouri River.

267 Q. Did competition produce an advance in the live stock rates?

A. Where, from St. Paul? Have they been advanced?

Q. I don't know whether they have or not. I just asked.

A. You asked me if competition produces them. Competition may have forced it and that competition ceasing may have enabled things to get back to their normal basis.

Q. Well, do you know any difference in conditions which affect traffic between Chicago and Buffalo and Pittsburg and New York which should require a different adjustment of the rates between live stock and packing house products and dressed meat?

A. Well, the character of the service, the business, volume of tonnage, and so forth, may be entirely different, the proportion of one to the other in this territory than there is in the Missouri River territory. I do not know what actuated the Eastern lines in adjusting their rates the way they have to Pittsburg, Buffalo and New York.

Q. They have always been adjusted, though, on the basis that packing house products and dressed meat paid the higher rate?

A. I don't know that they have, they happen to be that way today, I don't know how long that history is, how old that is.

268 Q. Are there any differences in the conditions with respect to the cost of handling live stock now and dressed meat and packing house products now from what it was four or five years ago?

A. There may not be as to the relative cost, but the conditions under which they are transported are different.

Q. I am speaking of the relative cost between the two. Now, you spoke about the cabooses being an element of cost, isn't it a fact that you use the ordinary caboose in transporting,—for use in all sorts of trains?

A. No, sir. We have different classes of caboose that we use, a different caboose on these trains loaded with live stock. Sometimes we have eight or ten or twelve men, or twenty men, to accommodate in one of these trains. The ordinary caboose that we handle a freight train with would not take care of them. You take a train of live stock, Mr. Cowan, from Missouri River to Chicago and the way we are required to run it it is about as comfortable a way for a man to come over as you can get. That would be especially so from Missouri River. You could get in one of these cabooses in a bunk and lie down and go to sleep and you don't know anything about it until it gets to Chicago the next morning. You don't know whether the stock is up or down.

269 Q. Unless the train had a wreck. Now, the cost of the stock yards you speak of. You said the stock yards of your company cost a million dollars. I would like to have you tell me who of your company knows what it cost to build these stock yards?

A. The auditor's office keep accounts. They know what these various yards cost.

Q. What person in the auditor's office knows what it cost to construct those stock yards?

A. Well, I don't know what particular individual, but the auditor in charge of the accounts knows, could satisfy himself so that he would be able to make a statement.

In that connection I would just like to add one thing additional as to the expense attending handling of live stock, that does not entail on other freight, and that is the matter of furnishing scales for the weighing of live stock at stations. I left that out.

Q. Furnishing flat scales?

A. Yes, sir—no, sir, wagon scales, so they can drive a steer on it or half a dozen steers and weigh them.

Q. Do you furnish very many of them?

A. Yes, sir.

Q. How many?

A. Quite generally.

Q. Why do you furnish those scales?

A. Competition forced it.

Q. That is you furnished them because other roads do?

A. That, and then a great many people imagine that if
270 they weigh their stuff on scales that belong to an individual, that there might be some disparity in the weight, might be something wrong about it; whereas, if the scales belonged to somebody that has no particular interest in whether they weigh heavy or light, they might get a little better system of weighing. So you might say, public opinion in some of these communities forces the railroads to put in the scales.

Q. Do you know how many scales you have in on your line in the State of Iowa?

A. No, sir.

Mr. DAWES: What were you going to say?

A. He wants to know how many scales we have. I do not know.

The COURT: Do you have them at every station?

A. No, sir, not all stations, but the majority of them.

Mr. COWAN:

Q. Now, those conditions with respect to the scales, with respect to the stock yards, and with respect to carrying the men, have been the same right along in the transportation business for years, haven't they?

A. Yes, but the method of transportation of live stock has changed.

Q. What method?

A. Of handling, the kind of cars we load in and everything else.

271 Q. Since when?

A. In the last 15 years. The couplers have come in. In the olden time when we passed men in charge of live stock, we had the link and pin coupling which would bring everything up standing when we stopped the train.

Q. That has been 15 or 20 years ago?

A. I say, conditions have changed.

Q. But they have not changed in the last eight or ten years?

A. Well, the equipment of live stock cars has changed, is increasing, that is, these new appliances have increased every year, more and more of it.

Q. You mean a greater proportion, as you put on air brakes?

A. Yes, sir.

Q. Haven't you been handling practically altogether air brakes and regularly equipped cars substantially such as are now in use for eight or ten years?

A. Well, I know that eight or ten years ago a portion of our equipment, at least were equipped that way, I do not know what extent, that is, what percentage of the whole.

Q. Now, those same conditions, those same relative conditions for handling dressed meat and packing house products and live stock apply in other parts of the country, do they not?

A. How is that?

Q. These same relative conditions between handling the live stock and the dressed meat and packing house products
272 apply in shipments from here to Buffalo, they have to use stock yards and stock cars and take men in charge, do they not?

A. Yes, sir. They do not give people return transportation, for example.

Q. How is that?

A. They do not furnish return transportation. If a man goes from here to New York, for example, with a train load of cattle, he pays his fare back.

Q. Who takes care of the cattle then?

Mr. DAWES: I object to this particular line of inquiry as to what is done elsewhere under other conditions. It cannot concern or throw light on this particular subject.

The COURT: The objection is overruled.

Mr. COWAN:

Q. The railroad assumes the burden, then, of taking care of the cattle themselves?

A. Well, the railroad companies assume it whether there is a man in charge or not. That is the reason we have all these claims, we have a claim for a steer that gets down and has its neck broken or leg broken, or is killed, whether a man is in charge of the live stock or not. Now, the man in charge has not prevented anything of that kind occurring, in all probability he don't know anything about it until after the car arrives at the market, but we are asked
273 to foot the bill notwithstanding the fact that we have passed a man in charge of that live stock for the very purpose of preventing its getting down and getting injured.

Q. And you say he does not look after his stock in transit?

A. Well, I don't—if he does, how do those things occur?

Q. Who is Mr. Darius Miller, Mr. Crosby?

A. He is First Vice President of the Chicago, Burlington & Quincy Railroad Company.

Q. How long has he been such?

A. About three years and a half, I think.

Q. Previous to that time what position did he hold?

A. He was Vice President of the Great Northern Railway.

Q. Hasn't he been connected with the Burlington System a great many years?

A. No, sir.

Q. I was under the impression that when he testified in this case in 1902 that he testified that he was at that time and had been for some time Vice President of the Burlington?

A. I think if you will look at his testimony you will find that he went to work for the Burlington, probably, January 1st, 1902.

Q. Who was Mr. Delano?

A. Mr. Delano was General Manager of the C. B. & Q. Railroad east of the Missouri River.

274 Q. I believe that is all.

Redirect examination.

By Mr. SEVERANCE:

Q. Isn't it a fact that live stock cars are on demand of shippers at local points sent to those local points and often lay there for days

before they are loaded, and isn't it true that a large part of the live stock equipment of every railroad company is idle because it is waiting the pleasure of the shippers at local points?

A. There is more or less of that done.

The COURT: Is that true more of live stock cars than other kind of cars?

Mr. SEVERANCE: Yes, than packing house cars, that packing house products are shipped in—those cars belong to private car lines, as a rule, do they not?

A. Yes, sir.

Examination by Mr. JEFFERY:

Q. If a cattle train were wrecked on any road, or a meat train were wrecked, which would cost, under practically the same conditions, suppose the car turned over, which would cost the company the most in dollars in your estimation?

275 A. Well, that is a pretty hard question. We might turn the car of live stock over and break the necks of every one that is in there and have to pay for them, and then we might turn it over again and might break the neck of only one. We might turn a car load of meat over and not damage any of it.

Q. Well, from your experience as a railroad man do you think that there would be a more likelihood of turning over a cattle car and not hurting any of the cattle than there would be of turning over a car of meat without damaging it?

A. I think the susceptibility to damage would be in favor of the live stock, it would be more apt to be damaged.

Q. A good many per cent., don't you think, Mr. Crosby?

A. Yes, sir.

Examination by Mr. RANSOM:

Q. I would like to ask a question. Have you got rates tributary to South Omaha and the western part of Iowa into South Omaha?

A. Yes, sir.

Q. Established rates, all the railroads have?

A. Yes, sir.

Q. Now, take the place you mentioned, Russell, Iowa, was it?

A. Yes, Woodburn, Iowa, I think.

Q. What did you say the rate was from that point into South Omaha?

276 A. Woodburn, Iowa; the rate from that point to South Omaha is 14.158 cents per hundred weight on cattle.

Q. How far is that place from South Omaha or the River?

A. It is 155 miles from South Omaha.

Q. Have you rates established and published into South Omaha from Northwest Missouri?

A. Yes, sir, we have some rates from there.

Q. And have you rates established and published into St. Joe from Missouri?

A. Yes, sir.

Q. Now, can you state what the rate is into the Missouri River

from Northwest Missouri and Western Iowa, say fifty miles from the River?

A. Well, here is, take Calista, Iowa; that is fifty miles from Pacific Junction. The rate to South Omaha is 10.68 cents per hundred weight on cattle.

Q. Now, does that same rate prevail at all points about the same distance from the Missouri River east?

A. Yes, sir, here is Red Oak, Iowa, that is forty five miles from Pacific Junction—Pacific Junction, by the way, is 25 miles from South Omaha. The rate is 9½ cents on cattle.

Q. Well now, take points 75 miles from the Missouri River. What is the rate there?

A. Prescott, Iowa, to Pacific Junction is 72 miles; under the tariff we call it 75. The rate is 12 cents.

277 Mr. SEVERANCE: That is the rate to South Omaha?

A. Yes, sir.

Mr. RANSOM:

Q. That rate prevails at all points the same distance?

A. Practically, yes, sir.

Q. Now, take a point a hundred miles way?

A. Thayer, Iowa, is 102 miles from Pacific Junction.

Q. What is the rate there?

A. 13.53 cents on cattle.

Q. That is the same on all points about the same distance from South Omaha and the Missouri River?

A. Yes, sir, that is based on a distance tariff, the Iowa distance tariff.

Q. That is 13 something, you say?

A. 13.53 cents.

Q. You cannot state what the tariff is from these several points mentioned into Chicago?

A. The rate is 23½ cents.

Q. 23½ cents?

A. Yes, sir.

Q. Where is the dividing line between Chicago and the Missouri River?

A. That is, what do you mean?

Q. Where you commence to scale it down towards Chicago, and abandon the 23½ cent rate?

A. Well, that is, I don't know just what point that is.

Q. Do you know where it is on the Great Western?

A. No.

278 Q. Do you consider these rates that you have mentioned at 50 miles, 75 miles and 102 miles, approximately, from the Missouri River and into South Omaha a fair rate as compared with the 23½ cent rate from the River and from South Omaha into Chicago on live stock?

A. Well, those rates are given to us by the Iowa Commission. It doesn't make any difference what we think of them.

Q. Well, you have considered those rates, haven't you?

A. Well, we have accepted them.

Q. Is it your opinion they are too—withdraw that—do the cattle and other live stock move out of this territory in Western Iowa, which is tributary to the Missouri River, both to the Missouri River and to Chicago, on those rates?

A. Yes, sir.

Q. They do move out on both rates?

A. Yes, sir.

Q. That is, they are carried, the live stock is carried, from those points to South Omaha and at the same time other shippers from the same territory will come to Chicago?

A. Yes, sir. Some men, the same man will ship them in both directions.

Q. Have you examined the rates into Chicago from the dividing line?

A. No, I cannot say that I have.

279 Q. Don't you know as a matter of fact, Mr. Crosby, that after you do abandon the 23½ cent rate, as you get farther east, that the rate is scaled down more rapidly towards Chicago than it is to the Missouri River west of that?

A. Well, I think it is because our Interstate rate would naturally be on the——

Q. It doesn't matter what it is, but that is the fact, isn't it?

A. Yes, sir, that is a fact.

Q. Now, do you know of any place except at the Missouri River where shippers of live stock are given this privilege to unload except at South Omaha and other Missouri River points?

A. No, I don't know where—Well, they have the same privilege at St. Paul and Minneapolis.

Q. Yes, St. Paul and Minneapolis?

A. Yes.

Q. You have no custom there, no rules in force by which if a shipper is dissatisfied with the South Omaha market, for instance, or the St. Joe market—say South Omaha market, he could ship to St. Joe?

A. No.

Q. And you have no rate that if the live stock was shipped to South Omaha from the west, he could unload there and try the market, and then if he was dissatisfied with it, ship to Cedar Rapids?

A. Nothing except on the Mississippi River rate. He would have that privilege.

Q. There is no such favorable arrangement made for him as there is to ship to Chicago?

A. No.

Q. No such favorable rate on any other point?

280 A. Well you mentioned Cedar Rapids, that is——

Q. There is a packing house there?

A. They do not handle cattle, however. For example they would have the same privilege of shipping to Cedar Rapids that they would to Chicago.

Q. But not on a single rate?

A. The Cedar Rapids rate is made either by combination of the

Missouri River rate or the Mississippi River rate used as a maximum. We would not charge a higher rate to the intermediate point.

Q. What is the rate from South Omaha to Cedar Rapids?

A. I don't know. I could not tell you, but as a rule the Mississippi River rate from all that territory makes a less rate than the combination of rates on Omaha.

Q. There are no rules adopted by the railroad company and no custom in vogue by which a man out here at Monmouth could ship cattle to Omaha at the established rate and then if he didn't like the rate ship to Buffalo?

A. No.

Q. And no inducements are offered to him to ship back to the Missouri River, are there?

A. No, sir.

Q. No such favorable arrangement is made in Chicago as there is at Missouri River points?

A. Well, the live stock rates are practically on the combination of rates through Chicago, for example—we do not publish any rates from western territory to territory east of Chicago. We have
281 no system of through rates.

Q. Mr. Crosby, when you are making up trains of live stock from these Missouri River shipping points, like Sioux City, South Omaha, St. Joe, and Kansas City, they are made up right there, ain't they at that one place, aren't they?

A. Oh, yes, sir.

Q. And when a live stock raiser or shipper in this territory east of the Missouri, Northwest Missouri and Western Iowa is about to ship his hogs to South Omaha or any Missouri River point, can he depend exactly, as exactly on the time when he will get to South Omaha as he can calculate to come to Chicago?

A. Well, he knows what his schedules are in both directions.

Q. Well, the trains are scheduled to Chicago so that you know when they are going to get here, don't you?

A. Well, we try and have them make the schedule.

Q. You testified that you have to get here at a certain time?

A. Yes.

Q. Now, as a matter of fact the drift, then, the schedule of trains is towards Chicago. Now, if a man wants to ship out of this territory to the Missouri River, he cannot make as close calculations as to when he will get into the River as he can to get into Chicago?

A. Well, I don't see why he can't, because we have train service.

Q. You make up live stock trains on your road in this
282 territory, Western Iowa, and Northwestern Missouri regularly to come to South Omaha?

A. Well, we have regular schedules, they are not known as live stock trains. They are put on to our merchandise trains, trains that handle general freight.

Q. They come on your regular local trains into South Omaha?

A. Yes, sir.

Q. And your local trains do not get in there on schedule time as exactly as your live stock trains do here in Chicago?

A. Well, I don't know whether the service is any better in point of arrival at one place than the other.

Q. You say you don't know. Well, you have no live stock trains made up in this territory?

A. No, sir.

Q. You carry it on local trains?

A. It is carried on local trains.

Q. So all the delays that happen to a local freight train will happen to a man that is shipping out of this territory into the Missouri River?

A. Yes, sir.

Q. You say that they move out of this territory to Chicago and to the Missouri River?

A. Yes, sir.

Q. Now, why do they move out under those rates?

A. Well, certainly the rates do not prohibit movement, they seem to be fairly adjusted in accordance with the conditions. The
283 shipper makes up his mind that, this lot or today I will ship to Chicago with this class of stock, and tomorrow I will ship to Omaha, or may divide his business.

Q. He may ship to either place under those rates?

A. Yes, sir.

Q. And does do it. How long do you say that has existed?

A. These rates have been in effect there for years; I do not remember how long.

Q. And is what you have testified to about South Omaha applicable also to St. Joe market?

A. Yes, sir.

Q. Does it apply to the Sioux City market, or do you know?

A. I don't know. I have nothing to do with Sioux City. I imagine those conditions are about the same.

Examination by Mr. LYNDE:

Q. I would like to ask a few questions. These markets you name in the Black Hills country, Gillette, and others on your line, what is the average distance of those points from Chicago—take Gillette. I refer to the points where the 48 cent rate controls?

A. About 1200 miles.

Q. How far from them to the Missouri River?

A. No, I will take that back, it is less than 1200 miles. I
284 think Gillette is about 650 miles from the Missouri River.

Q. That is 650 miles from the Missouri River and then 500 in addition to Chicago?

A. The Chicago distance added.

Q. So the shipper from Gillette at the 36 cent rate to the Missouri River—on a shipment from Gillette the 36 cent rate to the Missouri River applies on the 650 miles?

A. Yes, sir.

Q. As against the 12 cent as to the 500 miles to Chicago, is that it?

A. Yes, sir.

Q. That is true of the other points, too?
A. Yes, sir.
Q. That is all.
The WITNESS: I would like to make one explanation. You understand our rates from Gillette and Sheridan are made for a longer distance than your rates from Belle Fourche. The short line fixes our rate, but the lay of the country is such that our stations for 200 miles are in competition with you and we have to carry a blanket rate.
Q. Whether the Elkhorn or the C. B. & Q., the fact is the rate into Omaha is very much larger per mile than the rate from Omaha on to Chicago?
A. Yes, sir.
Mr. SEVERANCE: Over twice as much.
Mr. RANSON: Just exactly three times as much for the
285 same distance.

WILLIAM A. GARDNER, called as a witness in behalf of the Defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

The COURT: Your full name, please?
A. William A. Gardner.

Mr. BAXTER:

Q. Mr. Gardner, what is your occupation?
A. William A. Gardner, General Manager Chicago & Northwestern Railway.
Q. With what railroads in the United States have you been connected; in what capacities, and what have your duties related to?
A. I have been telegraph operator on the Alton and Illinois Central; trains master on the Atchison road; clerk and operator, train master, assistant superintendent; superintendent; assistant general superintendent and general manager of the Northwestern.
Q. Well, have your duties related to the actual movement of traffic over your lines?
A. Yes, sir.
Q. On that portion of your road which lies between the Missouri River or South St. Paul on one hand, and Chicago on the other, what is the maximum number of loaded cars of live cattle
286 and live hogs that can be hauled by one engine at the speed which is required for that service?
A. From 25 to 30 on the main line. There is a difference, of course, in the amount of time you have to make the market in; that governs the rate of speed at which you have to travel. And the tonnage for a number of cars in a live stock train is the tons or number of cars that you may move between terminals at a certain rate of speed; that is, you cannot stop and set out at the foot of each grade, and fill up when you get over the grade; you cannot do any

switching at terminals; therefore the tonnage of the live stock train is considerably less than that of any other commodity.

Q. On that portion of your road, what is the maximum number of loaded cars of dressed meat or prepared products of cattle and hogs that can be hauled by the same engine at the speed which is required for that service?

A. I do not believe I understand that question.

Q. My first question was as to the number of loaded cars containing cattle and hogs?

A. Yes, sir.

Q. That could be hauled at the speed required for the live stock service?

A. Yes, sir.

Q. Now, my other question is, the number of cars, the loaded cars of the product that can be hauled at the speed required to haul such products?

287 A. Well, about five more, probably, thirty five cars.

Q. Well now, what is the maximum number of loaded cars of ordinary dead freight that can be hauled by the same engine at the speed which is required for that service over the same road?

A. 35 to 40, dependent on the capacity of the cars.

The COURT: More still?

A. Oh, yes.

Mr. BAXTER:

Q. What is the average weight of the cars employed on your road in the transportation of live cattle and hogs?

A. About 18 tons and a half. That includes the bedding and offal.

Q. Includes bedding and manure?

A. Yes, sir.

Q. What is the average weight of cars on your road used in the transportation of dressed meat and prepared products?

A. About 22 tons. And that allows for the ice, five thousand pounds of ice on the car.

Q. What is the average weight of cars employed in the transportation of ordinary dead freight?

A. About 17 tons.

Q. What is the average weight of the contents of cars on your road when loaded with live stock or live hogs?

A. It averages exactly 9.7 for the last fiscal year ending June 30th.

288 Q. What is the average weight of the contents of cars on your road when loaded with the dressed or prepared products of cattle or hogs?

A. 12.2 tons for the same period.

Q. What is the average weight of the contents of cars on your road when loaded with ordinary dead freight?

A. 13.3 tons for the same period.

Q. On that portion of your road which lies between the Missouri River or South St. Paul on the one hand, and Chicago on the other,

what is the average rate of speed at which trains of live cattle and live hogs are moved?

A. Well, a through train of live cattle and live hogs would probably average from 25 to 28 miles an hour. A train of cattle and hogs which was a pick-up train, and the average train of live stock on the Northwestern Railway comes from about ten different places, that would average about thirty five miles an hour running time.

Q. On the same portion of your road what is the average rate of speed at which trains of dressed or prepared products of cattle and hogs are moved?

A. From 20 to 22 miles an hour. We only move products on two trains, one of them is scheduled to leave Council Bluffs at 2 o'clock in the afternoon and get into Chicago at 2 o'clock the next afternoon, 24 hours for the 490 mile run. The other one leaves there
289 at 11 o'clock at night and gets here at 6 o'clock in the morning, 31 hours. We do not move products on any other trains than those two.

Q. On the same portion of your road what is the average rate of speed at which cars of ordinary dead freight are moved?

A. Well, from 12 to 15 miles an hour. That is what we intend to do. We do not always accomplish it.

Q. What is meant on your road by the tonnage rating of a locomotive engine?

A. Well, it is the number of gross tons that a locomotive will pull within a certain district, between terminals or over certain grades, determined by an actual test.

Q. By gross tons you mean the weight of the car and the contents?

A. The car and the contents, yes, sir.

Q. What is the average tonnage rate of locomotives used on that portion of your road in the transportation of live cattle or hogs?

A. Between Missouri River and Chicago?

Q. Yes.

A. From ten to eleven hundred tons, and 33 per cent. is the revenue tonnage.

Q. What is the average tonnage rating of locomotives used on the same portion of your road in the transportation of dressed or prepared products of cattle and hogs?

290 A. That will run 100 to 1250 tons, and 36 per cent. of that will be revenue tonnage.

Q. What is the average tonnage rating of locomotives used on the same portion of your road in the transportation of ordinary dead freight?

A. Well, that will run from 1200 to 2000 tons and 44 to 45 per cent. of that is revenue tonnage.

Q. By revenue tons you mean——?

A. The paying freight in the train.

Q. Take an engine that can pull a given number of tons over a given railroad at the rate of say twelve miles an hour, what effect would an increase of the speed to 18 miles an hour have upon the

tonn-ge which could be pulled by the same locomotive over the same railroad under otherwise similar conditions?

A. Well, probably it would reduce the tonnage one fourth. Of course everything would depend upon the weather conditions and wind and moisture.

Q. On that portion of your road what proportion of the trains in which live cattle or hogs are moved is composed exclusively of cars containing live cattle or hogs?

A. Well, I think last year we moved east bound 15,000 trains, that entirely, that is the aggregate number of east bound trains, freight trains, between Omaha and Chicago, and there is some 22 or
291 23 per cent. of those trains that were exclusively live stock trains.

Q. On that portion of your road what proportion of the trains in which the dressed or prepared products of cattle or hogs are moved is composed exclusively of cars containing such products?

A. Well, there wouldn't be any composed exclusively of products, because we do not have a full train of products any day; we only moved last year out of South Omaha something like 3500 car loads of the product, and that came 10 or 12 cars a day.

Q. Well, do you fill up those trains?

A. We do, invariably.

Q. To the capacity of the engine with other freight?

A. Yes, sir, invariably.

Q. What other freight?

A. Grain, merchandise and so forth.

Q. Do you fill them up with live stock?

A. Not ordinarily, because live stock does not move at the time the product trains move.

Q. On that portion of your road what proportion of the trains on which ordinary dead freight is moved is composed exclusively of cars containing ordinary dead freight?

A. I should not say more than twenty per cent. contained exclusively dead freight, because there is so many of them have small lots of stock.

Q. On the portion of your road between the Missouri River
292 and Chicago or St. Paul and Chicago is preference *is preference* given to trains loaded with live cattle and live hogs over trains loaded with dressed or prepared product of cattle and hogs, or over trains loaded with ordinary dead freight, or do all of your trains move upon an equality?

A. The train containing live stock is given the same preference over all other freight trains that passenger trains are given over all other freight trains, and in some instances they have preference over passenger trains.

Q. Will you explain to the court what those instances are?

A. Well, if a passenger train has a very long time, or is scheduled like some of the nights trains are not to arrive in Chicago before seven o'clock in the morning, and we come along to a terminal and there is two or three stock trains there, that it is essential to get in here by six o'clock we hold the passenger train half an hour and let

the stock trains come ahead, because they make just about the same time passenger trains do, and can keep out of their way, and the passenger train is able to make up its lost time of thirty or forty minutes and arrive on time, the result is we are not obliged to pay claims on the live stock.

Q. What effect, if any, does this preference, which you give to live stock trains have upon the movement of other freight trains?

A. Well, it delays them somewhat, at times, seriously. You will *in bear* that for instance when we are bringing six thousand
293 to seven thousand cars of live stock a month into Chicago, in January and February, in the spring months that is 1500 cars a week. Fifty per cent. of all that stock is loaded Sunday, and arrives here Monday Morning, and it takes all the equipment we have got in the way of locomotives to bring all those stock trains in here Sunday night, and get them in here Monday morning, and the dead freight has to lay in yards while we move the stock; and 25% more of it gets in here Wednesday morning, and there is also the same detention then to dead freight. The other 25% comes in the other days in the week, mornings, and it increases the detention to dead freight, it increases per diem that we have to pay on foreign cars, and it decreases the utilization of our own cars.

Q. On a portion of your road between the Missouri River and Chicago, what proportion of the cars intended for the transportation of live stock move to the point of shipment empty?

A. Practically all of them. We have no loading for the westbound stock cars, particularly in the stock season. There are sometimes when we can load oil in barrels, sometimes when we can load a little company coal, but there is no steady loading for the stock car.

The COURT: How about returning cattle?

A. Very few of them move from here, Judge. Some of them move north but very few of them west, they mostly come from the southwest, feeders. It is safe to say that not one per cent. of our stock cars move west under load.

294 Mr. BAXTER: Well, how is it with reference to cars used in transporting packing house products?

A. They all go empty also.

Q. Now, how it is — reference to cars intended for the transportation of ordinary dead freight?

A. Well, 27% of all our car mileage is empty car mileage, and of that 27%, 9% of it is stock car empty mileage, 18% is dead freight mileage. Cars that we pay dead freight mileage on.

Q. Then out of a hundred live stock cars, as I understand you, practically all of them would go back to the points of loading, empty?

A. Practically.

Q. Out of one hundred cars used for the transportation of freight, dead freight, not more than 18% of them would go back empty?

A. Well, I don't think eighteen would go back empty, I don't know as you correctly understood my reply, and I have not got in my head the empty car mileage of the Northwestern Railroad *vs.*

The loaded car mileage. I can get it when I go to lunch, I have got it on my desk. If 100 represented the total mileage of all cars on the Northwestern Railroad, 75 would represent all the cars that moved loaded on the Northwestern Railroad, 9 would represent all the stock cars that moved empty, and 16 would represent all the dead freight cars moved empty, but it would not be in the relative relations of a hundred, because the dead freight mileage is way
295 above the empty stock car mileage.

Mr. COWAN: I have the figures. The figures show the total car mileage, 29.69 per cent. is empty on the C. & N. W.

A. That is 1904?

A. 1904.

A. We beat that a little last year, it is about 27%.

Mr. BAXTER:

Q. On that portion of your road, is the movement of cattle and live hogs continuous throughout the year, or are there periods when practically little or any is moved?

A. May to September are the light months, and the heaviest months are during the winter, January, February and March, I should think probably one half of all the stock we move would move in December, January, February, March and April.

Q. Well, now, during that portion of the year, when the movement of the live stock over your road is comparatively light, can you find any considerable, can you find other loading for any considerable portion of live stock cars, or do they have to lie idle?

A. No, they lie idle generally.

Q. On said portion of your road is the movement of the prepared or dressed product of cattle and hogs continuous throughout the year or are there periods when there are practically no movements of them?

A. I beg pardon, I didn't get that.

Q. I say, is your movement of the products practically
296 continuous or are there periods during the year when you move but little of that?

A. No, that moves with regularity, about the same number of cars every day.

Q. Then I understand that all those cars go back empty?

A. They all go back empty, yes, sir.

Q. During the year ending June 30, 1905, what amount of revenue was received by your company for the transportation of live cattle and live hogs and what amount was claimed for damages to said cattle and hogs and to persons travelling in charge of it?

A. Well, I think $3,000,000. our revenue was; we paid for damages to stock $63,000.

The COURT: 53 or 63?

A. 63. We paid for personal injuries $7500., but that is not a fair exposition, because the previous year we paid $42,000. and the previous year before that ten or twelve thousand dollars. I think the personal injuries, therefore, will average $25,000. a year riding in cabooses. Our damage and loss is about a dollar a car. I had

occasion to look that up two years ago in Iowa before the Legislature, and that is about the way it run, and I think it runs that way all the time.

The COURT: Have you looked it up as to the other products, dressed meats?

A. Yes, sir.

297 The COURT: I suppose you are going to ask that (addressing Mr. Baxter)?

Mr. LYNDE: I don't think Mr. Baxter heard you.

The COURT: Are you going to ask him about the damage per car for dressed meat?

Mr. BAXTER: My question has not been per car.

The COURT: He gave it to you, I notice.

Mr. BAXTER: It was a voluntary statement, I didn't ask for it.

Q. What is the damage paid on packing house products either in gross amount or per car?

A. The average damage on packing house products has been, for the last three years $5,000 a year. There is no damage paid on delayed packing house products, unless it be you are unfortunate enough to have it in a place where you can't ice to it, which seldom, if ever, occurs. Damage to packing house products is caused by wrecking where you break up a car and break up the contents so there is no salvage left.

Mr. LYNDE: What does that average per car?

A. About 85 cents a car. Of course, that includes interior points this side of the Missouri River.

Mr. BAXTER: Can you state the amount of revenue derived by your company during the year ending June 30, 1905, from the handling of packing house products and the amount paid in claims on account of delays, loss and damage to packing house

298 products?

A. Why, I think the revenue is $320,000. on packing house products.

Q. And the damage $5,000?

A. $5,000.

Q. During the year ending June 30, 1905, what was the tonnage of live cattle and live hogs carried over your road?

A. About one million tons.

Q. During the same year what was the tonnage or dressed or prepared products of cattle and hogs carried over your road?

A. 165,000 I think.

Q. During the same year, what was the tonnage of ordinary dead freight, other than the product of cattle and hogs carried over your road?

A. About $30,000,000.

Q. Are there or not stock yards or stock pens on your Road which are necessary for the transportation of live cattle and live hogs, which are not used in the transportation of dead freight, and if so, state the number of them and their cost?

A. Well, we have, eleven hundred stations on the Northwestern

Railroad. At 983 of those stations, we have stock-yards. There are 2,000 covered pens in these stock-yards, and there is a thousand of these pens that are paved. There is some 740 odd that have got scales. There is about 800 of them that have got water facilities. There is 600 of them have bins for storing bedding, sand and gravel, and one thing and another, and there is a large number of
299 them that have independent tracks that are only utilized for the purpose of stock, I think ¾ of them. They cost about $700,000. for the yards, that is the lumber and putting up the pens. The independent tracks cost $250,000.

Q. That makes a total of——

A. About a million dollars, I think.

Q. What does it cost per annum to maintain and operate them?

A. Well, these yards are built in a very substantial manner, but they are subjected to very rough usage. These country stock-yards you know, are not alone used for the purpose of driving in a carload of stock, and then driving it out through the chute into the car; they concentrate the stock there more or less, some times they keep it two or three days, notwithstanding we object to it, and the steers fight and the hogs root. We have got to have feeding troughs, some of them high for the cattle, and some of them low for the hogs; we have got to have water in the troughs the same way. And you have got to have pens divided up, so that men can put in select stock that he is going to ship and all that, and undoubtedly they depreciate from ten to twelve per cent. a year. And there is one point in connection with that, that is that if the Northwestern Road to-morrow endeavored to duplicate its pens it could not do it for double for what these cost. Lumber that went into these pens cost ten to
300 fifteen dollars a thousand. Common boards now for fencing cost $24. or $25. a thousand on the line of the Chicago & Northwestern Railroad. Therefore, the cost of repairs to stock yards are very much out of line for comparison with their original cost. And this cost of the yards I have not included anything for the ground at all, although that is probably worth from fifty to seventy-five dollars at each station. And among other things you should bear in mind that probably in 50% of the cases the water at the stations does not serve the stock-yards. The passenger stations are situated in the middle of the towns where they will best accommodate the public. The stock-yards are situated away out on the outskirts where they will be of the least annoyance to the public, and it is essential you have independent water plants at stock yards the same as you do for watering locomotives, and you have a good many stations where you have no water for locomotives that you are obliged to have water for stock yards. And in these modern days municipalities are getting after railroads about draining stock yards and cleaning them out, things we did not use to pay much attention to, but it is a matter of very considerable extent now, that thing.

Q. In your statement of the cost of operation and maintenance per annum, did you include anything for annual depreciation, wear and tear, interest on money invested?

A. Oh, yes, I should say ten or twelve per cent. per annum would

be a reasonable depreciation, but that is a pretty large de-
301 preciation.

Q. Explain for the purposes of the record the difference between the manner in which live stock cars are constructed and the ordinary box-car in which ordinary dead freight is carried?

A. The live stock car is all open construction for the purpose of ventilation, slats, and in feed and water cars there is provision made along the side for water, and at the top for hay-racks, etc. It requires a peculiar construction of the car, and a car that is liable to depreciate rapidly, and to be injured, if it receives very serious concussions or jars because your braces are cut right off in the middle in feed and water cars to introduce feed and water racks. The roof of the car is not so secure as on the ordinary car, because it is a sort of hip arrangement a dome in the middle for the purpose of putting in the feed.

Q. I wish you would state the cost of the box-cars in which ordinary dead freight is transported, also the cost of live stock cars—state which of them deteriorates faster, and which are the most expensive to maintain?

A. Well, the last contract we made we paid the same price for box-cars and for stock-cars, we paid $650. a piece for them. The average box-car will last about twenty to twenty-one years. The stock-
car about seventeen years.

302 Q. Now, the cost per year of maintaining it?

A. The cost per year of maintaining, very few railway companies and we are of that number, can afford to keep enough statistics to determine just what it cost to repair each individual car. We have some fifty thousand freight cars. We cannot charge out each car by number every day in type what it costs to repair that particular car. We do know this, however, that it does cost about $35. per car on an average, and we also know that a stock-car requires and receives about double the attention that an ordinary car does that is engaged in carrying dead freight, and in my judgment will cost from $60. to $65. per annum. If you will permit me to qualify that some, I want to explain that. A stock car is always undergoing repairs. There is never a time when it stops at a terminal that it is not surrounded by car-repairers, and they are always tightening up nuts, putting in bolts, changing brake shoes, because they run at a high rate of speed and wears out the brake-shoes very rapidly, and very many other incidentals that are not peculiar to any other type of car. Therefore, I believe they cost that much more to maintain and repair than an ordinary dead freight car does, and a refrigerator car will cost on an equality with a stock-car, a car that carries dressed
beef and dressed product will probably cost just about as
303 much to maintain per annum as a stock-car. The first cost is considerable more. It will cost a thousand dollars instead of $650. that the stock car cost.

Q. Well, now, what is the estimate of the annual cost of repairs on the ordinary box-car?

A. $25. to $30, I should say.

Q. And on the live stock car?

A. I said $60 to $65.
Q. On the refrigerator cars the same?
A. About the same as the stock-cars.

A recess was then taken until two o'clock P. M., of the same day, September 19, 1905.

304 SEPTEMBER 19, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon WILLIAM A. GARDNER resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. State the aggregate amount paid by your company during the year ending June 30th, 1905, as rental for live stock cars?
A. About $18,000.00.
Q. What does it cost to load live cattle and live hogs per car and on whom does the expense of loading at local stations fall?
A. There is a prevailing opinion that it don't cost anything, but I don't agree with that. The stock shipper himself actually loads the cattle and the hogs, but he is always assisted more or less by the station employés and by the train employés.

If there is only one car of stock to load, it is generally placed at the chute with a pinch-bar by the railway employés, and the shipper uses the bedding which we provide at our expense. He puts them in the car or in the pen and then all hands generally turn in and
305 help load the stock. If there is more than one car to load, they scarcely ever load one car until after the locomotive arrives. Then it displaces the car that is loaded, and places the other cars that are to be loaded and the time of the locomotive and of the train men engaged with the train, and of such portion of the station man's time, as is required, such station men as are engaged in that service is certainly chargeable to the loading of the stock.

In these modern days, the station men don't work twenty four hours, and then cry for more work. They generally have an agreement with the railway company that ten hours or eleven hours a day is a day's work. If you keep them up in the evening or get them up early in the morning to make way bills for the stock shipments after their regular hours for stopping or before their hours to commence or for beginning their work, then you have to pay them penalty time, twenty five cents to fifty cents an hour.

I noticed somewhere in the testimony in this case that of Mr. Store, who at that time was Traffic Manager of the Great Western Railroad and is now one of the Traffic Directors of the Union Pacific System and a man whom I regard as authentic, where he said that he thought it cost the Great Western Road $3.00 a car for
306 loading a car at local stations.

I don't think it cost the Northwestern Road that much money because our density is considerably greater than the Great Western, but I should say that $2.00 a car would not be unreasonable. Please understand that we do not keep any fifteen cent or

twenty five or thirty cent record of any man's time, at each station or anything of that sort. I am giving you my conclusions from some twenty or twenty five years of experience and observation, in connection with loading stock.

Q. When live cattle and hogs arrive here at Chicago in less than train load quantities, are the cars of the train carried immediately to the stock yards or are they held until a full train load of cattle cars can be obtained?

A. When a train arrives in—When cattle arrive in train load lots, they are despatched directly upon their arrival. If they arrive say, in five or ten cars, that may be mixed in with an equal or greater number of deae freight; they are switched out immediately and taken to the stock yards. If two of those trains were to arrive within fifteen minutes of each other, in two or five car lots or ten car lots, they would be held perhaps, if we had time to do it, and sent in one train. Ordinarily we don't have much time to accomplish
307 that. We have got to move the stock directly to the yards in order to make the market.

Q. Are cars containing live cattle and hogs, started into the yards regardless of the number of cars offered or are they held until full train loads of cattle and hogs can be obtained?

A. Well, they are not started regardless of the number offered but they are frequently started in very small trains. For instance, we would not have started a train from any place to run to Chicago with less than ten or twelve cars of stock in it. We would not do that except under compulsion. On the Branch Lines where some seventy per cent. of the live stock originates in the state of Iowa on the Northwestern Road, we frequently have a train that will run from 15 to 60 miles with only eight cars of stock in it. When it gets down to the main line it is consolidated with another train that may have picked up 15 or 20 cars west of the Junction Point. It is a most difficult thing however to secure the full utility of the power in the movement of live stock for this reason. There will be say, out of Council Bluffs, or Dennison, or Woodbine, all of them good stock shipping points, a shipment of stock but they seldom will have more than five or six cars a piece to ship on a particular day. You cannot combine any dead freight with that stock train, you have got to send an engine and caboose over there and pick up the shipper's
308 stock and then go along seven or eight miles and pick up others, and so go along, and when you get through instead of having all that the engine can pull, that is 28 or 30 cars, you probably won't have more than 25 cars and that train is brought into Chicago intact, so that although the printed rating of locomotives on everybody's time card or rate-card, will indicate that they can pull 65 or 70 per cent. of the total capacity of the locomotive in live stock trains, they seldom are enabled to get that much on account of the difficulty in concentrating.

Q. Are any trains of live cattle and hogs run special in order to make the market, or are they always run upon a fixed schedule?

A. We have no schedule stock trains. Seven eighths of the movements are as special trains.

Q. Are there any other special expenses incident to the transportation of live cattle and hogs which are not incident to the transportation of the prepared products of cattle and hogs or the transportation of ordinary dead freight? If so, please specify them as fully as you can.

A. May I refer to some notes that I have got?

Q. Certainly.

A. The product is moved regularly. You may figure on so many cars every day from the same place, and it is ready every day with the same regularity that a passenger train is ready to depart from its terminal station. You know several hours in advance of its
309 departure precisely how many cars of dressed beef you are going to have.

That enables you to go around and collect enough other freight to make up the maximum tonnage for the train that is going to move with the dressed beef. The trains are run at a regular rate of speed.

The Northwestern Road is fortunate in that, perhaps, that it has a double track betwen Chicago and Omaha. We can start our trains out and schedule them out at so many miles an hour from Omaha to Chicago. We don't have to provide for meeting any train and we simply have to provide for passenger trains or stock trains passing the dressed beef train.

There is no difficulty about the supply of empties for loading dressed beef. The ordinary method is that just as many loaded refrigerator cars as the Northwestern Railroad may bring east, we return an equal number of empty cars west, that is, refrigerators. Should we fail in that, for one day or two or three days and the other roads do not fail, they simply take some cars, that have been hauled west by some other railroad and load them for the east bound movement over our road and that is ultimately balanced up because that other road may be at a disadvantage some other time when we are open.

With stock cars that is entirely different. There is no time
310 guarantee on dressed beef. With our schedule trains if we are two or three or four hours late, we probably get a letter admonishing us that if we are late again we will never get any more of the business, but ordinarily we continue to haul our proportion of the business. If a train of dressed beef is delayed by a wreck, or something of that sort, all you have to do is to see that the refrigeration is kept up. Ordinarily, the ice in the cars will last for ten or twelve hours without any additional icing. If the delay lasts longer than that you have got to get the cars back to the nearest ice-house.

The loading of dressed beef and these products, is generally confined to the main line of the railroad, or lines upon which you have a heavy traffic. It is not necessary to start a special engine and special crews to bring it down to the main line.

Upon the shipments on the Northwestern, for example, those shipments are made from Omaha, South Omaha, Sioux City, Des Moines, Marshalltown, Cedar Rapids and Cudahy. With the exception of Des Moines they are all on our direct through line, and the Des Moines line is a line that has 15 or 20 passenger trains a day

and six or eight freight trains a day so that it is considerably different from the average branch line.

311 That may not appeal to you as amounting to a very gresy deal but it does stand for considerable in the way of expense in the operation of a railway, becau-e it is very much easier to regulate your trains on main lines, than on branch lines, and it is not necessary to perform special service.

The claims for damages in the case of dressed beef and the product are confined almost solely to wrecks. That is where you break up a car and its contents. We handle considerable dressed beef and products up in the lumber company and we ship them in an ordinary box car and sometimes we do have to pay some claims on them, on account of the extreme hot weather when the product may be spoiled.

There are no particular terminal facilities required for the handling of dressed beef or its product. The Railway Company does not have to provide anything, they don't even have to provide the cars and while we pay a cent a mile on the refrigerator cars, the owner of the cars has to make all necessary renewals and that price is not only to cover his cost of repairs, but also his cost of renewals. It is true that refrigerator cars are iced en route and that might be taken as an equivalent to the feeding and watering of live stock, but we receive for ice on the Northwestern railroad $1.50 a ton, which only covers the expense connected with that, and there are

312 several months in the year when we do not ice at all.

It is only during the summer months that we ice and that is at the Mississippi River.

Now as to stock, that is a live freight, and there certainly is a great distinction between the transportation of anything that is alive and something that is dead. There is an indefinite movement of live stock as compared to the regularity of the movement of dressed beef and packing house products. It is dependent in great part upon the market conditions at the various purchasing or packing plants.

It is not an unusual thing for us to receive an order Friday from localities in Iowa, several orders that combined will want 100 stock cars to load on Saturday night or Sunday. We move those hundred stock cars into that territory Saturday. The shippers will get a telegram from their Chicago man wiring them that the market has gone down, and the stock don't move for twenty four or forty eight hours so that our locomotives instead of bringing back loads have got to come back to the freight terminal without them, and then when the stock is ready to move, we have got to harness up again, and go up there with the same engine and crew and bring a load back. That makes a double movement of the engine in order to get the stock.

313 It moves in irregular quantities, notwithstanding the condition of the market. Sometimes they will have a rain, heavy rain, making the roads impassable in the country, and where a man expected to have a five car shipment out, he will only have a one or two car shipment out.

Again, they will change their minds, and order five cars, and

then want ten cars to ship and then we will have to make the run of forty or fifty miles with the extra fi*g*e cars at the additional expense so as to cover the shipment.

When we are handling 1500 cars a week, half of which is loaded on Sunday, that portion arrives on Monday morning in Chicago. The average train is picked up at ten or twelve different places, which increases the rate of speed between stations, and in addition to that, it makes Sunday one of the busiest days in the week.

Now the wage scale, of train men and engine men is just the same on Sunday as on any other day, just the same as the rates of freight are the same on Sunday for freight and passengers as they ar- on any other day but the large movement of live stock on Sunday compels the railways to keep on hand and under *a*pay a large number of men to water the stock and particularly the hogs at various points along the road, to repair the cars, and inspect the cars and on ordinary week days those men where there are no stock
314 trains running or passing through, they are provided with their employment in connection with the various shops. The shops, on Sunday, however, do not run and there is practically nothing that you can put this large force at except the inspection of cars and the probabilities are that, while the railroad pays fo*f* full time on Sunday, it only gets about half time in labor from its employés.

You have to clean the stock car every trip and it costs from fifty cents to $2.00 a car to do that. We can contract in the summer months sometime- for thirty five cents a car but you can scarcely ever make a contract in the winter months because it mostly all the time requires a locomotive with a steam hose attached to get the manure out of the car, because it is frozen solid. Very frequently to a depth of eighteen inches or two feet that is the case.

You cannot clean stock cars here in Chicago; you have got to haul them out to outside place. We haul ours to the Mississippi river at Clinton. We bought a couple of farms there so as to have a place where we could take the stock cars away from the main line and clean them up. We used to do it here in Chicago, but they passed ordinances which we were very glad to comply with because it was a nuisance.

Q. How far is it from Chicago to the Mississippi river?
315 A. 138 miles to Clinton. We filled up one far-, and had to go onto the other; we had one farm east of the river, and now we are using a farm on the other side.

We carry a great many stock men in stock trains. We have to use for them east of the Mississippi river peculiarly and particularly constructed caboose cars. The ordinary caboose car on the No. ..western road costs about eleven hundred or twelve hundred dollars. This so-called drovers' car costs us $1600.00 and the paraphernalia to put into it, this drovers' stock car, costs forty or fifty dollars, and it probably costs that much every year to maintain it.

In equipping those cars we put in sleeping arrangements that are not very much inferior to what is known as the tourists' sleeping car. We provide blankets and Mattresses and pillows and all such as that.

I think our cars sleep sixteen people. We have sixty of those cars that cost, as I said, $1600.00 a piece or $100,000.00. We only*se* use them east of the Mississippi river because all our stock trains arrive at the Mississippi river at a reasonable hour for a man to go to bed. You have got to get in there by midnight or else you won't make the market.

We have got an accurate reco*t*d of the people that we have kept from time to time, who travel on our stock trains. We never kept
t-ose rec-rds for a year but we have got them for thirty days
316 in succession, and I think once we kept them for sixty days
in succession. We will average two men for every five cars of stock, and I can recollect several Monday mornings last winter when we brought into Chicago more passengers on our stock trains than we did on al- of our pas-enger trains that come in here from west of the Mississippi ri*g*er. If you take a run of 800 cars of stock, which is not an unusual thing, it would be 250 or 260 people, and that i- more than our four or five passenger trains will have in the aggregate from west of the river.

It should be borne in mind that those are not all shippers or owners of live stock either.

In case of a wash-out or a wreck, you cannot let your live stock stand still. You have got to get it somewhere in the interests of ordinary humanity where you can unload it and feed it and water it. Even if you have got it in feed and water cars, you have got to get it to some point where you can put water in the water-trough and if they have exhausted the feed racks, you have got to replenish them and then if they have to stand around from eight to ten hours, you have got to unload the stock.

During the winter months we are very frequently obliged
317 to put two locomotives on one train of stock in severe
weather. The stock man very naturally objects to having their shipments cut in two or separating one man's shipment and putting it into a different *frame*. You take January and February, particularly on a Monday morning, and we will double head a very large number of live stock trains and in addition to that we will have from one to two of what we term "relief engines" standing along every thirty or forty miles, so that, in case the cold weather or something else gets the best of our engines we can replace the engine in bad weather by one of those in good order so as to make our time.

You must understand that these stock trains move in a procession. They are generally a block apart, that is, from three to five miles apart, and there is from 20 to 25 of them. If one of them stops in there, it is suicide to the rest of them, so we have got to keep the procession moving without any delay at all.

The protection to be thrown around a stock train is very much greater than those which are required for an ordinary freight train. They run at a much higher rate of speed and a great deal more risk is connected with the movement and we have got to be very much more careful. In a great many respects it is more exhausting for the engineer and fireman to pull a stock train than it is any other

type of what is called a "freight train" and for that reason
318 our engine men when they come in on our stock trains, while they do not decline because that would be in subordination,—we do not compel them to take their trains to the yards. We always relieve the crews that bring the stock trains into Chicago. We replace them — either a fresh engine and a fresh crew for which we are obliged to pay time and a half from our terminal here to go down to the stock yards. That is, if it takes a man five hours to make the trip we have to pay him seven hours and a half. That is not true of dressed beef.

Empty stock cars west bound have to move at relatively the same rate of speed as the loads do east bound. Of course, you can get around that by buying more stock cars, but the capital account invested would run against you to a greater extent than it does to move these empty cars at the increased rate of speed, bearing in mind that the stock business is not regular, but on the contrary very irregular.

Now we have special terminals but that has already been mentioned here, I think; feed yards, we have some five or six yards along, one at Clinton, one at La Fox and one at Belvidere, and others. That is necessitated by the twenty eight hour law in part and in part by custom. We have grandfathers, and fathers and sons that want to ship their stocks to be unloaded and fed at some feed yard. They have done it in that way all of their lives
319 and they continue to do it, but that is a very small percentage of the stock that moves however.

If you will notice, and this is a very important point, I think, if you will take those so-called granger group of railroads that handle the greatest live stock tonnage west of Chicago, the number of tons of revenue freight that they pull per freight train is very much less than any other group of railroads, and I have not any doubt about the fact that is due to the fact that they perform so much emergency service in connection with their live stock.

I know I would guarantee to increase the revenue freight of the Northwestern from 25 per cent. to 40 per cent. if we could eliminate the live stock from it, and I have no doubt other operating men could do better than that. It is a fact if you take the Burlington, The Northwestern, the Milwaukee and all the rest of them you will find that their train tonnage is very much less than it is in the East or possibly in the South and the train tonnage is the yard stock of railway profit. The less mileage you have and the more tons you pull, the greater your net income is.

There is no one commodity of traffic in connection with the Railway business in proportion to its tonnage that takes so much time of the executive or administrative departments as the live stock
320 business does. On the Northwestern Railroad, for instance, the Superintendent and Assistant Superintendent and the Train Master and Train Despatcher and his assistant and the Master Mechanic and all the rest of them never think of going to bed when a stock run is on. They are up all day and up all night, and when they are not doing that they are planning what they are going to do the next time they have a stock run.

In comparison with the live stock tonnage and the dead freight tonnage, I should say there was five times as much attention given to the live stock end of it, as there is to any other one commodity, on the divisions that carry live stock. I think I have exhausted myself on that subject.

Mr. LYNDE: How about the return transportation?

A. We return all these people to an average distance, as far as we can get at it, the distance which we haul the stock men is about eight hundred or nine hundred miles, and it costs us about $3. and $3.25 per car on the live stock that comes in here, figuring it at two cents a mile, for the stock men that we haul free.

Mr. LYNDE: Returning, they ride on first class trains, don't they?

A. Yes. That rate is a less rate than a first class rate but it is the same rate that you could buy a thousand mile ticket for,
321 with your return. Of course, they occupy sleeping cars.

Mr. BAXTER:

Q. Is the cost of cleaning the live stock cars borne by the company?

A. Exclusively by the company.

Q. And your estimate is that that cost how much?

A. Thirty five cents to $2.00. Probably the average price would be $1.25.

Q. The cost of the bedding, who bears that?

A. The railway company provides the bedding.

Q. What do you mean by "bedding"?

A. Well, it is sand and gravel, that is what I refer to, and it has to be loaded at the sand pit or the gravel pit and has to be hauled to the various stock yards and then it is unloaded into the bins, of which I said we had five hundred or six hundred, this morning. I suppose if competition is very strong, some of the company employés have to help shovel the stuff out of the bin and into the stock car although to each other we deny that.

Q. What do you estimate that to cost?

A. Well, I should say $1.00 a car would not be an extravagant cost. That stuff sells in Chicago for $2.00 or $2.50 a yard, the same kind of material that we use.

Q. In arriving at that cost of $1.00 or $1.50 per car for bedding, you charge up against it the freight?

322 A. Oh, no. I said $1.00 a car. We don't charge up any freight.

Q. Then you haul it from the sand pit to the sand bin free of charge?

A. Yes, sometimes that is only ten miles and some times it will be fifty.

Q. Are any of your live stock cars required to be disinfected, and if so, what does that cost?

A. Very frequently, particularly at this time in Nebraska and Dakota, owing to the quarantine laws. That is liable to cost from 5 cents to $1.50 *cents* per car. Just at this particular juncture, we are in the position where if we do take the stock the government

threatens to fine us, and if we do not take it, the shipper wires us that it is ours, he has turned it over to us and that is all there is to it.

Q. At those times when your live stock movement is heaviest does the extra speed have any effect as to injuring your live stock cars and requiring more extensive repairs on them?

A. I beg pardon?

Q. When your live stock movement is at the heaviest, you have to move your cars more rapidly?

A. Yes, sir.

Q. Now, I say, does that add anything to the expense?

A. Yes, sir, that adds to the expense of repairs as I said
323 this morning, and that is one of the items that leads me to believe that the repairs on a live stock car cost twice as much as on other cars.

Q. During the year ending June 30th, 1905, what were the live cattle and hogs earning per t-ain mile on your road?

A. Wel-, I don't think I can reply to that qu-stion, not intelligently, anyway.

Q. You could not gi*g*e me the average earnings per tr*a*in mile on that product?

A. I could do this, I could take a car of live stock, if you want, from a Missouri River point or a point in the Missouri River zone, and tell you what it earned to Chicago.

Q. As a matter of fact you have not figured it out?

A. No, but I can take a car of products and do the same thing.

Q. Can you give me the average earnings from all freight per train mile?

A. Yes, I think it was 2.19.

Q. During the five years ending June 30th, 1905, has the number of cattle and hogs moved over your road increased or decreased?

A. For the five year period it has increased very materially, but I should like to qualify that by saying that during that period the Rock Island Railroad bought the B. C. R. R. & M. Railway, which formerly gave us ten or twelve thousand carloads of stock a year, and we lost all of that, but notwithstanding that loss I think our receipts deliver-es at the stock yards are about equal to what they used
324 to be when we had that stock so that to-day on our own line, the stock movement has very materially increased.

Q. What was the size and capacity in tonnage of your live stock cars in 1888 and what is the size an- capacity of your present live stock cars?

A. Well, I don't think we have any stock cars left now from 1888. Probably at that time the maximum was a 31 foot car with a 20 ton capacity. Now, it is a 36 foot car with a 30 ton capacity.

Q. How many live stock cars did your company have in 1888 and how many has it at present?

A. Well, they probably had 1800 to 2,000 in 1888 and we have 5,000 now. I may not be reliable about that former statement as to what they had in 1888, that is a surmise.

Q. From your experience can you tell us how the cost of the transportation of live cattle and live hogs, all conditions considered, com-

pares with the cost of the transportation of the dressed and prepared product of cattle and hogs? Is it greater or less and about what per cent.?

A. I should place the live stock at 100 and the products at about 70.

Q. Where would you place ordinary dead freight?

A. About 50.

The COURT: That is the cost, if I understand your question.

325 Mr. BAXTER: That is the cost.

The COURT: The comparative cost?

A. Yes sir.

Mr. BAXTER:

Q. When you have demands upon you for cars out at your local stations, ar- the shipper- at all times rea-y to load when your cars are placed there?

A. Not all times. Do you mean to load on the day that the car is placed there or load directly when it is placed there?

Q. Load directly?

A. If the stock is in the yard, they are generally ready to load immediately, but it very frequently happens, as I explained, that the stock ca-s will be there, and then, owing to some fall in the market or not being able to get the stock down, not being ready with the shipments, they do not load promptly and the cars will remain there another day.

Q. Are demands frequently made upon your company for an unusually large number of cars for the movement of live stock at points largely scattered?

A. Yes, that happens very frequently indeed. We w-ll get an order from some division in northwestern Iowa, that he wants 200 stock cars the next day, and the division will cover a radius of 300 miles perhaps but we are organized, of course to meet those

326 demands, and we do meet them. It costs money to do it but we do it.

Q. What is your estimate as to the difference in cost between handling a through train of live stock from a Missouri river point to Chicago and the cost of handling another train load of live stock which you have to pick up car by car at stations scattered along the line of your road between the Missouri river and Chicago?

A. You mean a full train out of the Missouri river?

Q. Yes.

A. It costs twice as much probably to pick up the intermediate train, because the intermediate cars would have to be distributed one, two, three or five at a time in the face of the traffic going in the opposite direction. It would be subject to very serious delays in the way of setting those cars out and spotting them at the stock chutes, it would take a long time to do it. You would be subjected to the same delays to your loaded train when it came along to pick them up and all those things you would escape with a train carrying a full tonnage of stock cars from the river, a train coming out of there

fully loaded. There would be a very great difference in the two movements.

Q. What is the difference between the cost of handling the dressed product of cattle or hogs in through train loads from St. Paul
327 and Missouri river points directly through to Chicago and the cost of picking up live cattle and hogs at way stations between St. Paul and the Missouri river and Chicago? My other question was merely the difference between bringing a full train of live stock from the Missouri river to Chicago and picking up a train of live stock en route. My present question is what is the difference of the cost between bringing a full train load of packing house products from the Missouri river to Chicago and picking up a train load of live stock at intermediate stations?

A. Well, I think about twice a- much, probably.

Q. Are there any packing houses located at stations on your road between St. Paul and the Missouri rived points on the one hand and Chicago on the other? If so, give the names of such stations at which packing house- are located?

A. There is a packing house at Cedar Rapids, one at Marshalltown and one at Des Moines, but they are not very large affa-rs. I think the one at Marshalltown and Des Moines gave us 250 carloads of freight last year, and the one at Cedar Rapids gave us in the neighborhood of 800.

Q. That would make an aggregate of——

A. About 1300 cars altogether from the three places.

Q. State whether the live cattle and hogs which are transported from St. Joseph and Missouri river points on your road to
328 Chicago are transported in through trains and state whether live cattle and hogs are transported from intermediate points in through train or only in car loads picked up at various stations?

A. Well, we seldom, if ever have a through train of live stock from St. Paul to Chicago or from Omaha to Chicago or South Omaha. We do have some trains of range stock from the Minnesota transfer at the Union Stock Yards, but the Northwestern road is a very small factor in that movement. I think we had some four or five thousand carloads of range stock from the Missouri river, not via South Omaha but via Blair, through from the Black Hill ranges into Chicago. That was transported in solid train loads by itself. We very seldom have a full train from any intermediate point. I don't suppose that will happen half a dozen times a year. They are generally picked up at from five to ten points.

Q. You spoke of your road furnishing free transportation to persons in charge of live cattle and hogs and you stated you thought it amounted to a certain amount per car. Can you state for the fiscal year ending June 30th, 1905 what that transportation amounted to in the aggregate?

A. Well, I have to estimate, as I have said. We don't keep that record every day but according to our estimate, (and we tried to be conservative about it) it would be about $200,000.

329 Q. $200,000 per annum.

A. Yes sir.

Q. I believe none of the roads furnished transportation to anybody in charge of packing house products or dressed meats?

A. Not to my knowledge.

Q. Have you prepared a statement giving the names of all the stations on that portion of your road which lies between St. Paul or the Missouri river points on the one hand and Chicago on the other, at which stock yards or stock pens are located, showing the cost of constructing such stock yards or pens, and the annual cost of the maintenance of them?

A. Yes, I can give you such a statement.

Q. Well, will you file it as Exhibit "A" to your testimony?

A. Yes. That is only between St. Paul and Chicago, the Missouri river and Chicago.

Q. I believe I asked you the average annual cost of keeping live stock cars in repair.

A. Yes, I said, $25.00 to $30.00 and $60.00 to $65.00. I testified this morning to the total number of stock yards on the Northwestern railroad. Now you want the statement between the Missouri river and between St. Paul and Chicago?

Q. Yes. It will, of course, be less than the other.

Mr. LYNDE:

Q. You also want that statement to include the branch lines in Iowa?

Mr. BAXTER: Yes.

* * * * * * *

329a *Statement of Cost of Stock Yards and Tracks and Cost of Maintaining Same Between St. Paul and Missouri River, on One Hand, and Chicago, on the Other.*

Division.	No. yards.	Cost of yards and facilities.	Cost of exclusive stock yard tracks.	Total cost.	Average cost per year operating and maintaining.
Wisconsin.....	43	$19,110.00	$11,400.00	$30,510.00	$1,222.00
Galena	75	84,060.00	19,800.00	103,860.00	2,670.00
Iowa.	99	119,820.00	26,700.00	146,520.00	9,680.00
Iowa & Minn...	48	65,956.00	12,100.00	78,056.00	2,162.00
Northern Iowa..	61	54,050.00	16,100.00	70,150.00	3,922.00
Sioux City	59	51,795.00	15,200.00	66,995.00	3,470.00
Madison	77	26,701.00	20,100.00	46,801.00	3,160.00
Minnesota.. ...	78	48,060.00	20,620.00	68,680.00	6,376.00
C.,St.P., M. & O.	97	25,657.00	25,800.00	51,457.00	5,264.00
Total.	637	$495,209.00	$167,820.00	$663,029.00	$37,926.00

330 The WITNESS: That will include some stock yards on the Omaha road, the Chicago, St. Paul, Minneapolis & Omaha road, which I can give you.

Q. That lies between the Missouri river, St. Paul and Chicago?

A. Yes sir.

Q. Your road extend- across the Missouri river, don't it?
A. Yes sir.
Q. What is your western terminal?
A. Casper, Wyoming, and Bellefourche, in the Black Hills.
Q. What other roads go into Omaha from the East, the Illinois Central?
A. The Burlington, The Milwaukee, the Rock Island, the Great Western, and the Illinois Central.
Q. Do all of those roads cross the Missouri river and go beyond it?
A. The Burlington does, and the Rock Island does.
Q. The Illinois Central does not?
A. No sir.
Q. Does not the Chicago & Great Western cross the Missouri river?
A. Yes sir.
Q. Or it is confined to this side?
A. Well, I believe they have got a freight terminal in Omaha, so they do cross the river, yes, but it don't extend into Nebraska.
Q. And the same is true with reference to the general railroad station, some of the lines that leave Chicago go beyond the
331 Missouri river, and some of them do not?
A. Yes sir.
Q. Now those lines which extend beyond the Missouri River, they engage in the transportation of live stock from the South and West and Northwest to the river, and on to Chicago, do they not?
A. They do.
Q. And those that are limited to the Missouri river, they don't go beyond that, of course, and don't gather up any stock west of the river?
A. No.

Mr. LYNDE:

Q. If I understand you correctly, you state that the cost of handling a train load of the product of dressed beef is greater than the cost of handling a train load of live stock?
A. You don't understand me correctly at all.
Q. Is that your opinion?
A. Why, no sir, the cost of handling the live stock is very much greater.
Q. I got it just the other way around. That applies to a through train load from the Missouri river to Chicago, does it not?
A. Yes sir.
Q. So that, comparing the cost of handling a train load of the dressed beef or the packing house product with a train load through from the river of live stock, if I understand you correctly,
332 there would be the greater cost on the handling of the train load of live stock.
A. Certainly. You take a car of dressed beef and its products from Omaha to Chicago, going to some connecting line and all you have against you is the $2.00 terminal charge at Chicago and $3.00 at Omaha and $10.00 mileage. On the stock car you have got the cost of cleaning it up, and disinfecting it and you have got the ter-

minal charge at Omaha which you have to pay yourself and the terminal charge in Chicago for which you collect $2.00, but it costs you $3.50 so you are $1.50 out on that; you have got your damage and loss and your risk of transportation to the passengers on your stock train, etc.

Q. And all the incidentals incident to it?

A. And all the incidentals, so that a cost of live stock is considerably greater than the dressed beef product and notwithstanding the fact that the dressed beef product has more paying freight in a car than the car of live stock does. Of course, the latter tends to bring down the revenue of the car of live stock, the small quantity of revenue freight you charge on.

333 The COURT: That would be about 25 per cent. of the live stock, about a quarter more?

A. Yes, sir.

Cross-examination by Mr. COWAN:

Q. The figures you have given, Mr. Gardner, have reference to the Chicago & Northwestern Railway system?

A. That alone, Mr. Cowan.

Q. How much do you pay your engine men per mile, from Omaha to Chicago? What is the basis of your compensation to your engine men and firemen?

A. It depends on the type of locomotive. Do you mean the locomotive described in the business we have been discussing?

Q. Well, you can name the different wages with the different types of locomotives.

A. Well, we would pay the engine men on these live stock trains and dressed beef trains, which always had a large type of freight engine, I believe, $4.40, a hundred miles; we pay the firemen $2.75.

Q. That is 4.40 cents per mile?

A. Yes, sir.

Q. And the firemen how much?

A. 2.75, 27½ cents.

Q. What do you pay the train crew, conductor and brakemen?

A. The conductor, $3.45, two brakemen, $2.30 a piece, $4.60.

Q. That scale of wages applies wherever that type of en-
334 gine is used?

A. Yes, sir.

Q. Now, how do you gauge the scale that you pay them by the class of engine? What do you call the engine that draws these wages?

A. These engines weigh 130,000 pounds on the drivers, that approximately.

Q. Now, what other engines have you, and what other scale of wages for them?

A. Well, we have four dollar a day engines, $3.90 and $3.80, and they run down comparatively with that rate of drivers.

Q. Do you use this type of engine that draws the higher wage scale in the pick-up trains that you run of live stock from Iowa to Chicago?

A. We do, exclusively, yes, sir.

Q. And you use that type of engine exclusively with the packing house products and dressed beef products?

A. We do, and with the dead freight as well.

Q. What proportion of your total freight tonnage on these lines from the Missouri River to Chicago is handled by that class of engines?

A. On the main lines?

Q. Yes.

A. All of it.

Q. Those lighter engines are only used on the branch lines?

A. That is all, and they are used in Minnesota and Dakota on the main line.

Q. So that substantially all main line traffic is paid for on
335 the basis of this class of engine?

A. Yes, sir.

Q. Do you recall, Mr. Gardner, what the total expense is as stated in your annual report for the engine service and repairs on your line of road?

A. Yes, I can give it to you exactly for the last twelve months.

Q. I mean per locomotive mile as made out in your annual report, is what I have reference to, you have it itemized?

A. Yes, I thought I had it here in my pocket, twelve millions of dollars.

Q. No, you misunderstood me.

A. No, I don't think I did.

Q. Well, maybe you have got the other figures. $12,000,000 was your total?

A. For 31,000,000 miles.

Q. Have you got a printed annual report?

A. Not for this year, it is not printed. I have got some proof sheets.

Mr. SEVERANCE: What was that question?

Mr. COWAN: The cost of locomotive mileage.

A. I know what you are thinking of. The thing you have there says it cost 20 or 25 cents a mile.

Q. For the average per mile.

A. That is a fact, so far as it goes, but it don't go far enough.

Q. Well, what are the items that go to make up the locomotive mileage expense?

A. Fuel, oil, waste, and the round-house repairs, the tools
336 and supplies, the labor and the men; I can give you that in detail if you would like it.

Q. What is that?

A. I can give you that in detail by amounts if you would like it.

Q. If you please, as it will be in the reports this year.

A. Fuel, five million and a half.

Q. Have you figured it out per mile?

A. I can divide by the total mileage, I know what it is.

Q. I know that would give it, I thought you had figured it out.

A. It would be about forty cents.

Mr. LYDNE: You have given the total mileage as 31,000,000?

The WITNESS: Yes, sir.

Q. Each of these items you can get at the amount by making the division?

A. Yes, sir.

Mr. COWAN:

Q. You can give the total items and it can be figured from them.

A. You would like the total?

Q. I say, you can give it.

A. Pardon me, I did not understand you.

Fuel, $5,500,000; Oil and waste, $166,000; Men, $3,343,000, that is the engineers and firemen; dispatchers and wipers and round-house men, $760,000; tools and supplies, $84,000; Materials, $700,000; Labor, $1,400,000; that aggregates, approximately, $12,000,000.

Now, these figures won't appear in this coming report, prob-
337 ably, because this includes some things that the Interstate Commerce Commission does not require I think in the annual report.

Q. This is the printed annual I am talking about?

A. Yes.

Q. What was the amount in the year 1904 in your printed annual report of the cost of locomotive mileage per mile, can you recall it?

A. No, I do not; possibly you have got it right there, the 1904 report, somewhere between 20 and 25 cents.

Q. 1902, in your printed annual report shows it in your items of repairs and supplies for engines and tenders per mile, engineers, firemen, wipers, cost of oil, waste and tallow per mile, cost of fuel per mile, total cost per mile run by engines, and the last figure is 20.48 cents per engine mile?

A. Yes, sir.

Q. Now, what do your figures embrace which is not embraced in these figures?

A. Well, I can tell you if you will let me see those a minute, possibly. (Examines papers.) I should say that the difference was that that omitted the material that went into the cost of supplies.

Q. For the year 1904 your annual report shows the estimated cost, or rather the exact cost per engine mile run for those different items, does it not?

338 A. Yes, sir.

Q. Will you bring down a copy of your printed annual report tomorrow?

A. For 1905?

Q. For 1904?

A. Yes, sir. I will be glad to do that.

Q. You haven't it for 1905 yet?

A. No.

Q. Do you recollect what the total operating expenses of the Northwestern system was for the year ending June 30, 1905, per train mile?

A. No, sir, I have never figured that out.

Q. Your annual report for 1904 will show what it was for that year?

A. Yes, you can take the aggregate operating expenses, of course a railroad has only one thing to sell, that is transportation, all the expense is train mile expense; it is not fair to take half of the expense for any one thing and say that is incidental to train mileage, it is all incidental.

Q. Your average operating expenses per train mile will probably not exceed somewhere around a dollar twenty, will it, Mr. Gardner?

A. Well, it will run from that to a dollar thirty, I presume, that is, you determine that by taking the gross earnings and dividing, or the gross expense and dividing by the mileage.

Q. The total train mileage?

A. Yes, sir.

Q. With the exception of fuel and the expense of station
339 service, are there any additional expenses for conducting the transportation of any considerable amount than the items which you have mentioned? You have given the wages of train crews and outside of that the fuel, station and telegraph service is the principal expense for conducting transportation, is it not?

A. No, I should not say so. The maintenance of way is a very heavy expense, it costs the Northwestern Railroad a thousand dollars a mile.

Q. That is not for conducting transportation?

A. Why not, begging your pardon?

Q. Well, the accounts are divided into maintenance of way and structures, and maintenance of equipment, and so forth?

A. It is all chargeable to transportation. We only have one thing on a railroad to sell. I don't care what you spend your money for, it is chargeable against that one thing in my judgment.

Q. You misunderstand me. I am talking about the items of expense used in the annual report. You have one item of conducting transportation.

A. Yes, sir, it is divided there.

Q. The maintenance of way and structures is an item of expense that is light for the whole business transported over the road, and you divide that up upon the basis of train mileage. Suppose
340 you begin to pick up a train load of cattle or hogs this side of the Missouri River, where would you begin to pick that up coming to Chicago?

A. Probably at Missouri Valley, which is some twenty-two or twenty-three miles out, they ship from there to Chicago.

Q. And how far do you come before you fill up your trains?

A. Oh, we probably come fifty or sixty miles, of course that varies, Mr. Cowan; one day it would be forty miles and the next day a hundred.

Q. Where is the next division point?

A. Boone, 150 miles.

Q. By the time you get to Boone, would you have a full train?

A. Oh, yes, we would have a full train there.

Q. If not of live stock of enough of something else to make it up?

A. No, of live stock and nothing else. The ordinary stock shipper in Western Iowa or any other place won't stand for putting dead freight in with live stock; that is a custom that probably we are to blame for but it is there nevertheless.

Q. Where does your crew start from that picks up that train?

A. That picks it up from Missouri Valley? Well, sometimes they start from Council Bluffs, that is the division terminal point,—Council Bluffs to Boone. In a season when empty box cars are
341 moving to Nebraska to bring grain down, then we can accommodate the stock trains or the live stock at Missouri Valley and east of there by turning around a man who is taking empty box cars to Missouri Valley to go into Nebraska.

Q. Well, assuming that they start from Council Bluffs, that is the longest distance point?

A. That would be the longest distance, yes.

Q. Now, these crews start out with the caboose and the engine, do they?

A. Ordinarily, yes, sir.

Q. And you pay them on a mileage basis?

A. We pay them on a mileage basis, yes, sir.

Q. It does not take as much fuel to haul that empty train, or we might say the light train, without a load, as it does if it were loaded?

A. That is dependent entirely on the rate of speed, of course it would not take as much fuel to haul a caboose car as it would ten cars of freight, no.

Q. The fuel expended produces the power as a general proposition?

A. Makes the speed, yes.

Q. Now, they make that run through to Boone in what length of time in picking up this train?

A. Well, they make that run through to Boone in all sorts of length of time.

Q. You have an idea about what the average time is?

342 A. Oh, yes, they will average—probably they will be going that 150 miles not to exceed eight hours, and five of those eight hours, or four to five of those eight hours, they will actually be running, the remainder of the eight hours will be standing still waiting to load stock and pick it up and assemble it in their train.

Q. Now, that crew receives pay on the basis of that 150 miles?

A. They do; and we have to pay them just as much for that eight hours' work as we would if they worked fifteen hours.

Q. Exactly. Now, what is the length of time which must elapse on that division before you pay those crews overtime?

A. Well, when it goes on an average of more than ten miles an hour. If they were 16 hours making the 150-mile run, or 15 hours and 35 minutes, we would commence paying them over-time.

Q. As a rule it is expected that that business will be done within the regular time limit so there will be no over-time?

A. Ordinarily, yes, sir.

Q. And it is your effort, and you require it of your crews, to try to do that in order to make it less expensive?

A. Yes, sir.

Q. How many cars of live stock would you consider a train
343 at Boone that you should have picked up and bring on to Chicago?

A. Practically 25, we could haul 30 if we could get them.

Q. Assuming it on the basis of 25, now what is the rate of freight from Boone to Chicago?

A. From Boone to Chicago?

Q. Yes.

A. This freight you said came from west of Boone.

Q. I understand.

A. There the rate is 23½ cents. But what I don't know about rates is going to fill a large volume.

Q. You know enough for the purposes of this question.

A. Well, it is 23½.

Q. That train will be a train which takes a 23½ cent rate?

A. Yes.

Q. Now, Mr. Gardner, what do you consider to be fair, without magnifying or minimizing, what do you consider to be a fair estimate of cost to your company per car, aside from what you paid this crew, now, on that trip to Boone for the loading of those cars with the live stock?

A. Well, I have stated two dollars I thought would be a reasonable charge.

Q. Well, I thought that was mighty high.

A. Well, as I have said, there is testimony to the effect that it was three dollars.

344 Q. Well, now, who testified to that?

A. Mr. Storr, if I read right.

Q. Mr. Stickney said it cost 25 cents to a dollar and a half, when you mentioned that Mr. Storr said three dollars I did not recollect it.

A. I read that in the testimony.

Q. Mr. Stickney says 25 cents to $1.50?

A. Yes, sir.

Q. And he is supposed to be a walking encyclopedia of all railroad knowledge in that country?

A. I don't aspire to that at all, neither am I an expert, but I do know what things cost, in a measure.

Q. Well, how do you make out, Mr. Gardner, that it costs $2.00 to load a car of live stock on that division?

A. On account of the very large number of stock yards that we have, and the very small number of stock shipments that are made from many of those yards.

Q. And in that $2.00, you mean to include the expense of owning and maintaining facilities for that purpose?

A. I certainly do, and the water and everything else.

Q. I have probably misunderstood you when I used the expression a while ago. I thought you meant the expenses aside from that.

Mr. SEVERANCE: Did Mr. Stickney include that in the answer? Did he make a separate answer for that?

Mr. COWAN: I could not recollect at this time.

345 The WITNESS: That does not include the bedding in my judgment, Mr. Cowan.

Q. I want to go to that point. You say that $2.00 a car, however,—you make that estimate on it,—but that includes all the facilities, the owning and maintenance of facilities?

A. It includes the facilities, the maintenance of the stock yards, and the time that the agent would put in, if it was at night, and the time of the train crew.

Q. Do you include the bedding in that also?

A. I do not.

Q. Don't you believe it could be fairly included and yet you would have it pretty high?

A. No, I do not. I think the time of the train crew would pretty nearly equal it, as I said.

Q. The train crew you pay for. I am saying, aside from that.

A. I say, a certain part of that time is chargeable to the car, in all equity.

Q. My question was the expense of loading those cars, aside from the payment of this train crew.

A. I did not so understand it.

Q. You misunderstood me. What I am trying to get at is the expense of loading those cars. We have already figured out that you have got to pay the train crew for the 150 miles, until it gets

346 to Boone. Now, how much do you figure it will cost you for actually loading the cars and for the maintenance of the facilities, not including any proportion of time for your train crew?

A. I should say $1.75.

Q. And of what does that consist?

A. That consists of the maintenance of yards, their depreciation, repairs, the station agent's help, all the time he puts in there, and consists of the maintenance of stock scale and the water plant.

Q. Now, in regard to the bedding. Is it a fact, or not, that you charge in some instances for the bedding furnished?

A. We do not charge for it, to my knowledge.

Q. I had understood it was charged for, in some instances. I didn't know any instances.

A. I believe there is some understanding between some of the roads to the effect that they will charge fifty cents, but I have yet to see the first bill made by the Northwestern road, or any other. I probably would not see it on any other.

Q. I didn't pretend to know, I just asked you. How much bedding, if you know, will it take for an average car?

A. Well, I don't suppose I can be accurate about that. I talked with our stock man three or four weeks ago about that. He said it would probably take two yards, distributed, on a car 36 feet long, eight feet wide,—that would not give a very thick bed to do that.

347 Q. And that bed consists of sand?

A. Sand and gravel or gravel, just whatever the pit may be that is in closest proximity to that stock yards.

Q. Is it not a fact that very frequently the cars are bedded with straw or hay by the shippers themselves?

A. Well, I cannot say that it is very frequently, but then you do find cars that after they put in this sand and gravel they put some hay on top of it.

Q. Now, Mr. Gardner, does it require, or do you know whether it requires in actual practice, a clean and rebedding of a car on every trip?

A. I know it requires a cleaning and bedding on every trip, absolutely.

Q. And you ship no stuff in here where the bedding is renewed?

A. Oh, I won't say we ship no stuff in here. For instance, suppose a car of stock is loaded at a local station in Iowa, and goes to some other local station, there is more or less of that all the while. It may get to the latter local station and that man will not re-bed the car, he may put in a little more on top of what is already in there without cleaning out the car, and ship stock to Chicago.

Q. There is one point you do know about yourself, and that is whether you carry any cars beyond the Mississippi River without stopping them there to clean?

A. We do not. I want to qualify that some. There might

348 be an occasion once a year, Mr. Cowan, or twice a year, where the thermometer was 30 or 40 below zero, and there was a train of stock cars slipped through without being cleaned, but you can go there, or anybody else, and see what we are doing to every stock car, every stock car is religiously switched to the stock car tracks and cleaned.

Q. In the trial of your terminal charge case, a claim was made by all the railroads with reference to the expense they were put to for cleaning cars.

A. Yes, sir.

Q. And my recollection is the record shows that they then stated the item as 25 cents per car?

Mr. SEVERANCE: I object to this statement, and move to strike it out.

Mr. COWAN: It is cross-examination; I am leading Mr. Gardner up to a question.

Mr. SEVERANCE: That is not a question.

The COURT: You have made a statement. Finish up your question on your statement.

Mr. COWAN:

Q. Among other roads that put in that statement was the Northwestern. Now, do you know whether when the cars were cleaned at Chicago, it cost more or less than 25 cents per car?

Mr. SEVERANCE: I make the same objection and motion.

349 The COURT: Let him answer.

A. I think it cost less at Chicago, because the bedding had less time in which to freeze and become solid.

Mr. COWAN:

Q. Ordinarily, what does it cost you per car on an average for cleaning expenses at the Mississippi River? You must know pretty closely to what that comes.

A. I do know, pretty closely. I will say a dollar and twenty-five cents, take the year round. You must bear in mind that our heaviest stock months are in the winter.

Q. How many cars do you clean at the Mississippi River?

A. Why, I presume last year we cleaned 45,000 or 50,000 there.

Q. Well, do you know what the total expense of that cleaning service was there? You could find that out, couldn't you?

A. I can find that out, yes.

Q. I wish you would ascertain, Mr. Gardner, definitely.

A. I can find that out with this exception, which very frequently occurs. When we have a very large stock run, we have to turn in all the section men in the country, and hire a whole lot of extra people to put in and clean cars. Now, we never have charged that section labor out to cleaning stock cars, it goes in as track labor.

We keep a certain gang of men there all the while to clean
350 cars, then we increase it or decrease it from other labor on the Road the same as in other cases of emergency and do not charge it out to that particular thing. I have no doubt I can give you a fairly comprehensive statement.

Q. Do you know what other roads pay for cleaning cars where they have a contract for cleaning cars?

A. I have no knowledge whatever. I doubt if very many have contracts.

Q. How many cars will a man clean?

A. Some days he will clean only one. A dollar and a half a day man. It has to be done during the daylight hours in the winter time.

Q. That would be an extraordinary case, wouldn't it?

A. I don't think it would in January and February, no sir.

Q. Do you think there is on your books a statement of the total cost of that plant for cleaning cars there, and the total number of cars cleaned?

A. I think I could give you the total cost, pay-roll and number of cars cleaned.

Q. In other words, if you were to get at the total cost, and total number of cars, you can do that?

A. Yes, sir.

Q. I wish you would do that, Mr. Gardner?

A. I will, with pleasure.

Q. See what it costs, whether it is greater or less than you had estimated. Now, these cattle that you bring from Boone,
351 following that car up, into Chicago, after you start out with that train, it is subject to all of the same advantages and disadvantages right on up to delivery into Chicago that a train is

that comes from the Missouri River, is it not—there is no substantial difference?

A. Well, it is subject—of the same kind of freight you mean?

Q. Yes.

A. Yes.

Q. And you pay the same amount for trackage here in Chicago to the Stock Yards Company and to the other companies over whose lines you reach the stock yards track?

A. Yes, sir.

Q. And the same for the men who carry the trains on from your junction point into the yard and all that?

A. Yes.

Q. A charge of two dollars per car as a terminal charge to the shipper in the same manner?

A. Yes, sir, we do.

Q. How much do you pay at South Omaha as a shipping charge for the delivery of packing product and dressed meat to your line?

A. Two dollars a car, I believe.

Q. How much do you pay. Do you pay that to the packer in addition to the rate?

A. No, I think the railroad absorbs that. I am not clear on that, but I think they do, they absorb most anything.

Q. Now, when you bring your packing house products to Chicago, unless they are delivered to some other railroad to be carried
352 around Chicago you have to deliver them to the Union Stock Yards tracks, do you not?

A. We deliver all of that stuff to the Chicago Junction Railway at Melrose Park and pay them three dollars a car to deliver.

Q. Three dollars a car, and you collect no part of that back?

A. No.

Q. Suppose that a train carried dressed meat and packing house products comes along at the same time, as they no doubt have very close to the same time to this train that is carrying live stock from Boone, Iowa, wherein lies the difference in the cost of performance of the service of hauling that train of dressed meats and packing house products to Chicago and hauling that train of cattle?

A. Well, the principal difference in cost would be the difference in the rate of speed of the two trains, the stock train will run considerably faster than the packing house product train, after it is picked.

Q. In what length of time do you usually perform the service from Boone, Iowa, to your junction point of the Stock Yards rails at Chicago?

A. We allow about two hours to get in. That is dependent entirely on the time the train of stock may leave Boone, and there is absolutely no regularity to that. On one train today it may
353 take us three or four hours to assemble the 25 cars of stock, to-morrow it may take six hours, to-day or next day it may take three hours to do it. And when we leave Boone we are going to get that train of stock in here as fast as we can to make the market the next morning. When I say "make the market," I do not mean

arrive at seven o'clock the next morning, I mean commence to arrive at midnight, because when we have 25 cars of stock——

Mr. LYNDE: Trains you mean of stock, you said 25 cars.

A. Yes, I beg pardon, 25 trains, we have got to run them ten minutes apart. 25 trains would make 250 minutes, which would be four hours and ten minutes between arrival of the first train and arrival of the last train and we have to run the first trains just as fast as we can run in order to get the trains in here to make the market. That don't apply to dressed beef in any manner whatsoever.

Q. Now, Mr. Gardner, the two dollars that you pay at Missouri River on the packing house products per car and the three dollars and a half, is it at Chicago?

A. Three dollars we pay the Chicago Junction Railway.

Q. Three dollars at Chicago?

A. Yes, sir.

Q. Which is not absorbed, constitutes the terminal expenses which you pay out on the packing house products and dressed meats per car, the terminal expenses on the live stock aside from the train crew cost, it would be $1.75 you last put it, as I understand?

354 A. Well, that was at an intermediate station. I thought you were discussing South Omaha now and Chicago.

Q. I am, but I am undertaking to compare the dressed meat and packing house products with this live stock train from Boone. When you got to Chicago you say you are out in expense of how much in delivery to the stock yards?

A. I think all the testimony here has been three dollars and a half per car. I think that was our statement a year ago, and we get two dollars for it, which makes a dollar and a half.

Q. So there are terminal expenses, of a difference of a dollar seventy-five in favor of the live stock train into Chicago?

A. That is correct, yes sir.

Q. Now, where do you bring the packing house product car to at Chicago to deliver it to the Junction Railroad?

A. It is a station on our main line out here called Melrose Park, it is about thirteen or fourteen miles, I think.

Q. Is that the station from which you estimate the expense in reaching the stock yards with the stock car?

A. With the stock-car no— we bring the stock cars in to Western Avenue, which is about eight miles this side of Melrose.

Q. The train crew——

A. If you will permit me, the engine and crew, which brings these refrigerators to Melrose, of course, covers the same distance

355 that the engine and crew do that bring the train of stock into Western Avenue. There is no difference between the mileage.

Q. I was just going to ask you that question.

A. There is no difference between the mileage on a dressed beef crew and a live stock crew.

Q. Now, your engine and crew starting from Council Bluffs then with packing house product and dressed beef trains coming to

Chicago cost you exactly as the engine and train crew that carries this train of live stock, which you pick up between Council Bluffs and Boone and bring on to Chicago?

A. Yes, the same rate of pay.

Q. The same rate exactly?

A. No difference in them.

Q. Now, wherein lies the difference in cost aside from the items we have just been discussing in the pulling, hauling of that train of dressed meat, and packing house products from Boone on to Chicago and hauling the live stock train on to Chicago?

A. Well, as I have said, that will depend upon the rate of speed. You might select a day and a train of dressed beef and a train of live stock and bring them along an hour apart and at the same rate of speed, the expense would be identical right straight along. Now, all of the dressed beef and packing house products that we move as I have stated before do move on a regular schedule, our rate of speed is the same day in and day out practically.

Q. And what time does that train leave Council Bluffs?

A. Two o'clock in the afternoon.

356 Q. Or does it leave South Omaha at that time?

A. No, Council Bluffs.

Q. Council Bluffs at two o'clock?

A. A. Yes sir.

Q. And reaches Chicago when?

A. 2:15 the next day.

Q. And what is the schedule of that train at Boone?

A. Oh, I think it is nine—well, I can't tell, somewhere around ten o'clock. I can't tell within fifteen minutes of it. The time card will show that if you want it practically.

Q. It is practically a 24 hour schedule?

A. Yes sir, about 24 miles an hour.

Q. It makes almost exactly twenty miles an hour. Now, does that train have to take a siding in order to let live trains pass it, if any overtake it?

A. If any should overtake it, it would take the siding, and the nearer it gets to the Missouri River the more the probability is that some stock trains passing it.

Q. Now, then, the stock-train would not have to stop, but that train would?

A. Yes sir, that train would have to stop.

Q. In order to make that twenty miles an hour spped, will not the train carrying dressed beef and packing house products between stations have to make faster speed than the stock train would to come in on time?

A. No, because the matter of delay in letting the stock train by it will only be a matter of about ten minutes, the blocks are

357 only about ten minutes apart, and the stock train might get in here several hours ahead of that train. The stock train would have to be here in the morning at seven o'clock, before that. I do not want to be misunderstood as testifying that that happens

every day. This is a supposititious question to me as I understand it, because the stock train arrives here at two o'clock in the afternoon—the dressed beef train I mean arrives at two o'clock in the afternoon. There would be very few occasions where a stock train would pass that particular dressed beef train. Now, the other dressed beef train arrives at 6:25 in the morning on the nights that — runs, it would not be an extraordinary occurrence for eight or ten stock tracins to pass it, because it comes along at a time when there are many stock trains in proximity, to it. The fastest dressed meat train does not run at a time when it is liable to be overtaken by very many stock trains.

Q. Do you claim your stock trains picked up that way and leaving Boone make a better average, including all the stops than twenty miles an hour on here to Chicago?

A. Yes, I claim that because——

Q. Are you certain they do that?

A. Am I certain they do that?

Q. Yes.

A. I used to be a train dispatcher out there.

Q. Now, when that stock train leaves Boone you have got a
358 certain number or extra number so and so that you run that train on?

A. Oh, we can identify them.

Q. You identify them right through?

A. Yes sir.

Q. So you do of dressed meat trains, that has got a number?

A. That has got a regular number on the schedule.

Q. Does all of the packing house products and dressed meat which comes out of Council Bluffs come through Boone?

A. Yes sir, and all that comes out of Sioux City over our line comes through Boone.

Q. Comes through Boone. Now, does all the live stock concentrate on your main line by the time it reaches Boone?

A. No.

Q. I mean live stock from west of the Missouri River?

A. The live stock from west of the Missouri River, and most of the live stock from Western Iowa, would concentrate when it got to Boone.

Q. Boone would be a representative station?

A. It is one of our freight terminals out there.

Q. Where is Clinton from Boone?

A. 200 miles.

Q. This side?

A. East.

Q. East of there. You made out for the use of the Commission, and at the request of counsel in the live stock case, Texas Cattle Raisers case against the various roads, a statement showing your trains out of Clinton?

A. Yes sir.

359 Q. And that showed live-stock cars in the train, that is, the loaded cars, and other loaded cars without designation, and

empties, I presume. I think that was the form of the question. You have a copy of that statement, have you?

A. I have, at the office.

Q. That was for the first 15 days of April, and the first 15 days of October, I believe?

A. I don't just recollect the months; it was 15 days three or four months apart.

Q. If you take 15 days, say, in April, and 15 days in October, would that be about representative of the movement?

A. It would, I should think, fairly so, yes, sir.

Q. You can make a statement that would show what time these trains left Boone and the time they arrived at Chicago, and show what the consist of each train was, that is, the total number of loaded cars of live stock, and the total number of loaded cars of dressed meat and packing house products, and the total number of other loaded cars, and the total number of empties?

A. Yes, sir.

Q. I wish you would make up a statement showing those facts, with respect to each and every train of all sorts moving eastward out of Boone toward Chicago for the months of—for 15 days, the first 15 days of April and October of 1904, if you think that would be representative.

A. I will.

360 Q. Now, would not that statement, Mr. Gardner, furnish definite information with respect to the matter of speed and to the consist of the train, the amount of loaded cars and empties that were hauled?

A. It would furnish definite information as to the definite number of cars in the train and the kind of freight they contained. It would be very misleading, indeed, as to any speed matter, because all it would show would be the time betwen two terminals, and that might only figure out 15 miles an hour, whereas the time between many stations between those two terminals might be 40 miles an hour. The only way to give that to you accurately would be to bring a train sheet in here.

Q. That would require an enormous amount of figuring to show?

A. It certainly would, but this would not be fair evidence as to the rate of speed, by any manner of means.

Q. If you desire to supplement that with a train sheet that shows the speed of trains over any given division, or the length of haul that the dispatcher is checking up with his sheet, of course you would be perfectly privileged to do that.

A. I will be fair as to the facts, if it does not express anything, whether it does or not, to our benefit or not, I will put down the facts, you may rely on that.

361 Q. Is it a fact or not that you haul more loaded cars in the trains which carried the live stock, or in the trains which carry the dressed meats and packing house products?

A. Well, I should say we hauled the most loaded cars in the trains that carry dressed beef and packing house products on an average.

Q. But this statement will show definitely how that is?

A. Yes, sir, that will show definitely.

Q. You said this morning that the live stock car weighs 18½ tons, including bedding and manure. Is it not a fact that at the weigh-master's office here at Chicago, all of those cars are weighed as they go out?

A. Weighed as they go out?

Q. Yes, sir.

A. Yes, we get the weights of those coming out after they are unloaded, and we get the weights of them going in.

Q. When they have still got manure in?

A. And that is where we got our information,—averaged that thing up.

Q. Did you take it definitely, take the total number of cars?

A. Yes, sir, we sent a man out there to do it.

Q. It showed them 18½ tons?

A. It is approximately correct. Of course you will find an occasional car that would be 17½, and find an occasional one about 19½.

Q. What is the weight of your present cars that you con-
362 tract for, you speak of contracting for stock cars?

A. We do not contract for a certain weight, you know, they vary.

Q. I know you don't. They have got a stenciled weight on.

A. 32,600, I think, is what is stenciled on them.

Q. And what is the weight of the refrigerator cars that are in use, the light weight, I am talking about?

A. I think 20 tons,—40,000 pounds.

Q. What is the capacity of the ice and salt box in weight in these refrigerator cars?

A. Well, I don't know as I can tell you that, I presume about four tons.

Q. Now, do you weigh those refrigerator cars as they come in and weigh them as they go out?

A. No.

Q. How do you get at the weights of the dressed meats and packing house products in the cars to charge freight on it?

A. That is checked in at the packing houses, and we have the advantage of that check and bill it in accordance. We have a man there.

Q. You accept their weight?

A. Yes, sir, on inspection, we test it every once in awhile.

Q. Do they load packing house products clandestinely in with dressed meat cars?

A. I don't know that I have ever personally discovered that, no.

Q. You have heard tell of it?

A. I have heard tell of it, the Western Weighing Association reports it sometimes.

363 Q. What proportion of dressed meat and packing house products come to Chicago over your line, comes on the 18½ cent rate, and what proportion on the 20-cent rate?

A. I can't tell you that. We are fifth in the lines that move that

stuff from the Missouri River. There are four other roads carry more of it than we do, ours is very small.

Q. Have you the figures as to how much you carried for the fiscal year ending June 30, 1905, of dressed meat?

A. I have at the office. It is somewhere between 3300 and 3500 cars from South Omaha.

Q. That is both products and dressed meats?

A. Yes, sir.

Q. In what proportion is the one to the other, is dressed meat in carloads and packing house products in carloads, in tonnage and carloads?

A. Those two, I think, are two thousand of products, and 1400 of dressed beef.

Q. But of the total shipments there is always a greater amount of dressed meat passing through the Mississippi gateways than the packing house product?

A. I believe so, yes, sir.

Q. Do you know any reason why it happens that your road gets a larger percentage of the product?

A. I don't know about that.

Q. Have you got any statement made up from definite figures which shows the actual average weight per car paid for packing house products, separate from the rate paid for dressed meat?

364

A. Yes, sir, I think I have got that, if not, we can get it.

Q. Do you recall what it is?

A. Why, I think it averages about 11 tons and 13 tons; that is about the way it runs.

Q. You stated this morning what the average of both was together?

A. Yes, 12.2.

Q. Twelve and two-tenths?

A. Yes, and I think it runs in the relation of 12 to 13, a little fraction both sides.

Q. Do you know what the average weights of cattle are shipped from these interior Iowa points to Chicago for a 36-foot car?

A. Yes, sir, we run about 23,000 pounds.

Q. What place or office do you resort to to ascertain what those average weights are on cattle?

A. I have the auditor make up a statement, he makes it from the original way-bill that we collect freight on.

Q. Are you making your estimate of 23,000 pounds on something he made out for you or just as you understand it?

A. Well, a little of both. I had occastion to look that up in the 28-hour law that we discussed here awhile ago and found out that is about what it run, and then this statement we got from him verified that.

365

Q. You have spoken of a great many circumstances surrounding the traffic of live stock and the traffic in dressed meat and packing house products bearing on the cost of service, you have mentioned the difficulties that occur, like the furnishing of

stock yards, other facilities, carrying of men on return passes, the loading of the live stock, services performed in that particular, bedding the cars and their cleaning and the like; is there any substantial difference now in those particulars to the conditions which had existed for ten or twelve years?

A. Well, there is one very great difference, that both material and labor had advanced very materially in the last ten or twelve years; we do a few more things now than we did ten or twelve years ago; and the same things we used to do then probably cost twice as much now as they did then.

Mr. LYNDE: Isn't the speed greater too, Mr. Gardner?

A. Oh, no, not a very great deal.

Mr. COWAN:

Q. Now, in what particular has the service performed, in the shipments of live stock changed, we will say, in eight or ten years?

A. Has the shipment changed?

Q. No, in what particulars has the service performed changed?

A. Well, the change is a great deal more of service and a great deal more of live stock which has necessitated expansion in
366 the facilities and so forth, and the increased pay of train men——

The COURT: The amount of service has increased more in the live stock business than it has in the dressed meat business, is that the idea?

A. Yes sir, because we always have handled a great deal more of live stock than we have of dressed beef.

The COURT: And you do more live stock business than you used to in shipping it, do more work on it, spend more money on it?

A. Yes sir, we do.

The COURT: That is what he is trying to get at, he wants to know what.

A. The live stock business has always been something that all the railroads in the West have solicited pretty generously and there is some new things done right straight along.

Mr. COWAN:

Q. Well, now it is the particulars of those things that shows wherein there is any difference now to what there was then, that I am inquiring about, what are those particulars?

A. Well, I can recollect ten or twelve years ago where we didn't have very many wagon scales at stock yards where the shipper weighed his stock on the town scale and he paid for himself. The
367 wagon scales were necessitated by the fact that some railroad, maybe it was ours, commenced paying the shipper a dolar a car on account of his weighing his stock. Directly every railroad had to put in wagon scales at their stock yards and so there is no more paying of a dollar a car. They instituted the wagon scale. At that same time the matter of water in stock yards was not nearly as common as it is to-day. If we happen to have a track tank around there they would lay a pipe to the stock yards and you had water in it,

and if you did not have any facility of that sort at the station you didn't have any water. A man didn't expect you would. He went to the town pump with his stock and they had a trough there to water them. Now if we had a station of any size it must be provided with a steam pump or a wind-mill or some auxiliary that will provide water. We did not have in those days very many shed-ed pens, it wasn't necessary. Now as stated this morning we have got two thousand pens that have got roofs on to protect the stock from the elements. It is changed in that respect. I do not know that fifteen years ago that I ever heard a railroad company provided anything for bedding for the stock cars. The shipper provided his own bedding if he had any, in a good many cases. Now it is the universal practice to provide bedding. The matter of carrying live stock men was not so popular ten or fifteen years ago as it is to-day, there were not so many men rode on the stock trains.

368 Q. Well, now are you quite certain that eight or ten years ago, I think I put my question eight or ten years, that eight or ten years ago, they did not just as frequently ride on stock trains as they do to-day?

A. The Northwestern road did not carry so many men.

Q. It did not carry so much stock?

A. We didn't carry so many men in proportion to the stock or car, we did not provide sleeping car cabooses in those days, it was not necessary. We did not have more than three or four men on a train. They could stretch out on the benches. We provide- these drovers cabooses because we were obliged to in order to accommodate the men. I have a pretty fair knowledge of that Mr. Cowan because I rode stock trains for several years of my life.

Q. Well, now speaking of the covered pens, where do you have those covered pens?

A. Well, we have got some eighteen hundred or two thousand pens—three-fourths of all our stock yards have those covered pens. It is due to competition. All the live stock west of the Missouri River is highly competitive, we have got no place out there we can call our own or anybody else.

Q. You mean east of the Missouri River?

A. Yes sir, between the Mississippi River and the Missouri River.

369 Q. Take it now, instead of eight or ten years ago, take it four years ago, in 1901, has there been any substantial difference between conditions existing then and conditions existing today?

A. Well, about that period, or possibly 1900, we started in making the extraordinary additions to stock yards.

Q. Whatever all of those things are, are embraced in the estimated cost of loading, which you figured at $1.75 a car?

A. Yes.

Q. In regard to the packing house products in dressed meat, your cost of labor and supplies and materials for the maintenance of your railway and the performance of the service of transportation, the cost of fuel and the like, has all advanced as much as applied to that traffic as it has as applied to the live stock traffic?

A. Yes, I think it is reasonable to apply it to that.

Q. The relation of the cost between packing house products and dressed meat, on the one hand, and live stock on the other, is substantially not different now to what it was four years ago, speaking of the relation?

A. No, it costs just as much to handle the packing house product now as it did then.

Q. I mean the relation between the two?

A. Yes, I understand your question. I should answer yes to it.

Q. Now, Mr. Gardner, there has been a constantly and rapidly increasing tonnage on your line of road, has there not, in
370 the last five years?

A. Yes, but it is not so wonderful as you might assume, as you will discover by our annual reports there; there has been a good many railways built into our territory in the last five years.

Q. There has been a large increase in your live stock traffic in this territory, has there not, on the Northwestern proper?

A. Yes, as I explained today, I think we have probably increased at the rate of 1000 cars a year for the last six or seven years on our own lines, although we are not carrying any more now in the aggregate than when we used to have the B. C. R. & N. stock.

Q. Now, your train tonnage, that is to say the amount of tonnage you haul in a train, the number of loaded cars has constantly increased from year to year, has it not?

A. Well, let us see. In 1896 I think I was made Assistant General Superintendent of our road. We were hauling about 196 tons to the train, and the report of this year, I think, will be 264 tons to the train.

Q. You have improved your road bed and your road-way during that time?

A. Very materially.

Q. You said to-day, as I understood it, that all of the live stock cars are returned empty?

A. Well, I said practically.

Q. You said you didn't think more than one per cent. went back?

A. Yes.

Q. Your car accountant keeps the statements or books,
371 rather showing the total stock car mileage; it shows that which is empty and that which is loaded?

A. Yes, sir.

Q. In connection with the other statement which you get up I wish you would get a statement showing correctly the total stock car mileage of the lines east of the river, if they keep it that way?

A. They don't keep it that way.

Q. Well, the best you can do then will be the total stock car mileage. And show what is empty and what is the loaded car mileage?

A. For what period do you want that, please?

Q. For the year ending June 30th, 1905, I suppose will be the nearest you can get it. What is the capacity of your 36 foot stock cars you have contracted for?

A. We have got then 30 tons, like lots of other cars.

Q. You said you paid out $18,000.00 for rentals of foreign cars?

A. Yes, foreign stock cars.

Q. For foreign stock cars?

A. That is on the per diem basis, 20 cents a day.

Q. Do you use or handle any of the Car Line Company cars now?

A. Of course we don't refuse business that comes to us in those cars, and that is where this $18,000.00 came in. We use our own cars exclusively in our own live stock business.

Q. Don't you pay the foreign car line company on the basis of six mills per mile?

A. We do those that request it, and the others per diem rates. I don't know that I can specify which roads get six mills and which get the per diem.

372 Q. What is the difference between the two methods of payment, which is the more expensive, to pay six mills per mile or 20 cent- per day?

A. The 20 cents per day basis is supposed to secure the prompt return of the car to its owner. With the six mills per mile you can let the car lay around on your line for months and not move it. The 20 cent- per days is probably a better return to the owner of the car than the charge per mile is to the owner.

Q. The effort in making the per diem basis instead of the per mile basis was not to change the amount of the cost but to secure more prompt return of the car?

A. More prompt return of the car to the owner.

Q. Have you in your accounts of the car movement statements showing what the per diem mileage is, the mileage per day of the stock cars and other cars on your line?

A. Yes, I can tell you that right now.

Q. How much do your stock cars average per day?

A. Fifty to fifty-five miles; box cars thirty miles; coal cars seventeen miles.

Q. What do refrigerator cars average?

A. When they are on our road they will average about the same as the stock cars.

Q. Is it not a fact that you have to return these refrigerator cars at practically the same speed that you bring them loaded?

373 A. Well, yes, in—I will say yes to that, but as I explained, there is not the emergency existing at the other end of the line of the empties; that is you don't lose the business if you don't get the empties there. We return them in solid train loads at the regular speed of 20 miles an hour.

Q. In the actual practice of returning both stock cars and refrigerator cars, do you take them in solid trains of empty cars or do you mix them up with all the traffic as it happens to move?

A. Well, we take them and aim to take them in solid trains of cars. We pull sixty empty stock cars West and pull about sixty empty refrigerators West. They are generally delivered to us, the refrigerators, in solid trains, and we take the stock cars as they come

from the stock yards, and double up what was two loaded trains and make one train of empties.

Q. And the refrigerators——

A. We receive generally in train load lots empty from the connecting line.

Q. Do you handle fifty cars, refrigerators?

A. Empties, 45 or 50, if there is not too much wind.

Q. In the case of this Boone shipment, if you had returned the 25 stock cars at Boone you would have to pay on the basis of 20 cents per day, or suppose them to be equivalent to six mills per mile?

A. We charged that out of the six mills per mile, our own cars.

Q. On the refrigerators returned empty you pay on the
374 basis of one cent per car per mile clear on to Council Bluffs?

A. We would.

Q. And you pay on the refrigerator on the basis of one cent a mile from Council Bluffs to Chicago, while in the case of the stock car it is six mills per mile from Boone to Chicago?

A. Yes, and when the refrigerator car wore out the fellow that owned it would have to replace it. When the stock car wore out we would have to replace it.

Q. When it is yours?

A. Well, it is ours.

Q. But you get the six mills if it is yours?

A. Yes.

Q. Assuming both of them belong to somebody else, as refrigerator cars always do, I suppose, the one is paid on the basis of six mills per mile and the owner replaces it, and the other a cent a mile and the owner replaces it?

A. Yes.

Q. Now, when you figure that your two trains have these different expenses and the different expenses on the terminals I would like to know how you make it that it costs you twice as much to haul a stock yards train as it does that train of packing house product?

A. I don't recollect that I stated it cost twice as much.

Q. That is where I probably misunderstood you?

A. The question was put in a different way. I think you will recall it was a question of the distribution of a train of empty stock
cars, west-bound, at various places, *versus* hauling a train
375 of fully loaded dressed beef from Omaha to Chicago; and there is considerable difference to my mind in that transaction.

Q. Take the case of hauling that dressed meat train from Council Bluffs to Boone?

A. Yes.

Q. Do you believe that that cost you less money than it does to pick up these cars between Council Bluffs and Boone into the train?

A. I do. But it is pretty difficult to predicate a case, Mr. Cowan, on one car or one train or one day. There is a thousand matters of operation that are equitably chargeable to every car and every train and every day, and I can't possibly particularize as to any one car or any train or any one day in the division of expense.

Q. You form your opinion, as an operating man, from all of the set of circumstances as you view it?

A. Yes, the entire operation of the railroad.

Q. And another operating man that expresses his opinion upon it, whatever it may be, doubtless does it from the same standpoint?

A. Well, I can't tell what is working in anybody else's mind, of course.

Q. Well, he would have the same opportunity to do it?

A. He would.

Q. The 300 miles haul on the refrigerator cars that were not on the others would amount to $3.00 of the train was actually all picked up at Boone, the stock train?

A. I beg your pardon.

376 Q. In the case we have been discussing, the instance of the packing house product train from Council Bluffs, and the live stock train from Boone——

A. Yes.

Q. You would be at an expense of $3.00 more going from Council Bluffs to Boone and back, with the refrigerator cars, for each car, being 300 miles the round trip?

Mr. LYNDE: More than what?

Mr. COWAN: More than you would in the case of the live stock train.

The WITNESS: Well, you are starting the dressed beef train from Omaha and the live stock train from Boone. We started out to start both engines and crews from Council Bluffs and the live stock train would pick up the cars, and the dressed beef train, all leaving Council Bluffs, the difference in mileage would be the proportion of difference that you picked up your live stock cars.

Q. I was going to follow that with another question—except there should be deducted from that $3.00 whatever the mileage would be on the stock car from the point it was picked up and brought to Boone?

A. Yes, that would be six mills a mile.

Q. Then for the 350 miles, or substantially that, from Boone into Chicago, there would be the amount of eight mills per mile more for the refrigerator cars that you have to pay out, than you would on the stock cars?

A. It would be four mills per mile.

377 Q. Four mills per mile for 700 miles, or *visa versa*, it amounts to the same thing?

A. That is right.

Q. Which would be $2.80; and assuming that half of your live stock cars were handled for 50 miles, or all of them were handled for 50 miles further than Boone, at six mills, it would be 60 cents for double 50 miles, and six mills per mile; so you would have the difference in your mileage in favor of the live stock train of $5.20 that you actually pay out?

A. I don't dispute that. I don't make a point that there is any difference between the cent a mile and six mills a mile.

Q. And $1.75 on the terminal expenses, which would make $6.75

more than you actually pay out on the dressed meat train than you do on the live stock train?

The COURT: Do you admit that? Do you say that?

The WITNESS: No, I don't admit that. He has figured that out to please himself, and I don't dispute his figures; but I can put up a hypothetical case which will look just the other way, if you desire it.

Q. But it is in view of what those figures appear to show?

A. Your illustration, as you figured it, is correct. I don't deny that. I confirm it.

Q. And it is in view of that extra cost that has to be paid out for the use of the cars and terminal charges on the dressed meat and packing house shipments more than the live stock shipments
378 that leads me to question you as to how it can be made different, that it costs twice as much for the live stock traffic as it does for the other?

A. Well, I don't claim that there is any point between allowing ourselves six mills per mile on our stock cars and paying one cent a mile on the refrigerator cars. You may use that in any way that you see fit; one costs just about as much as the other. Our six mills a mile will make the repairs on the cars and replace them about once in 15 to 17 years—17 years—and I suppose the cent a mile on the refrigerator cars will make their repairs and replace them in 17 years, and one is like the other.

Q. I made my figures on the basis of getting the equipment in both instances from somebody else, one cent a mile, and the other six mills a mile.

Mr. LYNDE: We make the repairs in one case and the owner in the other.

Mr. COWAN: No, in the case I figured the owner does the replacing, in both cases.

Mr. SEVERANCE: Mr. Gardner says they use their own stock cars.

Mr. COWAN: If they do, they get the six mills per mile to make the repairs and renewals with.

Mr. SEVERANCE: They can't do it for six mills a mile.

Q. I understood you to say one would be about the equiva-
379 lent of the other?

A. In my judgment it would.

Q. In regard to the disinfecting in the handling of this Iowa live stock, there is no disinfecting of the cars?

A. No. There is once in a great while. I don't recall when the last panic was about that. That wouldn't enter into——

Q. That was all the answer you gave in respect to the live stock traffic generally and intended to embrace the Missouri river?

A. Yes.

Q. You mentioned one item of holding at the wrecks. You said if you had a wreck you couldn't hold the live stock; you would have to take them somewhere and unload them?

A. Or take them around. That would be the alternative.

Q. Something like that would be done if it could be done, and the

very same thing would apply to the dressed meat, if you had that in cars?

A. We would never have that, paying another railroad 50 cents or a dollar a mule for the privilege of using its track to get dressed beef around; whereas we would pay one or two dollars to get live stock around. There is no similarity whatever.

Q. The cost of that item, as compared with the total revenue, would certainly be extremely small?

A. It would.

Q. In that loss and damage matter, there is one point I want to ask you about. You said you figured out it would cost you about one dollar a car on the live stock?

A. That comes into Chicago, yes.

380 Q. Do you have in mind the total amount paid for loss and damage claims on your live stock for any given year?

A. Yes, practically the total amount. We don't entertain claims from every delay, except on live stock, that does come to Chicago. We have very few personal injuries on live stock trains, except those coming to Chicago. South Omaha is not such a popular route for live stock that goes in there. We take into South Omaha 20,000 carloads of stock a year. We take up here to Cudahy five or six thousand carloads of stock a year; Cedar Rapids two thousand carloads of stock a year. The amount I mentioned of $65,000.00 covers all of the stock on the Northwestern Railroad, but it is all incidental to the Chicago movement. There is no such thing as a delayed train not making the market at South Omaha and being paid for. They haven't got that unhappy custom out there, fortunately, and the trains run at slow rates of speed. A good portion of it comes from near-by points. There are very few accidents or wrecks. All the market contentions in this congested territory are in the vicinity of Chicago. The personal injuries, since I have known anything about it, nine tenths of them have been on the Chicago market.

Q. In the trial of the cattle raisers' case, involving those Western Roads, I will ask you if you know whether the Northwestern, in its answer in that case, urged these very things as a reason why the rates should not be reduced?

381 A. Well, I don't know that they did. I didn't testify.

Mr. COWAN: I know you didn't but somebody else did.

Adjourned until 10 o'clock A. M. Wednesday, September 20th, 1905.

382 WEDNESDAY, *September* 20, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon WILLIAM A. GARDNER resumed the stand for further cross examination by Mr. Cowan:

Q. Mr. Gardner, to what source of information did you resort to ascertain the amount of live stock carried by each of the different

railroads into and out of the Chicago market and likewise Omaha to and from the Missouri river market?

A. Well, we had the stock yard report for the Chicago market and I presume there was one for South Omaha. I have not got that, be we keep our own record of our own business at South Omaha.

Q. I wish you would see if you recognize that as a stock yards report. (Handing paper to witness.)

A. Of 1904, yes sir.

Q. The statistics in those reports are regarded as being an accurate source of information, are they?

A. Oh, yes, and are so accepted.

Q. And the same with the reports at the other markets, the published reports?

A. I assume so.

383 Q. I wish you would turn to the Chicago & Northwestern Report in the printed report on page 27.

A. I have it here.

Q. That reports the shipment of the number of cattle the number of calves, the number of hogs, the number of sheep and the number of horses and the total number of live stock cars for each month of the year into Chicago via your line?

A. It does.

Q. And also reports the total number for each month of live stock cars and of the number of head of live stock shipped out. Is there a business of selling feeders on the yards at Chicago which are bought by persons intending to feed the live stock in Iowa which are shipped from Chicago to Iowa?

A. I believe there is. On the Northwestern road, however, I think that has decreased very materially. There used to be more than there is now.

Q. By reference to the report, the number of head of cattle shipped out seems to have been the same—Well, just withdraw that question. Have you any comparative statement of the different number of cars for different years, except as shown by these stock yards reports? I mean have you it at the present time, here with you?

A. No, not with me.

Mr. COWAN: At a later date we will offer the part of the report that we desire. We don't care to offer it at the present
384 time.

The WITNESS: I might with your permission say that those reports are quite liable to be misleading unless you go into it thoroughly. The Cudahy Packing Company, situated near Milwaukee ships more or less stock from the stock yards up to Cudahy to be slaughtered, and there is a good many cows loaded and shipped up into Northern Wisconsin and Michigan from the stock yards. That seems to be increasing every year and while the total number of cars shipped out by the Northwestern may not vary, yet the shipments might go to entirely different places and serve entirely different interests.

Q. There is a large feeder business, as it is called, at the Missouri River markets where cattle are sold and shipped out into the interior of Iowa and then shipped out to some market?

A. Oh, we have a good many feeders from the south-west that go up into Dakota.

Q. And to whatever extent that necessitates the movement of stock in the opposite direction to the large markets, there is a return movement of loaded, a loaded movement of the live stock cars.

A. No, sir, there is not, because these feeders come to us in foreign cars. We don't send our cars after those feeders and the companies owning those cars would not receive them at Chicago if we loaded them back to Chicago. We have to return them, may be
385 about seventy five per cent. or probably eighty per cent. to the road owning the car. We cannot afford to hold them going in the direction that the feeders came from, because if we do the per diem would eat us up.

Q. Do you not settle for any of those cars on the basis of so much per mile?

A. I presume we do, some of them, yes, sir; but they would get after us pretty hard if we did not return the cars promptly and one basis of the transaction is that the cars are to be returned with promptness.

Q. You do not use the cars which you ship out with feeders in them, to ship any other cattle to market?

A. We do with what few feeders may go to Chicago because they would go in Northwestern cars. Feeders that might go by South Omaha—Well, they don't necessarily have to go by the way of South Omaha, they might come by way of Nebraska. We don't utilize those cars with a return load, to any extent.

Q. Do you not ship railroad material in the way of ties and iron in cars going west?

A. We ship some iron in stock cars going west but very few ties for this reason: We can get more utility out of the box car going west with ties because a box car goes up in the northern country loaded with merchandise and it can come back with ties for the west or under load with grain. If you send a stock car up into
386 the northern country we would have to come back empty with it and then it would be loaded with ties and have to be unloaded and taken somewhere else to be re-loaded with stock.

Q. Do you not ship lumber out of Chicago in stock cars?

A. No, sir, we don't. We used to but the Chicago lumber market in the west is played out. There is no Chicago lumber and no Wisconsin lumber that goes west of the Missouri River.

Q. Do you not get most of your ties at Chicago to ship west?

A. No, sir. Out of the two million or two million and a half of ties that we buy a year, we don't buy to exceed 350,000 of them in Chicago. We buy say 600,000 that come up from the south in Illinois Central stock cars and generally onto our road and are delivered to us at Dixon.

Q. Do you not ship coal and coke in stock cars, west?

A. We have no coke to move west. We do use some stock cars, as I said yesterday, I think, loaded with company coal in the sum-

mer months at the Iowa mines that go out into Dakota and since my testimony yesterday I sent for the auditor and the car accountant and they both seemed prepared to make an affidavit to the effect that not one fourth of one per cent. of the stock cars on the Northwestern railroad moved west under load.

I said yesterday that I did not think one per cent. moved
387 west. These people that are in closer touch with it than I am say that they do not think one fourth of one per cent. does. We don't keep a record of the stock cars that go out under load with anything except live stock and we would have to take considerable time and research to make the statement which you requested yesterday and which we will be very pleased to make.

Q. Whatever the actual percentage of the loading is is shown by the accounts which your Car Accountant has?

A. He has no record of that fact and he will have to go over the conductors' reports for twelve months and pick out the stock cars.

Q. He has no separate item of empty—no separate or distinct item of stock cars?

A. No, sir, he has not.

Q. On adjournment yesterday evening or just before adjournment you had been asked in regard to the total amount of damage claims that you had paid on live stock and as I understood you you estimated it at $1.00 a car. You did that by dividing into the total amount by the total number of cars delivered into Chicago and that ran up to about $1.00 a car?

A. It was $63,000.00.

Q. I then asked you whether any of it happened in shipments that came from west of the Missouri river or happened west of the Missouri river and I understood you to say that you had
388 not considered that it did in making that estimate of a $1.00 per car.

A. You misunderstood me. I think I said that I had given that consideration, but that such a preponderance of it that happened east of the Missouri river that I did not think west of the Missouri river cut any particular figure.

Q. The facts as you gather them with respect to the loss and damage paid, you get them from your Damage Claim Agent's office?

A. I do and I get a very good and a very general idea from the reports that are put on my desk every morning of the detention to live stock trains. The first thing that we look at in the morning is the live stock trains and the next is the passenger trains.

Q. You cannot pretend that you recollect it from those reports?

A. No, but I do recollect as to what particular days that we had the detention and whether we have had a wreck that delayed the live stock and if we have 800 cars of stock I recollect what time the last train was unloaded at the chutes, etc.

Q. What is the name of your Damage Claim Agent who has a record of those things?

A. Mr. R. C. Richards.

Q. With an office in Chicago?

A. His office is in Chicago.

Q. What are the total number of cars handled by your company for the year, altogether?

A. Of live stock?

389 Q. Yes.

A. Well, I think I repeated yesterday, I will have to do that and add it up as I go along. 63,000 I think it was into Chicago, 20,000 into South Omaha, 7,000 into Cudahy and 2,000 into Cedar Rapids,—about 90,000 cars.

Q. Now, then you handled some live stock going onto the ranges?

A. The feeders that you referred to a few moments ago.

Q. Then you handle range stock that goes over your road out to Bellefourche?

A. That is included in the South Omaha stock, 17,000 cars of that stock going into South Omaha is from Nebraska points and from the ranges.

Q. I am talking about the stock shipped from Texas and so on.

A. Well, you probably know that most of that drives up there, it don't go by rail.

Q. Well, you know that none of it drives, don't you?

A. It don't go by rail or else somebody else must carry it. I believe the Burlington must carry some of it.

Q. But you don't claim, do you, that you don't carry that range stuff that comes from the Pan Handle of Texas?

A. I don't claim anything about that. I know positively that we don't carry any 17,000 car loads of stock into Bellefourche going into Nebraska to unload that we get out of there.

Q. But you do carry a lot of stock out there?

390 A. Well, I can look that up for you and give you accurate information.

Q. Well, somewhere from 90,000 to 100,000 cars that your company handles?

A. Well, 90,000, anyway. I should not want to go above that without investigating the feeders that you spoke about.

Q. And the total loss and damage claims amounted to $63,000?

A. Yes, sir.

Q. How do you get at the figures of the loss and damage paid on the dressed meat and packing house products?

A. I get at the figures on that with the aggregate of the packing house product that we carried both in car loads and in small lots.

Q. What was the total of that?

A. I can give that to you accurately as I have it here.

From the Union Stock Yards at Chicago, 1586 cars. From South Omaha 3331. From Sioux City, 1194. From Cudahy 4543 and from Cedar Rapids 758 and I testified yesterday that there was in the neighborhood of 255 each from Marshalltown and from Des Moines that would be 500 cars, making a total of 12,000 cars.

Q. What was the total amount of loss and damage paid on packing house products and dressed meat?

A. $5,000.00, five thousand two hundred and something.

Q. For the same period?

A. For the same period.

391 Q. Is it not a fact that the packers are furnished for their employés who travel over your line in their business in some way or another, with transportation?

A. Absolutely not to my knowledge and I issue the annual passes.

Q. They are not furnished tickets or anything either way?

A. No, sir.

Q. Well, now how is it with respect to the representatives of the private car lines owned by them?

A. The private car lines?

Q. Yes.

A. No, sir. No private car lines use our railroad except the fruit refrigerator lines from California and those packing house lines, and we don't give them any passes to my knowledge.

Q. There are certain statistics with respect to the operating expenses which have been referred to in the testimony and I desire to ask you if they are not contained in the annual reports furnished to the Inter State Commerce Commission as follows: The average car loading; the average number of loaded cars per train; the percentage of the empty to the loaded car mileage; the cost of operation of each and every department of the railroad; items of operating cost including wages, fuel, supplies, and materials, repairs and renewals of cars, repairs and renewals of locomotives and the

392 various items of repairs and maintenance of the roadway and the like of that. Those matters are all contained in the sworn reports to the Inter State Commerce Commission made annually.

A. They are.

Q. Any one testifying as to what they are, if he was in doubt would resort to that same source of information?

A. Yes, sir.

Mr. COWAN: To save a good many questions I desire to ask counsel representing the defendants, if they are willing to stipulate that the Annual Reports of the railroads filed with the Inter State Commerce Commission and the statistics therein contained and the tariffs on file with the Commission, may be used as evidence in the case to the extent that either party desires to use it provided that each party notify the other of what he desires to use and give an opportunity to furnish such other statistics from the same source as he may please to do.

Mr. SEVERANCE: I will decline to make that stipulation on behalf of our road for a very good and substantial reason.

Mr. DAWES: I decline on behalf of the Chicago Burlington & Quincy. The complainant has introduced his case. Why should we at this juncture stipulate anything more? That is the basis of my objection.

Mr. SEVERANCE: That is the reason of my objection.

393 Mr. COWAN:

Q. Mr. Gardner, I have in my hand the printed annual report of the Chicago & Northwestern Railway Company for the year ending June 30th, 1904, which you handed to me this morning. I will ask

you to state whether or not the statistics and reports as therein contained are correct as to the matters therein stated concerning the operation of your railroad?

A. It is the annual report and of course it is in a general form and it is correct, yes sir.

Mr. COWAN: I desire to have it marked so that——

Mr. LYNDE: It is not an exhibit to Mr. Gardner's testimony.

The COURT: For identification it may be marked.

Mr. COWAN: I was just having it marked for identification.

Mr. LYNDE: Well, that is all right but you wanted it marked as an exhibit to his evidence.

Mr. COWAN: Well, very well, let it go that way.

(Pamphlet referred to is marked "Gardner Exhibit A. F. B. D.")

393*a*–393*c* EXHIBIT "A F B D" GARDNER, Vol. 4, p. 393.

1904.

Forty-fifth Annual Report of the Chicago & North Western Railway Company, June 30, 1904.

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393*d* Forty-fifth Annual Report of the Chicago and North Western Railway Company, June 30, 1904.

The fiscal year of the Company having been changed by the Board of directors to close on June 30th instead of May 31st, as explained in the circular of the President to the Stockholders dated January 2nd, 1904, this report is made to include the thirteen months from the end of the previous fiscal year (May 31, 1903) to the end of the new fiscal year (June 30, 1904), the results for the intervening month (June, 1903) being shown separately herein.

Details of Income Account for the Twelve Months Ending June 30, 1904.

Average number of miles operated for twelve months, 7,403.97.

Gross Earnings for Twelve Months.

From Passengers	$13,027,708 46	
From Freight	37,254,538 88	
From Express, Mail and Miscellaneous	3,052,386 52	
Total Gross Earnings for twelve months		$53,334,633 86

Operating Expenses and Taxes for Twelve Months.

Operating Expenses (66 $\frac{35}{100}$ per cent. of Gross Earnings)	$35,389,303 96	
Taxes	1,837,805 33	
		37,227,109 29
Net Earnings for twelve months, carried forward		$16,107,524 57

393e	Net Earnings for twelve months, brought forward		$16,107,524 57
	Other Charges for Twelve Months.		
	Interest on Bonds and Interest (including a full year's interest on Fremont, Elkhorn & Missouri Valley Railroad Bonds)	$7,035,718 26	
	(NOTE.—Net amount after making the usual deductions for dividends received on C. St. P. M. & O. Ry. preferred and common stock.)		
	Sinking Funds	225,500 00	
			7,261,218 26
			$8,846,306 31
	Add, Income from Investments		553,435 00
	Net Income for twelve months		$9,399,741 31
	Dividends, viz.: 8% on Preferred Stock and 7% on Common Stock (including a full year's dividend on the increase in Capital Stock, as against a half year's dividend for the preceding year)		5,174,924 00
	Surplus Net Income for the fiscal year ending June 30, 1904		$4,224,817 31
	Add, Amount to Credit of Income Account for the Month of June, 1903, being the intervening month between the close of the old fiscal year (May 31, 1903) and the opening of the new fiscal year (July 1, 1903), for particulars of which see page 25		871,367 53
	Surplus Net Income for the thirteen months ending June 30, 1904		$5,096,184 84
	Less, Amount of Expenditures for Construction, Improvements and Permanent Additions to the property deducted from the Surplus Net Income for the thirteen months ending June 30, 1904, by authority of the Board of Directors		4,000,000 00
	Balance Income for the thirteen months ending June 30, 1904		$1,096,184 84
	Balance to Credit of Income Account, May 31, 1903.		9,901,098 01
	Balance to Credit of Income Account, June 30, 1904.		$10,997,282 85

393*f*–393*j* For the purposes of comparison throughout this report, the results for the new fiscal year ending June 30, 1904, are compared with the corresponding twelve months ending June 30, 1903. On this basis, comparisons for the twelve months ending June 30, 1904, are as follows:

Passenger Earnings increased	$865,711 46	
Freight Earnings increased	1,449,531 14	
Express, Mail and Miscellaneous Earnings increased	380,249 43	
Increase in Earnings		$2,695,492 03
Operating Expenses increased	$3,374,125 96	
Taxes increased	1,310 71	
Increase in Operating Expenses and Taxes		3,375,436 67
Decrease in Net Earnings		$679,944 64

The total increase in operating Expenses is distributed as follows:

For Maintenance of Way and Structures		25.76	per cent.
For Maintenance of Equipment		9.11	"
For Conducting Transportation, viz.:			
Fuel for Locomotives	28.79 per cent.		
Wages	22.91 "		
Supplies and Miscellaneous Expenses	8.02 "		
		59.72	"
For General Expenses		5.41	"
		100.00	"

* * * * * * *

393*k* *Freight Traffic.*

The details of Freight Traffic for the twelve months ending June 30, 1904, compared with the preceding twelve months, were as follows:

	1903.	1904.	Increase Amount	Increase Per cent.
Freight earnings.....	$35,811,007 74	$37,254,538 88	$1,443,531 14	4.03

	1903.	1904.	Percentage of increase or decrease.
Tons of Freight Carried.....	30,498,440	28,128,810	7.77 Decrease
Tons of Freight Carried One Mile	4,042,788,811	4,066,140,935	.58 Increase
Average Earnings Received per ton..	$1.17	$1.32	12.82 Increase
Average Earnings Received per Ton per Mile.....	.89 of a cent	.92 of a cent	3.37 Increase
Average Distance Each Ton was Hauled..	132.56 miles	144.55 miles	9.04 Increase
Total Mileage of Freight Trains.	17,531,086	18,106,231	3.28 Increase
Average Number of Tons of Revenue Freight Carried per Train per Mile Run.....	230.61	224.57	2.62 Decrease
Average Number of Tons of Revenue Freight Carried per Loaded Car per Mile Run....	12.97	13.04	.54 Increase
Average Approximate Earnings per Mile Run by Freight Trains.....	$2.05	$2.07	.98 Increase

Maintenance of Way and Structures.

The total Operating Expenses of the Company for the twelve months ending June 30, 1904, were $35,389,303.96; of this amount $7,166,308.14, or 20.25 per cent., was for expenditures pertaining to the Maintenance of Way and Structures. Included in these
393*l* expenditures is the cost of 53,530 tons of steel rails, the greater portion of which was laid in replacement of rails of lighter weight in 445.81 miles of track; also the cost of laying 2,333,616 new ties.

The expenditures for Maintenance of Way and Structures also include a large portion of the cost of ballasting 14.67 miles of track with crushed stone, 203.11 miles with gravel, and 78.08 miles with cinders and slag; the erection, in place of wooden structures, of 62 new steel bridges on masonry, and 13 on pile supports, aggregating 3,496 feet in length and containing 2,524 tons of bridge metal; and the replacement of other wooden structures with masonry arch and box culverts and cast-iron pipes, the openings being filled with earth. The wooden structures replaced by permanent work aggregate 11,246 feet in length.

* * * * * * *

Q. Do you know how much of the packing house products is carried in cars which do not also carry the dressed meat and how much of the dressed meat is carried in cars which do not also contain packing house products?

A. No, sir, I am innocent on that question.

394 Q. Are the weights on which you receive payment for freight, the weights furnished you by the packers or does the Western Weighing Association at Chicago weigh these cars and do you settle them on that basis?

A. Why, as far as my knowledge goes they are billed out of South Omaha at actual weight which is verified,—the packer's weight which is verified by the Western Weighing Association.

Q. You say so far as you know, but do you know that it is a fact that the Western Weighing Association weighs these cars and furnishes you the estimates or not?

A. No, I cannot testify to that, I have had occasion to go into that. I know this, that we test all of our weights and everything very carefully regardless of the Weighing Association or anybody else.

Q. Do you know whether the cars which contain packing house products and dressed meats are loaded heavier for one railroad than another, or do you know whether they run about an average of the same?

A. I have no means of knowing that except the testimony that I have erred in the various stages of this case. There seems to be some little difference.

Q. Is there a difference in the loading dependent upon the scarcity or plentifulness of cars?

395 A. Well, I have never had occasion to see that as I have no recollection of any time when there has been a scarcity of cars on our railway. We seem to have had enough.

Q. In the printed annual report for 1904, there does not appear to be statistics made up and figured out by the mile run of locomotives as there is in some of the previous annual reports. I will ask you to state whether or not previous to 1904 your annual report contained statistics where the locomotive and other cost per mile run was figured out?

A. I believe they did, some of them. I cannot tell you just what date that was changed. The accounting department makes up that annual report, you know, I don't have the handling of that.

Q. I notice in the report of your testimony that you state in your direct examination that a train carrying packing house products and dressed meat will probably contain five cars more on the average than a train carrying live stock. Are you prepared to state definitely that that is the case or not, Mr. Gardner?

A. Well, we are now making up a report that you asked for yesterday and will verify that.

Q. That will show deginitely?

A. Yes sir.

Q. Where do you keep on file all the train sheets which show the actual running of the trains on the road?

A. In the different Train Despatchers' offices.

396 Q. Well, now in the train moving out of Boone, Iowa, eastward to Chicago, at what office would the train sheet be kept that shows the movements of those trains?

A. At Boone, from Boone to Clinton and in Chicago from Clinton to Chicago.

Q. If you wanted to ascertain the actual definite facts with respect to the method in which the live stock trains were handled and the packing house product trains, and to ascertain the speed that they actually made between stations, you would have to resort to those train sheets, would you not?

A. We would.

Q. What length of time and what months or parts of months would probably be representative and indicate the relative speed and the method in the respective trains of live stock movements, on the one part and the dressed meat and packing house products on the other?

A. You suggested yesterday taking April and October.

Q. I just inquired if that would be a good example.

A. Yes, I think possibly it would be fairer to us to take one winter month, say January or February, with one spring month.

Q. Could you furnish for examination the train sheets for certain Mondays or such other days of the week as you would please, for two or three days in a month or two?

A. I can have copies of them made. We should not want to let the original leave our office or possession.

397 Q. I would not want you to go to much trouble to do it but I would like to see definitely.

A. I should like very much to exhibit them here, no matter what the trouble is. I should like very much to have you see them.

Q. Take the first and second Monday and Wednesday—There is plenty of live stock handled on both days?

A. Yes, those are the principal days.

Q. Of either January or February, and then April or May, if you please, take April, for example and October?

A. April, October, January and February.

Q. That would probably be representative?

A. Yes, I think it would.

Q. Take the first and second Monday and the first and second Wednesdays.

398 The COURT: I think there ought to be some way of your serving the notice on these people of what you want instead of taking up the time of the Court. I would like to hasten this matter as much as possible without interfering with the rights of counsel. I should think that you could make out a list at night in your office and offer it in the regular way, and not spend an hour or two of the Court's time in asking for things on cross-examination.

Mr. LYNDE: Those things that are called for really mean weeks' work for us.

The COURT: Well, that is for you gentlemen to settle outside of court.

Mr. LYNDE: Of course we can agree as we do here. We are perfectly willing to furnish them but they cannot be brought into court.

The COURT: I suggested this simply as a method for shortening time in asking questions on cross-examination. I should think that might be done and then we could get along with something else.

Mr. COWAN:

Q. In the handling of live stock from St. Paul, is it any more expensive than from the Missouri River?

A. Yes, our grades are greater between Chicago and St. Paul than they are between Chicago and the Missouri River. The maximum grade between Chicago and Missouri River is seven-tenths.

Between Chicago and St. Paul we have one per cent. grades
399 in some places.

Q. How is it between St. Paul and Chicago, one per cent. that way too?

A. The same in both directions.

Q. Is there any reason which you know of which should make a greater difference between the packing house products, dressed meat and live stock from St. Paul than that difference between the same commodities from the Missouri River to Chicago?

A. From my standpoint there is some reason. It costs us more on account of the grades to handle live stock from St. Paul.

Q. It likewise would on the packing house products and dressed meats?

A. Yes sir.

Q. Is there anything in your mind which warrants a different relation of the rates on the respective commodities from Chicago to St. Paul, or St. Paul to Chicago and between the Missouri River and Chicago?

A. I don't believe I can give you an intelligent reply to that question now, it has never occurred to me to reflect upon it.

Q. Speaking of the ordering of cars and the holding of them for loading, isn't it a fact that the cars are generally ordered some days in advance of the shipment?

A. No sir.

Q. You are certain of that?

A. Yes, I used to distribute them myself personally.

400 Q. What length of time did they generally give you?

A. They generally give you from 24 to 36 hours and in many instances you only get twelve hours. That is not due to any malice on their part or anything of that sort; it is due to market conditions. A man may go out in the country, people go out to buy this stock and they may buy more or less. When they start out their intentions are all right to ship ten cars of stock but when they get out and buy it they want — send in five cars or *vice versa*. They may go out to buy five and then end up in buying ten. The orders for stock cars are sent by telegraph invariably. If it could be done several days in advance it would be done by mail.

Q. Those orders are put in to your various agents?

A. They are put in to the agent and the agent notifies the train dispatcher and the various dispatchers notify the distributor of car equipment in Chicago.

Q. Isn't it a fact that when you bring in a great many cars say on a Monday, that your engines are going back, taking the first train back to distribute them?

A. We do that invariably whenever we can take them out, we

take them out to the cleaning yards and then distribute them. Some fifty per cent. of the mileage of the North Western Railroad, however, is on branch lines and a very large proportion of the
401 live stock originates on the branch lines and we do not haul any very great number of stock cars up onto those branches until we know that they are wanted.

Q. But you do distribute them at convenient points?

A. We do, we get them just as close to where we think they are going to be loaded as we can.

Q. And that is true with respect to all traffic where there is a very large volume of it like grain. You redistribute your cars when the grain is moving?

A. You take a good many of the country stations have enough stuff like rough merchandise in the station to take care of the grain business out of the station. The distribution of the box car is absolutely different and distinct from the distribution of the stock car.

Q. Where does the packing house products and the dressed meat moving out of Cedar Rapids, go to?

A. I don't know as I can tell you that. Well, I do know too. The large majority of it is export stuff, I think. They cater to a foreign market.

Q. That export stuff moves through the Mississippi River gateways and does not come into Chicago at all?

A. Well, I think a small percentage of it might come to Chicago, but not much of it.

Q. There is in the record, the annual report of your road for the year 1902, for the Commission. I would thank you to fur-
402 nish us with one for 1903. Will you be kind enough to do so?

A. Yes sir.

Q. One question more, Mr. Gardner, and I am through. Does it cost any more or less to handle live stock in full train loads from the Missouri River to Chicago than it does a train which you would pick up and receive say at Boone, Iowa, into a full train and bring it on?

A. That is a question that we discussed here yesterday. I don't know whether you misunderstood the direct question or whether I misconstrued it or whether we all labored under a misapprehension. What I want to be understood as testifying to is to this effect; that a live stock train or a dressed beef train picked up at several stations between Council Bluffs and Boone will cost approximately twice as much to handle between Council Bluffs and Boone as a through train does from Council Bluffs to Boone that does not set out or pick up any cars. The balance of the journey from Boone to Chicago if it is made under the same conditions will of course cost precisely the same as to the pay of the engine man and the trainmen and the amount of fuel burned and other things, but I explained it somewhat at length yesterday that in my judgment it cost 30 per cent. more to handle a live stock train than it did to handle a dressed beef train for a variety of reasons, very few of which I could express in dollars and cents.

403 Q. I believe we went over yesterday the items of detail so far as you were able to state them in dollars and cents.

A. You went over some of them, yes. I think we went over the cost of the Stock Yards and the matter of the loading.

Mr. COWAN: That is all.

Re-direct examination by Mr. BAXTER:

Q. In your cross examination you were asked as to the comparative cost of cars as between live stock and packing house products. Now, assume for the purpose of this question that the cost per car is the same in both questions, that the average weight of a live stock car is 9.7 tons and the average weight of the contents of the packing house product car is 12.2 tons and the cost per car is the same. Will the revenue paying freight in the live stock car cost more or less per ton than the revenue paying freight in the packing house car?

A. It will cost more per ton to move the lesser load in the live stock car.

Mr. LYNDE:

Q. This 30 per cent. additional cost in the live stock train over the dressed beef or packing house product train would apply to the handling of that train from Boone, Iowa, to Chicago if I understand you correctly?

404 A. No, it would apply the entire distance from the standpoint of the general principal. You might figure out some detail that would only apply east of Boone.

Q. What I mean by referring to Boone as distinguished from the haul from Council Bluffs to Boone, I mean to eliminate the pick up part of the business.

A. Yes sir.

Q. You treat Boone as a concentrating point where the train is made up as an entirety. Now, from Boone to Chicago is it a fact or not that the live stock train would cost more to handle than the dressed beef or packing house product train?

A. Why, the live stock train would cost the most. Possibly in one particular car or cars, but you must spread it over every live stock train those things that are particular to the operation of the live stock trains.

Q. You still handle those live stock trains at a greater speed from Boone to Chicago?

A. We do.

Q. How about your movement on these rush days, those incidental expenses that you refer to as are peculiar to the live stock business, those days are Sundays and Wednesdays?

A. Well, more particularly on Sundays and Wednesdays than any other days of the week as half of the stock that we handle comes in on Monday.

Q. What is the cost of your dressed beef trains on Sundays?

A. We don't have any dressed beef trains on Sundays, they don't load any at Omaha on Sunday.

405 Q. So these peculiar expenses that are incident to the handling of this traffic on Sundays are to be found alone in the live stock traffic?

A. That is true.

Q. Now, in the pick-up business on the branch lines that concentrate we will say at Boone, the cost is very much greater, is it not?

A. It is.

Q. Than in the handling of the train from Boone to Chicago?

A. Yes sir.

Q. Boone is not a place that you would describe as a pick up point, is it, it is a concentrating point?

A. It is a concentrating point of some branches.

Q. The questions that were put to you on cross examination by Mr. Cowan relate, as I understood him, wholly to the main line and apparently did not include the branch lines which concentrate at Boone. Now, the branch lines furnished about 75 per cent., I think you said, of the live stock?

A. I said 71, I think, of the stock, 71 per cent.

Q. That is where you get the stock and that is where you incur this peculiar and especial expense, those expenses that are attached to the picking up of live stock from station to station?

A. It is.

Q. As to the cost of cleaning the cars. If I understand you correctly, on the North Western those cars that are unloaded at
406 the Stock Yards at Chicago are all cleaned at Clinton?

A. They are cleaned at Clinton.

Q. So you had the cost of that too so far as it includes the hauling of the offal and the manure?

A. We do, about two tons to the car.

Q. Then what are the peculiar expenses there?

A. Well, you have to have ten or fifteen acres of ground upon which to clean the cars. You have got to elevate your tracks on a trestle. Our trestle at Clinton cost us about $4500. It is necessary because if you don't get your cars higher than the natural surface of the ground, you will clean but very few cars before the manure piles up and gets higher than your cars. We have erected this trestle and then it has to be arranged so that it can be moved from one place to another, a hundred or two hundred feet at a time at the least expense. There is a continual condition of spontaneous combustion going on. The more it rains the more heat you get in the manure. Eighteen months after we constructed the trestle there the whole thing burned up. Do not infer that these trestles are constructed of new material. We take second hand bridge material for that purpose so that the trestle cost us only about five or six dollars per lineal foot instead of ten or twelve dollars a foot.

The ties burn out very frequently on these tracks where a tie on the main line will last for ten years. These have to be re-
407 newed every two years or three years. They are special side tracks that can only be utilized for the particular purpose of cleaning the cars. They are outside of the main yard and you must necessarily take the stock cars when they come in dirty, and switch

them around onto the cleaning track and then move them back onto the main yard, to make them up into a train again. I was just going to add that the mere fact of putting a man into a stock car with a pick and shovel don't in any wise express the expenses incidental to the operation as a whole.

Q. Then as to your labor itself, do you keep men employed particularly for that purpose?

A. At certain seasons of the year we can employ men there by the hour to clean stock cars at such times as there may be stock cars there to clean.

Q. What seasons are they?

A. Those are in the months when there is not so much municipal improvement going on, such as paving and so forth. That is during the fall and winter. During the summer months it is difficult to get men unless we pay them ten hours a day whether they work or not. Of course we endeavor to keep them busy. We have a large feeding yard at Clinton and if there is no stock cars to be cleaned, we send them over there. At the same time there is con-
408 siderable loss in their trotting back and forth from one place to another. There is one other item and that is the necessary detention to the stock car during the process of cleaning. If we did not have to clean the stock cars on the road, I suppose we would get along with say 600 or 800 and possibly 1000 cars less.

Q. That would be practically then 20 per cent.?

A. From 15 to 20. It takes as long ordinarily to clean a string of stock cars as it does to move them from the Chicago yard to Clinton.

Q. I was going to ask you about how long that time was?

A. Five to seven hours.

Q. These stock cars—did you state the cost yesterday?

A. The last we bought cost $650. They would cost now about $800.

Q. So that practically involves an investment of $650,000 to $800,000 that you have to put in additional cars in order to make good time when you lose the use of your cars in the cleaning process?

A. Yes sir.

Q. Now, Mr. Gardner, have you made a comparative statement of the revenue and other items incident to the running of a full train, maximum capacity of live stock cars and a full train maximum capacity of dressed beef or packing house product from the Missouri River to Chicago?

A. Yes sir, I have.

Q. Have you got that statement with you?

A. I had the statistician in my office take a year's busi-
409 ness, that is between the Missouri River and Chicago?

Q. Yes.

A. I have got that but this one has got some marks on it. I will give you a clean one.

Q. These statements are, I see, headed one "live stock," the other "dressed beef" and so forth.

A. Yes, sir. It doesn't show what period, but it was for the 12 months ending June 30th, 1905.

Mr. COWAN: Have you an extra copy which I can look at while you are testifying?

A. Yes, sir. (Handing a paper to counsel.)

Mr. LYNDE:

Q. What do these statements represent, Mr. Gardner?

A. Well, they represent as nearly as possible the actual amount of live stock from the zone where the 23½ cent rate applies in Western Iowa to Chicago, and they represent a full train of dressed beef, thirty cars of live stock in one case and 35 cars of dressed beef in the other.

Q. You have taken the maximum in each case?

A. Well, we took the live stock from actual figures, then the dressed beef we gave all the benefit of the doubt by putting five cars more in the train and approximated that as nearly as possible.

Q. Well, your statement as to the live stock then shows
410 that on an average the gross tons per train are 845 tons. How many cars would that be, Mr. Gardner?

A. That is about 30 cars.

Q. About thirty cars. There is an average revenue paying tonnage per train of 287 tons of live stock?

A. Yes, sir.

Q. And that on the 23½ cent rate, that pays per car gross $45.50?

A. Yes, sir.

Q. Now, as against that you charge off the expenses, which you estimated at $16.05 per car?

A. That is right.

Q. Leaving net earnings per car for live stock $29.45 and net earnings per train of 30 cars of $872.48, which gives, as you stated, average earnings for train mile of 88 cents. Now, as compared with that the dressed beef statement shows on a basis of thirty five cars to the train——

Mr. COWAN: Let the witness explain.

Mr. LYNDE: He has already explained it if I understood him correctly.

Q. That is the basis you have stated?

A. Yes, sir.

Mr. COWAN: All I call attention to is, let the witness testify instead of counsel.

Mr. LYNDE: I am seeking to avoid unnecessary questions.
411 The COURT: Allright, go ahead.

Mr. LYNDE:

Q. On the basis of a train of thirty five cars of dressed beef there is an average gross tonnage of 1200 tons?

A. There is.

Q. And an average revenue paying tonnage per train of 432 tons?

A. Yes, sir.

Q. That is to say, 432 tons as against 287 tons of live stock?

A. Yes, sir.

Q. On which, applying the 20 cent rate there is an average earn-

ing per car to Chicago from the Missouri River of $45.14. Now, against that you charge the expense account, the items of expense, that is, the mileage that you have to pay and the terminal charges that you have to pay?

A. Yes, sir.

Q. Amounting to $15.85 per car; is that right?

A. Yes, sir.

Q. Leaving net earnings per car on dressed beef for packing house products of $29.29 as against $29.45 of live stock, but making the total earnings on your train of 35 cars of dressed beef net $1041.12 as against $872.48 on the live stock train, is that right?

A. Yes, sir.

Q. And making your average earnings per train mile 1.06?

A. Yes, sir.

Mr. BAXTER: On what?

412 Mr. LYNDE: That is on the products and dressed beef, 1.06 on that as against 88 cents on the live stock. That is figuring the live stock 23½ cents. Now, I note on the statement which I have here in my hand, Mr. Gardner, which you have handed me, that there follows the additional statement as to what would be the effect of applying the 20 cent rate, the local rate on the dressed beef and packing house product, to the live stock?

A. Yes, sir.

Q. By way of reducing the average earnings per train mile. Have you got that statement, that amount there?

A. 69 cents, I think.

Q. I think that is an error, Mr. Gardner, that is the reason I called your attention to it. It is a reduction of 3½ cents, which I take it is in the neighborhood of 14 or 15 per cent.

A. That should be 74 instead of 69.

Q. It should be 74 instead of 69, as I figure it, so I would like to have you make that correction.

Mr. LYNDE: These statements I ask leave to offer in evidence as exhibits "B" and "C" to Mr. Gardner's testimony, respectively. I have changed the figure on this statement. I think that is all. (The statements were marked as requested and introduced in evidence.)

412*a* Fresh Meat and Packing House Products (Thirty-five Cars).

Average revenue tons per train	12.20 tons
Average tare weight of car	22.00 tons
Ratio of revenue tons to weight of car and contents	36.00%
Average gross tons per train, Missouri river to Chicago	1200.00 tons
Average revenue tons per train, Missouri river to Chicago	432.00 tons
Chicago local rate from Missouri river	20.00 cents
Proportionate rate, Missouri river to Chicago on business destined east	18.50 cents
Average earnings per car from Missouri river and Iowa points	$45.14

Less:		
Mileage on car	$10.00	
Switching paid the Chgo. Jct. Ry. on eastbound business	3.00	
Account damage & loss	.85	
South Omaha terminal charge	2.00	
		$15.85
Net earnings per car		$29.29
Net earnings per train, Missouri river to Chicago		$1041.12
Train miles, empties to Missouri river and loads to Chicago		984
Average earnings per train mile		$1.06

This does not in any way consider the actual train movement of the dressed beef product which is one-half to two-thirds of the cost of handling livestock.

Exhibit "B" to W. A. Gardner.

412*b* Live Stock (Thirty Cars).

Average revenue tons per car		9.68 tons
Average tare weight of car		18.50 tons
Ratio of revenue tons to weight of car and contents		34.00%
Average gross tons per train, Mo. river to Chicago		845.00 tons
Average revenue tons per train, Mo. river to Chicago		287.00 tons
Chicago local rate from Missouri river		23.50 cents
Average earnings per car from Missouri river and Iowa points		$45.00
Less:		
Cost maintaining stock yards, water facilities and yard tracks and depreciation on same	$1.75 per car	
Cost a/c damage & loss & injury to stockmen in charge	1.15 " "	
Extra cost of delivery at Chicago above $2.00 terminal charge	1.50 " "	
Mileage on cars at 6 mills	6.00 " "	
Cleaning stock cars	1.25 " "	
Return fare of one man for every third car ($10.24) (2c. mile)	3.40 " "	
Bedding for stock cars	1.00 " "	
	16.05	$16.05
Net earnings per car		$29.45
Net earnings per train, Mo. river to Chicago		$872.48
Train miles, empties to Mo. river and loads to Chicago		984
Average earnings per train mile		$.88
Applying 20c. local rate as ordered by the Commission will further reduce our earnings on live stock per train mile to		$.74

(In arriving at above net earnings, we eliminated only such expenses as are peculiar to the movement of live stock).

This does not in any way consider the actual train movement of livestock, which cost is from 70% to 100% greater than the cost of handling dressed beef or packing house products.

Exhibit "C" to W. A. Gardner, see Vol. 4, pp. 412-413.

413 The COURT:

Q. Mr. Gardner, explain, for it seems to be admitted here that theretofore in other neighborhoods they charge a good deal more for the products than they do for the raw material, live stock. Will you explain why that is?

A. I think it is due to the fact, your Honor, that they have not investigated sufficiently the cost of the movement.

Q. With reference to the cost of the product or raw material, what is the comparative value, or is that shown?

A. No, it is not shown in my testimony.

Q. Is the product worth the most?

A. I assume a car load of the product is worth the most.

Q. Does that have anything to do with fixing the rate, ought not it to have?

A. Well, various testimonies that I have looked over, some of the experts in making rates I believe, have shown it does have something to do with it. I can't remember the particulars.

Q. What do you think controls in making the rate?

A. I think it ought to control, the cost of the service and the tonnage that you can put into a car ought to control. I call your attention to the fact that bulky stuff of light weight, like furniture, vehicles and all that nature, it is classified at a higher rate than live stock is, although we get less of a load of stock into a car than we do of the other commodities I have mentioned. There is scarcely
414 any freight in which you use so small a capacity or utilize so small a capacity of the car as you do in live stock, and there are many other bulky articles of freight——

Q. Weight and value should be controlling elements?

A. Yes, sir, because they enter into the cost, weight particularly.

Mr. LYNDE:

Q. How about competition, Mr. Gardner, between tariff?

A. Well, that has much to do with it; I am quite liable to overlook a good many things, because I do not aspire to know very much about rates, just looking at it from a practical standpoint.

Q. You do not consider the rate question?

A. I have nothing to do with that whatsoever.

The COURT: Supposing there is no competition, supposing the railroads all pool to fix rates, how do they determine those rates? They have pooled in the past, how do they determine the rates then?

A. Well, the rates are determined, I assu-e by the various traffic departments, which are composed of men of a great many years'

service and experience in the business, and generally taken as sagacious, and as I understand it very frequently the shippers have a voice in the classification of freight. If it is classified too high they seek by argument to put the railroads in the right line
415 of thought and generally succeed. The matter of rates, as I view it, is not one of arbitrary action on the part of the railroads, it is more a compromise between the shipping public and the railroads than it is arbitrary.

The COURT:

Q. I suppose they want to get the rates cheap enough to encourage shipping?

A. That would be my idea if I owned a railroad. And at the same time the rate on any particular thing ought to yield enough revenue to remunerate you for that particular thing.

The COURT: That is all, I guess.

Mr. SEVERANCE: One question:

Q. The Court asked you whether the value of the property transported was not an element in fixing the rates. Now, it is a fact, is it not, that what element does not substantially enter into the question as to the amount of or rate that should be charged except as far as may be necessary to cover insurance of the property; that is, the railroad is responsible for the property, for its value?

A. It is.

Q. And if it is responsible for something that is worth $2,000, it would be entitled to charge a rate above what it would charge for property valued at $1,000 because of that element of responsibility; that is true, isn't it?

A. I believe it is, and there is some testimony in this case
416 somewhere from Mr. Bird, which went into that thing.

Q. Well, that is the ground upon which the element of value is considered?

A. Yes, sir.

Q. Now, isn't it also a fact that the losses that have to be paid by railroads aggregate only a fraction of one per cent. so that the matter of insurance is a very small item in estimating the value of transportation?

A. It is.

The COURT: They would charge more for diamonds than they would for ordinary rocks?

A. I assume so, yes, sir.

Q. That would be governed by the danger of their being stolen, wouldn't it, that difference?

A. Well, there would be a very much greater risk and responsibility in the transportation of one than the other. We would have to safeguard it and pay a great deal more attention to it.

Recross-examination.

By Mr. SHAVER:

Q. Doesn't weight add to the cost of the transportation?

A. Yes, the increased weight of the load, as the weight of the car is a factor in the cost.

Q. The greater the weight the greater the wear and tear on the rails and road bed?

A. Well, the speed has got as much to do with that as
417 anything.

Q. The weight has also something to do with it?

A. It does, but you figure your hammer blow of the locomotive more from the speed than you do from the weight, and the same way with the car.

Q. The greater the weight the greater the friction on the rails, I suppose?

A. The greater the weight the greater the wear on the rail, probably.

Q. And it requires more fuel to haul a heavy train than a light one, does it not?

A. That is dependent on the speed entirely. We can burn more fuel with 25 cars of stock on certain portions of the road than we can with 60 cars of dead freight.

Q. The refrigerator cars are much heavier than live stock?

A. Yes, it shows, I think that with the ice and one thing and another, they are heavier.

Recross-examination.

By Mr. COWAN:

Q. You figure 9.68 tons net revenue paying freight per car in the case of live stock?

A. I do.

Q. You included in live stock hogs, sheep and cattle?

A. We did.

Q. Your cattle cars pay a net revenue of 23000 pounds, I believe?

A. I testified yesterday it was in that neighborhood.

418 Q. Didn't you include a lot of sheep in this that only run 10 or 11000 pounds per car?

A. No, not a lot of them. We took in this the stuff that came to Chicago market direct. Very few of our sheep come, none of them, they are all unloaded at La Fox.

Q. The report referred to, the stock yards' company report of Chicago showed that you brought into Chicago over a million head of sheep?

A. I do not dispute that but I say they came here from La Fox, they all stop there and feed, and we put into this statement, or at least aimed to, that stuff which moved through without stopping in transit anywhere. The sheep are eliminated.

Q. Well, in taking your averages of how much your stock weighed at Chicago, didn't you take the Chicago weight for it?

A. We took the Chicago weight?
Q. Yes.
A. We took the weight that we collected freight on, cattle and hogs.
Q. Well, didn't you collect freight on the sheep here?
A. Yes, sir, but I say we abstained—we took into this what would ordinarily move into Chicago in the Missouri River zone from those stations that we talked about yesterday.
Q. You mean, then, you didn't take the average of all the live stock that came to Chicago?
A. I didn't take the sheep into consideration, no.
419 Q. Well, you say you took that coming from that Zone?
A. Yes, sir.
Q. How did you get at the average number of tons per car?
A. Well, we took all the cars and took all the tons that came from that 23½ cent rate zone and divided one by the other.
Q. Only that that came from that zone?
A. That is it. There may be some few sheep in there, but there are very few in it, there are very few native sheep that are bred out there, I do not recall any.
Q. So you don't take your average live stock loading to get at the number of tons you have given here, but only the average from that district?
A. Which would be the average from that district.

Mr. DAWES: That is what we are dealing with, Mr. Cowan.

Mr. COWAN:

Q. Have you got the data?
A. No, I haven't got that.
Q. Did you go through the billing and select out the stuff that was shipped?
A. We had the auditor do that.
Q. You say you haven't it here, but you have somewhere those figures from which you computed this?
A. Yes, sir.
Q. Can you furnish them, Mr. Gardner?
A. Yes, sir, with pleasure.
Q. I would like for you to do so please. Now, we have
420 the average tare, weight of car, 18.50 tons. Did you take that from your own figures or from the Western Weighing Association figures?
A. Well, we took the Western Weighing Association and our own figures and compared them and arrived at that result.
Q. The definite actual record that furnishes that evidence is with the Weighing Association?
A. Yes, sir.
Q. In estimating the amount of your expenses I see you put loss and damage in this estimate at $1.15 a car?
A. Yes, sir, I left out some 21 or 2 thousand dollars and give that the benefit of the doubt as to claims that were not paid in connection with the Chicago market.

Q. Your claim is that you have a definite record of just how much you pay on live stock claims for every year?

A. Every year. It would be a thirty days' job to go through the record, though. We handle some five or six thousand claims, you know, every day, of one kind and another.

Mr. LYNDE: A day?

A. I meant letters, not claims. But he has five thousand letters a day.

Mr. COWAN:

Q. I am talking now about his records of payments. His records of payment do not require any such work. You have estimated in your cost two cents a mile on every car of live stock?

A. We have.

421 Q. Clear back to the Missouri River?

A. Yes, sir.

Q. Has that ever been regarded and considered as an actual cost?

A. It always has in my mind.

Q. Well, do you claim that it cost you $3.40 per car of live stock for carrying the drovers and return transportation?

A. I certainly do.

Q. It cost that money to carry them back?

A. Yes, sir. I do not go on the hypothesis that because we have got a train running and you put fifty or sixty drovers on there, that it don't cost you anything to carry them. You are under all the responsibility that attaches to a man who buys a first class ticket at three cents a mile.

Q. Now, you put the bedding of the stock car at a dollar?

A. Yes, sir.

Q. That is the cost of the material that you put there. Now, how do you get at the fact—you say *you cost it* you a dollar—how do you arrive at that fact?

A. I explained all that pretty fully yesterday, I think, in my testimony. I will review it again, if you like.

Q. How far do you have to haul this stuff?

A. All the way from ten to fifty miles.

Q. And how many stock cars will a car load of that stuff furnish bedding for?

422 A. It depends on the size of the car that you load the stuff in originally. Some of the big gondola cars will haul thirty yards. A flat car might take only seven or eight yards.

Q. You figure on the basis of two yards to the car?

A. Yes, sir, a yard and a half to two yards in a thirty-six foot car.

Q. And by using the estimate which I have called over, including $1.75 for cost of maintain-g stock yards, water facilities and tracks and their depreciation, $1.75, you give a total expense of $16.05?

A. Yes, sir, but that does not comprise everything by any manner of means. There is another matter of water that ought to go in there that I refrained from putting in. We have at every watering plant in the State of Iowa a contrivance for watering hogs, some 55 or 60 per cent. of the live stock out of Iowa is hogs. We run a pipe line on both sides of the main track, three or four hundred feet

from the water tank and we put in a stand pipe that works with a valve, and every time there is a stock train goes through there there is a man stands on either side and puts water in to the hogs, and that is done in the summer time every time we come to a water tank.

Q. Now, what portion of the year do you water hogs?

A. During the summer months.

Q. What portion of the year is the large hog movement?

423 A. Why, I suppose it is about equally divided. I never looked to see that. It is not as irregular as the range cattle business.

Q. That will be shown by the Stock Yards report. That will show whatever it is?

A. Yes, sir. Those plants, though, cost $50 to $75 apiece. I have not referred to them anywhere.

Q. Now, in moving your live stock from Bellefourche territory, take the Black Hills District on your road?

A Yes, sir.

Q. The difference in your rate, if they come on from the Missouri River, is 12 cents a hundred pounds, is it not?

A. I think probably. You know better than I do. I think the rate is 48 cents clear through.

Q. And thirty-six cents to Omaha?

A. Yes, sir.

Q. So the difference would be 12 cents?

A. Yes, sir.

Q. Now, if this stock train cost as much as you claim it does, to bring it on to Chicago from the Missouri River, then wherever you haul on that 12 cent rate from the Missouri River on to Chicago you are actually losing money?

A. Yes, sir, I think we lose money on most of the live stock business.

Q. You actually lost money?

A. Yes, sir, even at the 23½ cent rate.

Q. Do you know of any other large volume of freight that

424 pays you as much revenue per car mile as the live stock pays you on these local rates from Western Iowa points to Chicago?

A. Do I know of any other thing that pays us as much per mile?

Q. And that furnishes you as much volume of traffic?

A. Yes, sir, I should say that grain did.

Q. How much grain do you have to load to the car in order to get as much revenue as you do out of live stock?

A. Well, let's see. The rate on grain I think is 17 cents, isn't it?

Q. You ship grain from the Missouri River here at 11 cents?

A. Not to my knowledge.

Q. How much, 12?

A. I think the rate is 17 cents.

Q. Do you know how much grain you load to the car?

A. Yes, sir, we generally load, we have eighty thousand capacity box cars and load them generally I think to 100 or 110 per cent. of the capacity of the car.

Q. Have you ever taken occasion to see how much your total grain movement through Mississippi River points averages?

A. Oh, I have at odd times, not recently.

Q. Mr. Mahoney keeps definite figures on that, does he not?

A. He does.

Q. Now, the average load on your system per car is only about 13 tons?

A. 13.3 tons.

Q. That would indicate there could not be any great
425 quantity of the very heavy loading that you speak of?

A. Well, yes, it would indicate that we had some very heavy loading and that we had some very light loading. The Northwestern Railroad is somewhat peculiar in that respect. We start out of Chicago every day some four or five hundred car loads of merchandise from these freight houses that only average about eight tons to the car and that has very much to do with the average loading. On the other hand, we have a very big ore business up in Michigan that will average 35 or 40 tons to the car, but the light loading predominates.

Q. In order to earn as much per car load on the grain per mile as you do on the live stock the grain has to be loaded very much heavier than live stock that you move out on the 12 cent rate?

A. Well, I don't know about the 12 cent rate. I was not committing myself on that.

The COURT: Haven't you got the rates there, haven't you got the figures there as to what is the rate?

Mr. COWAN: I have them right before me.

Q. The proportional rate from the Missouri River to Chicago is composed of nine cents to the Mississippi River and three cents to Chicago?

A. We are not discussing the proportional rate on live stock. We are discussing the 23½ cent rate, and on that same basis grain would be 17½ cents.

426 Q. Practically all the grain moved from the Missouri River moves here on the basis of the proportional rate?

Mr. LYNDE: All except that which is shipped from intermediate points, Mr. Cowan, it is very much live stock in that respect.

Mr. COWAN:

Q. That may be from intermediate points, more than this proportional.

Mr. LYNDE: That is all we are dealing with here, is intermediate points.

Mr. COWAN: I have not examined whether you do charge more than the proportional from intermediate points. I haven't a tariff before me. I do not make an assertion of that kind.

Q. Now, in the case of live stock you figure that you haul 845 gross tons?

A. Yes.

Q. And in case of packing house products in your comparison you are figuring that you haul 1200 gross tons?

A. Yes, 1220 I think.

Q. You are estimating 35 cars of packing house products?

A. Well, it may not be 35 cars, exactly. That is as near as you can make up a statement of that sort, I think. You can figure it most any way. That is about as close as we can come to it.

Q. Well, you can figure it by making some division?

A. Yes.

Q. You say you can return 60 empty cars, live stock cars
427 and 45 to 50 packing house product cars?

A. I said 50 refrigerators, I think, and 60 live stock cars. But you should bear this in mind also that the 50 refrigerators go through and the 60 live stock cars may distribute themselves somewhere else.

Q. They do not have to be hauled as far?

A. They do not have to be hauled as far, although the locomotive has to go as far, and the train crew.

Q. Now, if you move the live stock and packing house product at the same rate of speed, isn't it a fact that the weight behind the engine is the test as to the cost of hauling it, the difference in cost?

A. No, sir. Speed has got just as much or more to do with it than the weight of the train.

Q. I say, assuming that you are hauling it at the same rate of speed?

A. Yes, sir.

Q. Assuming that you haul it at the same rate of speed, it certainly would cost more to haul 1200 gross tons than it would 845 gross tons.

The COURT: He answered that yes.

Mr. COWAN:

Q. Is it not a fact that you have what is equivalent to regular stock trains that load in that district of Iowa in the morning to reach the next morning's market at Chicago, live stock?

A. Why, if you would call "regular" something that occurs once a week or once in ten days or once in two weeks, yes, but
428 not every day, no. We have, I think—there is one schedule train out there that does pick up some live stock, but very few shipped on that particular train.

Q. You have on Sundays several of those trains, do you not?

A. Not that are scheduled, but that do run on a certain schedule.

Q. You know they are going to run?

A. We know they are going to run, yes, sir.

Q. Do not those trains load in the morning in Western Iowa for the next morning's market in Chicago?

A. No, most of them load the night before. They will commence loading at 10 or 11 o'clock or midnight, then instead of arriving in Chicago in the morning, they get in here early in the morning—I think I know what is in your mind if you will permit me to go on without questioning you if you want me to?

Q. Yes, go ahead.

A. I heard you ask somebody the other day whether it was not the fact that the time on live stock has been lengthened six hours from Iowa or something of that sort?

Q. Yes.

A. And I want to say that that is not the fact, but we have required the shippers out there, most of them, to load their live stock from three to four and five hours earlier than they used to. We make the same or better running time into Chicago than we
429 ever used to make. The reason for that was not to secure a lower rate of speed on live stock but was for the purpose of getting the live stock in here so as to make the market. And where the Northwestern Railroad under the old regulations, used to have from 20 to 25 per cent. of the live stock arrive here too late for the market, that is, unloaded after eight o'clock in the morning, by changing the loading—and this is done with the approval of the shipper—we *not* get practically all of the stock in here on time. We do not have two per cent. that is too late for the market. And it is a fact that there used to be a train in Western Iowa, the number of it is 132 and it left Missouri Valley at half past five in the morning and was due here the next morning at five o'clock, or something, at the Stock Yards, and we were invariably late with it because we could not make the time, and those people now, the great majority of them load the night before, with the exception of some who may unload and feed at Clinton.

Q. You mean they load Sunday night and get in here Monday morning?

A. I mean they load Saturday night late and commence getting in here about midnight. The idea of our changing our time was to have our arrivals commence Sunday night about midnight and be through with them about five o'clock in the morning instead of commencing to arrive at five o'clock in the morning and get
430 through at ten o'clock.

Q. Well, having heard those shippers testify in regard to it, Mr. Gardner, was the occasion of my question?

A. Yes, sir.

Q. I did not understand that you had any trains of live stock that you claimed to run here in quicker time than your schedule on these dressed meat trains. If you take the leaving time from Boone, for example, and the arriving time at Chicago, is it a greater length of time or as great as is the schedule on the dressed meat or packing house train?

A. I should not agree with you on that. I think the majority of the stock trains will show a very much greater running time. You have got to make with your stock trains an arrangement, a concession of two hours from the terminal yards to get over to the Stock Yards in, and as I have stated before, we have 20 or 25 stock trains in line, and we have got to run the head trains as fast as we can possibly run. We only have two main tracks on the Galena Division which enters Chicago. We are building a third one. I do not think that applies to the Burlington Road, I think they have three main tracks to Aurora. I don't think they have to run stock trains at as high speed as we do.

Mr. LYNDE: You said a majority of the stock trains show
431 a much greater running time, you mean less, do you not?
A. I mean less, a greater rate of speed.

Mr. COWAN:

Q. Now, the statement you are to make up, giving the time of leaving Boone and the time of arriving here, that will show definitely the relative time it takes those trains to get here?

A. That will show definitely that, but that does not show at all by any manner of means, it does not show this stock that comes into Boone from the Maple River country and the Sioux City country, and all up through there, where we sometimes bring in 150 and 200 cars of stock, and where it is further from Boone to those points although the rate is the same, than it is from Boone to Council Bluffs. There is a whole lot of things that that will not exhibit.

Q. Well, you claim, then, that you actually run your packing house product train, that it takes it a greater number of hours from Boone to Chicago than it does a live stock train from Boone to Chicago?

A. I actually claim that the rate of speed of the packing house trains per hour is slower than the average live stock train is per hour.

Q. But I am trying to get at the time it takes from Boone to Chicago, the comparative time.

A. I appreciate what you are trying to get at, but there
432 is a very great difference between what I think you want, and what I am perfectly willing to give you, too, because whilst the hours might show up on an equality between Boone and Chicago, it might show up that the live stock train between certain stations run just as fast as it could run for a distance of a hundred miles, probably, whereas, the dressed beef train would come along materially slower. There is one other item about live stock trains. We have to stop to permit the drovers to feed sometimes. That is something else that is not in there. We have got a restaurant at Clinton that cost $2,000 to put up, solely and alone for stock men, and I w-nt to verify what the gentlemen preceeding me on the stand said to the effect that we have two or three men there Sunday nights and Tuesday nights to take care of the stock men and guide them over to the restaurant and see that they get back without being knocked down and run over.

Q. Don't they pay for their meals?

A. Yes, sir, but we have to give the rent of the restaurant free and guarantee a certain profit to the man who keeps it and we are losing money on it.

Q. If you lose money in the transaction, why do you do this?

A. I think that is explainable, and I mean what I say about losing money in it, too.

The COURT: You are just finding that out, that you are
433 losing money?

A. No, sir, I have known it for some time, and I am glad of this opportunity to air my views.

Mr. LYNDE: Go ahead and explain with regard to it.

A. I believe we lose money in the live stock traffic and I believe every man who goes into it intelligently and faithfully will discover that at the end. My testimony here is not based on being coached or having rubbed up against this thing for two or three days. I have been at it four or five years, and the conclusions I have come to are the result of my investigations and study for four or five years, too, for the reason that the live stock business on the Northwestern Railroad, as I said before, has always been looked upon as expressing the reputation of the road. If you have the live stock trains on time, you are a good manager and everything, and all is well and good, but if you do not do so, it is otherwise. Now, there is no one business in the State of Iowa or Nebraska that so many people are engaged in as in the loading of live stock. There is no one thing that probably brings as much cash at frequent intervals into the State of Iowa as live stock sales do, it is a cash transaction, it is a legal tender. The first question that a man asks his neighbor in an interior town in Iowa in the morning is not about the treaty between Japan and Russia, or the
434 municipal ownership of street railways in Chicago or various other issues that we are interested in, but it is "What kind of a market did you strike, and what kind of a run did you have?" Now, if you did not strike a good market, he criticises the run, anyway, but if he strikes a poor market and has a good run we are not able to prove that he had a good run, and if he strikes a good market and has a good run in addition he feels good all over and the reputation of the road and almost every other railroad in the West is dependent on the time that they make with their live stock, and the humor that the live stock men are kept in. And I have had occasion to go to the legislature several times in Iowa to discuss this identical matter and for that reason the railroads are very anxious to perform the live stock service in an entirely satisfactory manner. It does not bankrupt them because they may not make a profit out of it. The live stock on the Northwestern Railroad is three per cent. of all the tonnage they haul. That is all, three per cent. of it, it is about 65 per cent. of the general reputation of the railroad in the States of Iowa and South Dakota and Nebraska, and they started in soliciting live stock a good many years ago.

The COURT: The stock men are in the legislature, is that the idea?

A. The stock men are in the legislature but I refrained
435 from saying that.

The COURT: You have been catering to them too much and to public opinion, is that the idea?

A. I do not say that. We do not cater any more to the stock man who is in the legislature than we do to the one who is out. Many of the bankers are in the stock business and many of the farmers are in the stock business and many other people are in the stock business, but it is the live issue in the State of Iowa.

Mr. COWAN:

Q. Notwithstanding that, Mr. Gardner, it seems to have resulted

that, while the packing house product and dressed meat rates are higher everywhere else in the country except between the Missouri River and Chicago and St. Paul and Chicago, the farmer did not at least exercise enough influence to get his rate down as low as the packers did?

A. Well, I don't understand——

Q. Well now, what is the occasion of the packing house rate being put down so low if the farmer had all this influence with the live stock rate?

Mr. LYNDE: Has the farmer made any complaint of the live stock rate, Mr. Gardner?

A. I was just going to say——

The COURT: Let him answer one question at a time. Answer Mr. Cowan.

Mr. LYNDE: Very well.

436 A. I will answer your question. I met the Association—well, the Corn Growers' Beef Association, Mr. Ames, I think, is the President. You know him. And I have yet to have the first one complain about the rate. I see Mr. Ames frequently. It is never the rate they complain of. I never heard one of them compare the rate between dressed beef and product and live stock. They may do it elsewhere but they do not with me. I might say here that the rate on beef product is too low. I do not claim that we are ma-ing any money out of it.

Q. Do you claim that the dressed beef rate ought to be lower than the live stock rate?

A. No, I do not make any claim about that at all. I have not studied it at all. I think both rates are too low.

Q. Now, if you lose money on the live stock rate from the Missouri River here, or 150 miles this side, about that of 23½ cents, how do you account for it that for years the railroads have been carrying, and yet carry, live stock from here to New York, double the distance, for 28 cents?

A. Well, because they do not have half the hullabaloo and hurrah, boys, about live stock between here and the seaboard as they do between here and Omaha, nothing like it. They do not carry any men with the stock trains to take care of it, as I understand.

437 These exporters move most of the stock. They tell me they carry very few men with it.

Q. Don't they make faster time?

A. I think not. I think they take about 60 hours going from here to New York, something like that.

Q. And they have to pay a lighterage charge in New York out of that rate?

A. I do not know about that, I am not posted on New York.

Q. Are there any factors in the matter of transportation aside from the men, you say they don't carry men with the train and back, are there any factors aside from that that would require a different adjustment between the packing house product and dressed meat on one part and live stock on the other in the Missouri River to Chicago trade and the Chicago to New York trade?

A. Well, I do not know that I am sufficiently well posted east of

Chicago to answer that question intelligently. I have some general knowledge of the way they do things, but not in detail.

Q. Do you know what it cost you per car load of live stock from the Missouri River to Chicago?

A. Do I know what it costs per car load? No, I cannot answer you that accurately. There are some of the costs on that statement.

Q. Do you know what it costs you on any traffic?

438 A. No, I cannot tell you what it costs on any traffic particularly. We are getting closer to knowing that every day, though, I fancy.

Q. Do you know, Mr. Gardner, whether or not the relation of the rates on packing house products and dressed meats were submitted to arbitration by all of the railroads, trunk lines, between Chicago and New York, and that by arbitration, they fixed the relation of those rates at 28 cents for live cattle and 45 cents on the dressed product.

Mr. SEVERENCE: I object to that as incompetent and not cross-examination.

The COURT: The objection is overruled. Let us see what he knows.

A. I do not know.

Mr. COWAN: Do you know of any other place in the country, where the rates on products and dressed meats is lower than the live stock rate, except that in controversy in this case?

A. I have not looked that up.

Q. In the transportation of dressed product from Omaha, south and west, or north and west on your lines of road beyond the Missouri River, isn't it a fact that you charge more for the dressed meat than you do the live stock?

A. I cannot answer that without reference to the tariff.

Q. Are there any differences in the conditions of transportation over there relatively between the two classes of commodities, different to what it is on this side of the river?

439 A. Well, there might be in different localities, different conditions. In a similar locality, with similar grades and all those things, probably it would be identical. Of course, you must bear in mind that the cost of fuel and supplies, when you get west of the river, is added to.

Q. But not any more for hauling dressed meat than for hauling cattle, of course?

A. No, but I say a ton of coal costs a good deal more after hauling it out there four or five hundred miles, than it does right adjacent to the mines.

Q. How many trains of dressed meat do you haul a week out of Omaha to the east?

A. To the east? We do not have any trains a week. The statement shows that we only had 31 or 32 hundred cars in twelve months. We are not playing favorite there on that business.

Q. Now, you speak of the 35 cars in trains that carried dressed meat? How are you able to ascertain that if you do not have any trains of dressed meat?

A. I said on the start that we had estimated that, that we did not have any trains. I think you will find in the reporter's notes that I have prefaced that.

Q. This is a statement of actual transactions in hauling the actual number of cars?

A. Yes, sir, as near as I could make out.

Q. But it is an estimate transaction in hauling dressed meat?

A. Yes, sir, giving it the benefit of the large tonnage.

Q. Mr. Gardner, I believe you say that this statement,
440 that there is a little statement made at the bottom that the clerk added there?

A. I am perfectly agreeable to cutting that off. I will do that myself for you when I leave the chair.

Examination by Mr. LYNDE:

Q. Mr. Gardner, do you know of any complaint ever having been made to the Chicago and Northwestern Railway Company by anybody as to the rates on live stock, except these commission men here in Chicago?

A. I have never heard a complaint.

Q. You never have heard a complaint from any shippers in Iowa?

A. No, and I see them frequently, and know a great many of them.

Q. Or as to the relations between rates on live stock and rates on dressed beef, and packing house products?

A. Never. I never discussed that with them.

Q. You have never heard the question raised by any of them, have you?

A. I have not.

Q. You do not profess to be an expert on rates, do you, Mr. Gardner?

A. I profess to know nothing about them whatever.

Mr. COWAN: It wouldn't do any good if they made a complaint, Mr. Gardner. You see no money in the business.

Mr. LYNDE: How do you know?

The COURT: I guess that is all. Call your next witness.

441 WILLIAM E. KEEPERS, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. Give your full name to the reporter?

A. William E. Keepers.

Q. What is your occupation?

A. I am general freight agent for the Northern and Western Lines of the Illinois Central Railroad.

Q. How long have you been connected with the freight traffic department of railroads in the United States?

A. A little over thirty years.

Q. With what railroads have you been connected, and in what capacities?

A. I have been with the Memphis and Ohio Railway, the Louisville and Nashville and the Illinois Central.

Q. During what part of that period have your duties had relation to the making of freight rates, that is, what territory?

A. Well, on the Illinois Central, for the last twenty years, or somewhat more, twenty-two or three years.

Q. Please file as Exhibit Number 1 of your testimony a statement showing correctly the rates in cents per 100 pounds now charged on cattle, hogs, packing house products and fresh meat re-

442 spectively, in carload, to Chicago, Illinois, from the following points, or such of them as your line operates from, namely: Kansas City, Missouri; St. Joseph, Missouri; Atchison, Kansas; Leavenworth, Council Bluffs, Iowa; Omaha, Nebraska; South Omaha, Nebraska; Nebraska City, Sioux City, Iowa, St. Paul or South St. Paul, Ottumwa, Iowa, Des Moines, Marshalltown and Cedar Rapids, respectively. Indicate on the statement by prefixing the letter "A" to such rates as apply on all shipments which are destined to points east of the Illinois state line, and by prefixing the letter "B" to such rates as apply on shipments originating beyond the point of shipment, and by prefixing the letter "C" to such rates as apply when shipments originating beyond, are destined beyond the Illinois and Indiana state line.

A. I will. (Witness produces paper.)

Q. You file that as an exhibit, do you?

A. Yes, sir.

(The document produced by the witness was marked "Keeper's Exhibit No. 1" and filed with the court.)

442½ EXHIBIT No. 1.

Rates are in cents per 100 pounds.

To Chicago, Ill. From	Cattle.		Hogs.	Packing house products.		Fresh meats.	
Kansas City, Mo...	23.5	B–20 C–18.5	23.5	20	A–18.5	20	A–18.5
St. Joseph.. " .							
Atchison, Kan....	.....						
Leavenworth, "							
Council Bluffs, Ia..	23.5	.....	23.5	20	A–18.5	20	A–18.5
Omaha..... Neb.							
So. Omaha.... "							
Nebraska City, "							
Sioux Citv, Ia.....	25	... .	23.5	20	A–18.5	20	A–18.5
St. Paul.....Minn.	25	B–15.5 (See Note.)	27	15.7	A–14.6	17	A–15.7
So. St. Paul .. "							
Ottumwa.... Ia.	22	.....	21	16	.....	16	
Des Moines... "	22	.....	23.5	18.5	.....	18.5	
Marshalltown, "	22	.....	21	16	.....	16	
Cedar Rapids, "	21	.....	18.5	13.5	.....	13.5	

A.—Applies on shipments destined east of the Indiana - Illinois State Line.
B.—Applies on shipments originating beyond.
C.—Applies on shipments originating beyond and destined to points east of the Indiana - Illinois State Line.
NOTE.—Effective September 13th, 1905, rate will be 20 cents.

Exhibit No. 1, W. E. Keepers.

Q. State whether the rates on cattle and hogs, set forth in said Exhibit No. 1, are in your opinion just or unjust, reasonable or unreasonable, and state fully your reasons for any opinion you may express.

A. Well, I consider the rates unreasonably low.

Q. What are your reasons for that opinion?

A. They do not yield a fair compensation for the service performed.

Q. Are they in any way affected by competition?

A. Entirely so; otherwise they would be much higher.

443 Q. Please file as Exhibit No. to your testimony a statement for the year ending June 30, 1905, showing the total freight earnings of your Company, the earnings of your Company for cattle, the earnings of your Company from hogs, the earnings of your Company from packing house products, and the earnings of your Company from fresh meat.

(Witness produces statement, which is marked "Keeper's Exhibit No. 2," and filed as part of the evidence herein.)

443½ EXHIBIT No. 2.

For the year ending June 30th, 1905:

(*a*) Total freight receipts of the Illinois Central Railroad	$32,607,922.17
(*b*) Receipts from cattle	528,103.81
(*c*) Receipts from hogs	453,317.22
(*d* & *e*) Receipts from packing house products, including fresh meat	591,802.40

The records of this Company do not show packing house products and fresh meat separately.

Exhibit No. 2 to W. E. Keepers.

A. You do not ask me to read that?

Q. No, do you file it?

A. Yes, I do.

Q. How does the amount paid by your Company for loss or damare to cattle and hogs, and for injuries to persons in charge of cattle and hogs, compare with the amount paid by your Company for similar claims in regard to the total freight carried?

A. For the year ending June 30, 1905, we paid for loss and damage to cattle and hogs, and injuries to persons in charge of cattle and hogs, $39,715.50. The total amount of loss and damage claims for freight is, $645,509.04.

Q. Are the through rates on cattle and hogs from the points of shipment in the territory in controversy in this case to the points of final destination greater or less than the sum of the local rates between said points where the through line is made up of two or more railroads?

A. I am afraid I did not get that question, Mr. Baxter.

444 Q. Are the through rates on cattle and hogs from points of shipment in territory affected to points of final destination greater or less than the sum of the local rates?

A. They are less than the sum of the local rates when made up of more than one line, made up of two or more lines.

Q. What is the established minimum carload rate for cattle and hogs respectively on your road, and how does the actual loading of cattle and hogs on your road compare with that minimum?

A. It depends on the size of the car. Our standard car is 36 feet in length, and the minimum weight on cattle is 22,000 pounds, on hogs, 17,000 pounds. The loading of cattle is about a thousand pounds more, perhaps runs a little higher than the minimum, not very much on the hogs, about the same as the minimum, it might run a trifle higher, but not much, sometimes a little under.

Q. Do you mean it is up to the minimum?

A. They usually try to load to the minimum. It might run a little bit under, sometimes, or a little over on hogs.

Q. Will you please file as Exhibit No. 3 to your testimony a statement showing a comparison between the revenue per car realized by your road on cattle and hogs in carloads and the revenue per car realized by your road on wheat, tropical fruits, vegetables and classified freight in carloads, for the same distances, selecting for said comparison some fairly representative portion of your

445 road over which such kinds of traffic actually move.

(The witness here produced a statement, which was marked "Keeper's Exhibit No. 3" and filed as part of the evidence in this case.)

EXHIBITS

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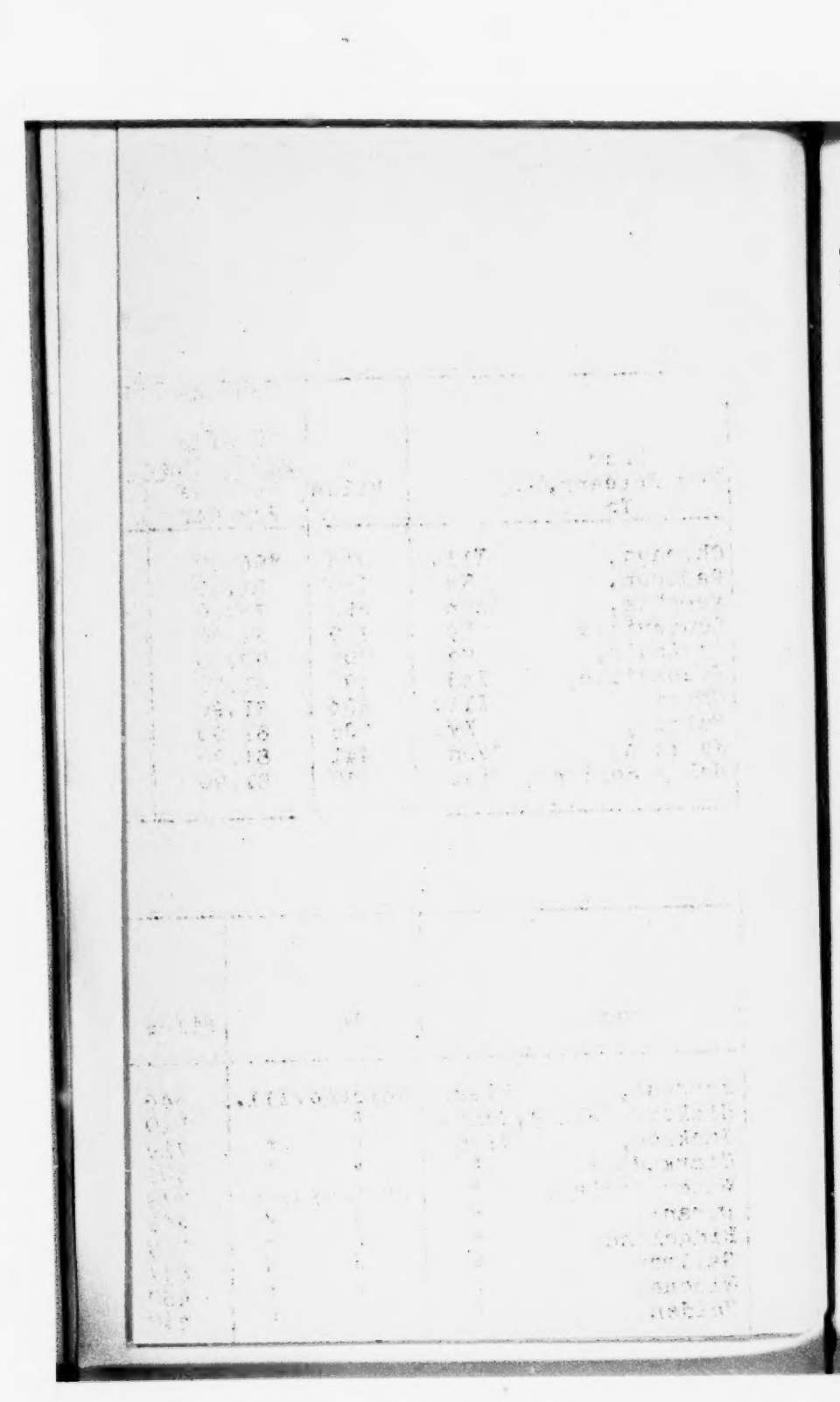

The COURT: What is the substance of that?

A. It shows the rates per car first from Omaha, Nebraska, to Chicago, 516 miles. The rate on cattle on the basis of 22,000 pounds per car,—We take that in making our estimates.)

Mr. BAXTER:

Q. We can't hear you, Mr. Keepers. You will have to speak louder.

A. I say, taking the first item here, Omaha to Chicago, on cattle and hogs, 516 miles, by our line, into South Omaha, the loading is 22,000 pounds to the car on the regular basis of the rates, the rate would be $51.07; on hogs, $17,000 pounds to the car, $39.95 to the car. The next item is the rate on wheat. A car of wheat loading 70,000 pounds would be $119.

Q. That is between the same points, Omaha to Chicago?

A. The same points, yes, sir. A car of corn, 112,000 pounds. A car of pig iron—that would be in the reverse direction, $90.20, 62,000 pounds—Cast iron pipe, 38,000 pounds, $57. I have taken correspondingly, taken rates on these articles from same town. I have given rates on live stock from Council Bluffs, Cherokee, Sioux City, Sioux Falls, Denison, Iowa, Storm Lake and Fort
446 Dodge. The comparisons run along pretty much the same. I might take Fort Dodge, 375 miles, the short distance, $51.70 on cattle; $39.95 on hogs; $119. on wheat; $112. on corn; $84.94 on pig iron; $53.20 on cast iron pipe.

The COURT: What is the difference in weight?

A. The weight for loading of wheat is 70,000 pounds; corn, 70,000 pounds; pig iron, 62,000 pounds; cast iron, 38,000 pounds. We could load more wheat and corn, and also pig iron, in cars, but we have taken the fair average weight. The cast iron pipe could be loaded much heavier than that, but we have taken the average weight of 38,000 pounds.

Q. How does the profit there compare with the weight?

A. The profit, I should think, would be a great deal more in hauling the cheap freight than it will on the expensive freight and on live stock. I have taken the other items here. Take the rates on yellow pine lumber, which comes from Mississippi and Louisiana. I have taken similar distances, taken Zachary, Mississippi, to Paducah, Kentucky, 518 miles. That corresponds with the Chicago-Omaha rate. The rate on Yellow pine lumber, which averages 47,000 pounds to the car, is $84.60. The rate from Vicksburg to East St. Louis, 537 miles, is $94. That is made to compare with the rates from Sioux Falls to Chicago, 547 miles, the rate on cattle being $55. and on hogs $51. I have made up various other illustra-ions, I do not suppose it is necessary to read them all.

Recess was here taken until 2 o'clock of same day, Wednesday, September 20, 1905.

447 WEDNESDAY, *September* 20, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon WILLIAM E. KEEPERS, resumed the stand for further direct examination by Mr. Baxter.

Q. Just before adjournment you filed, as an exhibit to your testimony a statement showing a comparison between the revenue per car realized by your road on cattle and hogs, in carloads, and the revenue per car on fruit, vegetables and classified freight per car load for the same distance. I will ask you to give the same comparison between the rates on cattle and hogs as set forth in your exhibit No. 1, with the rates charged by your railroad and by other railroads for the transportation of cattle and hogs, their various points of shipment and their points of destination, and the distances and other matters here relatively considered. Have you compiled a statement of that kind, the rates on live stock for similar distances?

A. I did not file that other exhibit that you marked No. 3.

Q. I don't care to take up the time of the court in reading that, all of your comparison.

A. No. Omaha to Chicago, 490 miles by the short lines,
448 the rate is $51.70 per car; on cattle per car, 36 feet long, $39.95 on hogs. A distance of 488 miles, from Thummel, Nebraska, to St. Paul the rates are $70.40 on cattle and $62.90 on hogs.

The COURT: How is that, from Thummel, you say to St. Paul?

A. Yes sir. The distance is 488 miles, practically the same from Omaha to Chicago. Another point is Atchison to Chicago, that is $51.70 per car on cattle and $39.95 on hogs. From Silver City, Nebraska, to St. Paul, a distance of 494 miles, $70.40 and $62.90.

The COURT: Well, there are others of the same nature?

A. Others of the same nature, yes sir.

Mr. BAXTER: Just file that as an exhibit to your testimony. Don't take the time to read it, but mark it No. 3¼.

(The paper referred to is marked Keeper's Exhibit 3¼ F. B. D.)

448a EXHIBIT No. 3½, W. E. KEEPERS.

Miles.	To Chicago From—	Per 36 ft. car. Cattle.	Hogs.	Miles.	To St. Paul From—	Per 36 ft. car. Cattle.	Hogs.
458	Kansas City...	$51.70	$39.95	458	Columbus...Neb.	$68.20	$61.20
469	St. Joseph.....	51.70	39.95	471	Silver Creek, "	70.40	62.90
491	Atchison.....	51.70	39.95	494	Central City, "	70.40	62.90
499	Leavenworth..	51.70	39.95	504	Chapman... "	70.40	62.90
487	Co. Bluffs.....	51.70	39.95	488	Thummel... "	70.40	62.90
490	Omaha.. ...	51.70	39.95	488	Thummel... "	70.40	62.90
494	So. Omaha ..	51.70	39.95	494	Central City, "	70.40	62.90
496	Nebraska City.	51.70	39.95	497	Paddock.... "	70.40	62.90
510	Sioux City....	55.00	39.95	510	Lockwood... "	73.70	62.90
409	St. Paul.....	55.00	45.90	408	Fremont.... "	67.10	51.00
414	So. St. Paul...	55.00	45.90	415	Ames..... "	67.10	52.70
292	Ottumwa.....	48.40	35.70	291	Oasis .....Iowa.	48.40	37.40
358	Des Moines ...	48.40	39.95	364	Burlington.. "	55.00	45.90
289	Marshalltown .	48.40	35.70	289	Elmira..... "	48.40	37.40

Miles.	To Kansas City From—	Per 36 ft. car. Cattle.	Hogs.	Miles.	To E. S. Louis From—	Per 36 ft. car. Cattle.	Hogs.
456	Coolidge, Kas.	$56.10	$52.70	459	Goodman...Miss.	$68.00	$61.00
468	Byron .. Colo.	58.30	56.95	472	Vaughan.... "	68.00	61.00
484	Morse.... "	58.30	58.65	489	Sloan ..... "	70.00	63.00
502	Martin... "	60.50	60.35	497	Madison.... "	72.00	65.00
484	Morse.... "	58.30	58.65	487	Canton..... "	70.00	63.00
489	Lamar... "	58.30	58.65	487	Canton..... "	70.00	63.00
497	Prowers.. "	60.50	60.35	493	Calhoun ... "	70.00	63.00
497	Prowers.. "	60.50	60.35	497	Madison.... "	72.00	65.00
508	Coddoa .. "	60.50	60.35	509	Jackson ... "	72.00	65.00
411	Larkin .. Kas.	56.10	52.70	410	Duck Hill... "	63.00	56.50
414	Shattuck, O.T.	64.90	64.60	414	Eskridge.... "	63.00	56.50
				294	Temple....Tena.	56.00	50.50
				360	Taylor.....Miss.	60.00	54.00
				290	HickoryVal.,Tenn.	54.00	48.00

The COURT: I assume that counsel will call the court's attention to these exhibits in the argument.

Mr. BAXTER: That is the idea, yes sir.

The COURT: I think that is a very good way to be used on both sides.

Mr. BAXTER: It will take a great deal of time to read those now.

The WITNESS: There are some others in other parts of the country.

449 Q. Excepting the rates on live stock from Chicago to New York and intermediate territory there and excepting the rate made by certain State Railroad Officials, do you know of any live stock rates anywhere in the United States for similar distances, that are any lower than the live stock rates charged in this case?

A. No sir, I do not, I have not seen any.

Q. Have you made some examination to see if you could find them?

A. Yes, I have looked over a good many tariffs or had them examined and reported to me by my office and with the exception of the rates east of here, which are on an abnormally low scale as we regard it, and the State rates that you have mentioned, I have found no rates that are not higher than those in question here.

Q. Have you recently had any complaint from live stock shippers as to the rates on live stock from the territory in question about the rates being too high?

A. No sir, I have not had a complaint as to the rates on live stock from that western territory for so long that I could not fix the time. Certainly not since the present basis of rates has been in effect.

Q. Have you had any complaint from shippers of cattle in Iowa or west of Chicago in regard to the relation between the—the present relation between the rates on live stock and the rates on the product.

450 A. No sir, the subject was never mentioned.

Q. Except in this case?

A. Except in this case. No shippers have ever mentioned it or brought it up or had anything to say about it.

Q. Have the rates on cattle and hogs been so high as to prevent the shipment of cattle and hogs or retard it, or have they been such as to promote the movement of cattle and hogs?

A. Why, they certainly have been sufficiently low to promot the business. It has increased. People have been in the business and staid in and others have gone in. It has been going right along without any diminution in any way that I can see. I think that the live stock business does not depend upon the rate conditions anyway. It would be an injustice to ourselves to have an abnormal scale of rates.

Q. I don't understand that you are connected with the Transportation Department of your road, you are in the Traffic Department.

A. Traffic entirely, freight traffic.

Q. So far as you have had an opportunity to observe, I will ask you in proportion to the service performed is the net revenue received by railroads for the transportation of cattle and hogs greater or less than the net revenue received by them for the transportation of ordinary dead freight.

A. It certainly is very much less.

Q. Have you compiled a comparison showing the revenues

451 per car of average loading derived by your company for cars loaded with coal and lumber or other low grade traffic compared with the revenue per car of average loading derived by your company for cattle and hogs between the same points or for similar distances? If you have, file that as Exhibit No. 3½.

(Paper produced and marked Keeper's Exhibit 3½ F. B. D.")

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Mr. BAXTER: I have just stated to the reporter that to preserve these exhibits he had better make them a part of the record, either of your Honor's record or mine.

The COURT: As he goes along.

Mr. BAXTER: Yes sir. Have you made that statement?

A. Yes sir.

Q. It is quite lengthy, is it not?

A. Yes sir.

Q. Well, with the permission of his Honor we will not take up the time to go into that.

The WITNESS: It is six pages and covers various parts of the country as well as that in the west.

Q. File as Exhibit No. 4 to your testimony a statement showing the rate charged by your company on cattle and hogs respectively to Chicago Illinois.

Also from such intermediate points on its line between St. Paul and Missouri river points on the one hand, and Chicago
452 on the other and also the rates on cattle and hogs at Sioux City, and South Omaha from stations on your road in Iowa.

(Paper produced and marked "Keeper's Exhibit No. 4? F. B. D.")

Q. As I understand it that exhibit shows the rates in both directions east and west from what are called in this case intermediate stations which lie between the Missouri river and Chicago.

A. Yes sir. From the south west to Chicago and from those same stations to Sioux City and to South Omaha.

Q. I will ask you whether those intermediate rates are in anywise subject to competition between the railroads?

A. Altogether, they are fixed by competition.

Q. Can you give us something like an accurate estimate as to the greatest distance that can be found in Iowa from any local station on any of those lines to a competitive station on some parallel or competing line?

Mr. DAWES: Do you understand the question?

A. I don't think I get that question.

Mr. BAXTER:

Q. Take any local station on your line in Iowa. How far is it from that station to the nearest competitive station on some parallel or competing line?

A. The greatest distance?

Q. Yes.

453 A. I should think offhand, 15 miles or eighteen. There might be some point where it would be 20 but I don't believe it is as far as that.

Q. Is there any difficulty at all in driving cattle or hogs a distance of 15 or 20 miles from one road to another?

A. No, they do it, half way between or more than half way between. All stock is competitive in the territory that we serve. That

is what diverts the business from one road to another without any particular loss to themselves.

Q. State whether a reduction of rates on cattle and hogs at these intermediate points on your lines between the Missouri River and Chicago would have any effect upon the revenue of your company and if so, what?

A. If the rates should be reduced to the basis of the packing house products and dressed beef rates from Missouri river, the effect on our line west of the river would be to affect a reduction of 3½ cents a hundred pounds on practically all of the live stock that we would be hauling to Chicago. I don't see that we could escape anything.

Q. That would amount to how much per annum if you have made the calculation?

A. On that basis I have made a statement. We hauled in a year to Chicago from points west of the Mississippi river of cattle, 53,986 tons; of hogs 42,269 tons. On the basis of 70 cents net ton re-
454 duction the reduction would be as a total $67,358.50 per annum based on the last fiscal year's operation.

Q. Now that is a direct loss resulting from the reduction of those particular rates. Would there be any indirect result or any indirect loss?

A. There is a considerable territory outside of Chicago that commonly takes the Chicago lakes, and where ther- are a good many shippers of live stock and more or less all through northwestern Illinois or northern Illinois and southern Wisconsin, they are shipping cows. It is a large dairy country. The reduction of the Chicago rates would be followed naturally with a reduction at those points. There would also probably be a reduction to the St. Paul and Minneapolis territory. That would af-ect us. Then it might be a reduction to other markets.

Q. Those indirect losses you have not figured up.

A. That we could not figure up because we could not tell where it would begin or where it would end, and it would be impossible to know the amount of the business.

Q. What terminal and switching charges are paid by your company on packing house products and fresh meats at St. Paul and Missouri river points?

A. The Illinois Central does not run to St. Paul. My understanding is that our business—we are in connection with the Minneapolis and St. Louis railroad which handles the business from St. Paul to our connection. My understanding however is that there is
455 a switching charge of $3.50 a car from South St. Paul to the M. & St. L. rails. At Sioux City there is a switching charge of $1.50 per car which we paid.

Mr. COWAN: I don't understand this. Let me get at what he is talking about. $3.50 and $1.50 on what sort of product.

A. $3.50 is the rate on the packing house product the switching charge at South St. Paul which the Minneapolis & St. Louis ra-lroad, our connection, pays. At Sioux City, which we reach, we pay $1.50 a car for switching the packing house products to our rails.

At South Omaha it costs $3.00 per car, $2.00 to the Union Stock Yards Company, and $1.00 to the Belt Line, which we have to use.

Mr. BAXTER:

Q. Are the same terminal and switching charges paid by your company on cattle and hogs coming from west of the Missouri river, to any of the Missouri river points?

A. We don't handle any further west than the Missouri river.

Q. Your line ends there?

A. It terminates at Sioux City at one point and Council Bluffs at the other.

Q. File a statement as Exhibit No. 5 of the number of cars of packing house products and fresh meat received by your company during the year ending June 30th, 1905, from the Missouri river points which are reached by your road.

(Paper produced and marked Keeper's Exhibit 5, F. B. D.")

455*a* W. E. KEEPER'S EXHIBIT No. 5. See Vol. 4, p. 455.

Number of Carloads of Packing House Products and Fresh Meats received by I. C. R. R. from Missouri River points during year ending June, 30th, 1905.

From—	Packing house products.	Fresh meats.
Sioux City, Ia.....	768	
South Omaha, Neb.....	1414	653

456 Q. Can a railroad other than the Chicago Great Western fix rates on packing house products and fresh meats from St. Paul and Missouri river points and other points without abandoning the traffic?

A. They would probably have to abandon the traffic. If the volume was so great that the Great Western could not haul it, they might give us some business, but it probably would not amount to much. I think the Great Western would increase its facilities so as to do it all. It would mean abandoning the business.

Q. I understand that the relation between the rates on live stock and the rates on packing house products has been changed, not by increasing the rates on live stock, but by reducing the rates on packing house products. Is that correct?

A. That is correct.

Cross examination by Mr. COWAN:

Q. How long have you been in the Traffic Department of the Illinois Central?

A. About thirty years.

Q. Did you have anything to do with making these rates?

A. Which rates?

Q. The ones that you have been talking about.

A. Do you mean on fresh meat and live stock?
Q. Yes.
A. No, I did not have anything to do with it because they
457 were made already for us.
Q. When?
A. The present rates were made about, I think, in February, 1902 on the fresh meat and packing house products by the Great Western road.
Q. Did they publish the rates for you?
A. Not for us. They made the rates and we followed them.
Q. Why do you say they made the rates?
A. They published the tariff.
Q. For whom?
A. For themselves.
Q. Did they make the tariff for you?
A. It made the rate for us, it did not make the tariff for us.
Q. Do you mean to testify here that they made the rate for you?
A. I mean to say that they made the rates and we had to follow them and we published the tariff and took such business as we could get.
Q. When you say "we had to follow them", did you do it, did Mr. Keepers do it?
A. Well, I have charge of the issuing of the tariff on this part of the road.
Q. In other words, you are the man by whose mental activity those rates were adopted?
A. If you wish to put it that way, I will answer yes. I gave the directions to have it done.
Q. You did that as representing the Illinois Central?
A. Yes sir.
458 Q. You did that because you wanted to participate in the traffic which otherwise you could not do?
A. We had to use those rates in order to handle any of the traffic, yes sir.
Q. Do you believe them to be just?
A. No.
Q. Did you believe them to represent the correct relation of the rates between the packing house product and the dressed meats and live stock?
A. I don't. I did not really consider that at the time, if that is what you refer to.
Q. How do you consider it now?
A. I cannot say whether they bear a fair relation or not. On the present basis, I should say they were wrong.
Q. All rates are too low in your opinion?
A. Pretty nearly.
Q. Is it not a fact that the relation of the rates as established by the published tariffs which you published or caused to be published for your road, making packing house products and dressed meats, those rates lower than the other is not a reflection of your judgment but was because of the necessity of getting the traffic.

A. That is correct.

Q. Do you know of any other rates on your line of road on those products which are lower for the dressed meat and packing house products than the live stock?

459 A. Well, there are rates yes, but not where there is any great amount of business involved.

Q. Where is that?

A. I cannot give you the figures, but I can give you my judgment which is only off hand. The rates on live stock from Omaha to Sioux City and to New Orleans would be much higher than the rates of packing house products. To Cairo, more, and almost any other point, more.

Q. You don't mean that there is live stock moving from there, do you?

A. I stated that it was probably not a very great volume.

Q. Is live stock moving in competition with dressed meat from Omaha to New Orleans?

A. No, it does not.

Q. That is simply a paper rate. Now, doesn't that happen to be so because of the fact that the New Orleans rate is based upon the Mississippi rate from Omaha and from Missouri river points.

A. No.

Q. It just happened that way?

A. Those rates are not made that way. If there was a volume of business from Omaha or Sioux City of live stock, it would not be as low as the packing house product is.

Q. I will ask you if you know of any rate——

A. I answer you that the tariffs would not make it as low on live stock as on the packing house products.

Q. That came about by the change of this particular

460 tariff.

A. They are never made one with regard to the other, of course.

Q. How is it in the Central Traffic Association territory.

A. In the defined territories, take Chicago and New York, you mean?

Q. Yes, take the rates on packing house products and dressed meats on the one hand and the live stock on the other, in all the classifications are not the two placed—in what classification are the two placed in the Central Traffic Association territory.

A. The packing house product are in the fifth class.

Q. And the live stock?

A. The live stock is not classified, it is a special classification.

Q. Isn't it classified in the fifth class?

A. Fresh meat.

Q. Live stock.

A. No, it is not because the fifth class rate from Chicago to New York is thirty cents and the rate on cattle is twenty eight.

Q. I am talking about the Central Traffic Association territory. New York is not in that territory, is it?

A. No.

Q. Well, you are talking a-out a rate from Chicago to New York?
A. Yes sir.
Q. What is the classification in the Central Traffic Association territory.
A. Well, I don't remember exactly.
461 Q. Have you the classification?
A. I have them at the office, yes sir.
Q. Please produce it so we can see, if you don't recollect. To refresh your memory I will ask you if dressed meat is not classified in the third class and packing house product and live stock, both as fifth class?
A. Packing house product is fifth class. I am sure of that, because I had occasion to know that and I think that cattle and hogs may be in the fifth class, but I could not say for certain.
Q. In the Illinois classification in the state of Illinois, what is it there?
A. They have a special classification. Live stock of all kinds are classified specially. They have a regular class of their own.
Q. And what is the packing house product.
A. There is so little moved that I don't know that. I would have to guess at it, I don't know exactly.
Q. And the dressed meat?
A. It may be the fifth class or the sixth class. It is sixth class in carloads and fourth class probably in less than carloads.
Q. Which, the products or the fresh meat?
A. The products. The fresh meat is first class in less than carloads, but probably about third class in carloads. I am not giving you that exactly, of course.
Q. You have that data, however.
462 A. Oh, yes.
Q. Will you produce that?
A. Yes sir.
Q. Or ascertain what it is?
A. You want to get the Official Classification and the Illinois Classification.
Q. I asked first for the Central Traffic Association classification.
A. That is known as the Official Classification.
Q. And then for the Illinois classification. Now, as to the Iowa classification, has Iowa a classification?
A. Yes, the Iowa classification is the Western Classification with some exceptions to it, and additions made by the Railroad Commission of Iowa, it is practically the same as the Western Classification.
Q. In what classification does it show the dressed meat and packing house products respectively.

Mr. DAWES: I suggest that the classifications, being printed documents, if they show anything different from what the witness has testified, that they be produced by counsel who is cross-examining upon that subject. His memory as to this classification is of no consequence whatever as a matter of fact.

The COURT: Cut it as short a- you can. If you have those classifications and those schedules you can produce them.

Mr. COWAN: I am asking him to produce them now.

Mr. DAWES: I assume that it is counsel's business to
463 produce them as a matter of cross-examination. This evidence, of course, is hearsay.

Mr. COWAN: There has been all sorts of questions asked here that the witness does not know anything about. If hearsay evidence had been excluded, practically all of it would have been.

Q. As the traffic man of the Illinois Central railroad, have you had anything to do with the matter of conforming your rates to these classifications or the making of classifications or participating in making the classifications.

A. In the western classification we have. When I say "we" I mean to say that I would have if I attended the meeting, in making the classification. There are a good many different members, all the roads from the east and Indiana State line to the Pacific coast. The Iowa classification, the Iowa commission allowed that classification to be used as a basis and then they have added some modifications of their own. The official classification and we have nothing to do with that, that is handled in a different manner and our interests are not as great in it.

Q. Now in the Southern Railway & Steamship classification, do you participate in that?

A. It is called the southern classification. The Illinois Central has a voice in the making of that classification. It is made by a general committee of the Southeastern Association, a sort of a joint committee makes the classification and it has to be changed
464 from time to time.

Q. Does the official classification govern in the Central Traffic Association territory?

A. Yes sir.

Q. Your road extends into that territory, does it not?

A. Well, a very little distance. It runs over into Indiana fifty or sixty miles down to Evansville. We have got 100 miles or so in that territory.

Q. The official classification north of the Ohio river and east of the Indiana and Illinois State line, the southern classification and the western classification comprise the great classification territory of the country?

A. Yes sir. There are some great modifications of those. There are some exceptions to them in places. Illinois is made up of everything else. It stands by itself and is made by the railroad commission.

Q. Isn't it a fact that with the exception of the reduction of the tariff in packing house products and in dressed meat rates, caused by the contract of the Great Western Road or brought about at that time, is the only instance in which by the classifications and rate schedules, the live stock rate is higher than the packing house products and dressed meat rate, where the two come in competition.

A. I could not answer that one way or the other.

Q. You claim that you don't know?

465 A. I don't know, no. I haven't given it any consideration in that light. Those are really commodity rates. They are always,—they extend from one point to another, and the matter of classification is lost sight of entirely. No one thinks about classification or the way freight is classified.

Q. Well, the classification is an expression of judgment.

A. It cuts no figure at all because the commodity rates go beyond the classification.

Q. Take the commodity rate then on your road. You hauled dressed meat and packing house products from New Orleans to Chicago, do you?

A. Not much dressed beef comes from the east. Packing house product does.

Q. Don't you haul live stock from New Orleans and Mississippi river points to Chicago?

A. To some extent.

Q. Isn't it a fact that the live stock rates are in all cases higher than the rates on dressed meats and packing house products?

A. No, there are no shipments of live stock south bound and there are no shipments of packing house products or dressed meats north bound.

Q. I am taking the direction in which it actually moves.

A. As I have said there are no shipments of live stock south bound and no packing house products or fresh meat north bound.

Q. Between the points then that I have named, between

466 New Orleans and Chicago, is it not a fact that the live stock rates are less than the packing house products and dressed meat rate?

A. No, they are greater I am pretty sure.

Q. How is that?

A. I think they are greater, and I think I can give you something further on that.

Q. What is your rate on dressed meat from say, New Orleans?

The COURT: He says he can find it out.

The WITNESS: No, I would not undertake to answer that. I thought perhaps I might throw some light on it but I find I cannot.

Mr. COWAN:

Q. I just asked you if you recollect the rate on dressed meat from here to New Orleans?

A. My recollection is that it is fifty cents a hundred, but I am not quite certain. The rate on packing house product is 36.

Q. Does that come by reason of their being in different classifications?

A. No, the classification cuts no figure in it.

Q. What is the rate on the fifth class, Chicago to New Orleans in carloads?

A. I think it is 52 cents, that is my recollection. It is about that, anyway.

Q. Do you recollect what the rates are on live stock from points like New Orleans and this side to Chicago?

467 A. No, I do not.

Q. Isn't it a fact that you ship from Southern Texas and New Orleans over the Southern Pacific and Illinois Central lines and that the rate is 63¾ from New Orleans to Chicago?

A. Our proportion of their rate, you mean?

Q. The through rate from San Antonio is 63¾.

A. We have had some shipments there, but we are considering very seriously going out of the business.

Q. That does not alter the question.

A. You asked me the rate from New Orleans to Chicago and then you asked me about the rate from San Antonio. There is no relation between the two but you seem to give that as a reason why I should know about the other.

Q. Do you know what the rates are from points in the state of Mississippi to Chicago?

A. I don't recollect, no.

Q. Do you know of the fact that the relation of rates from Chicago to th- Atlantic seaboard, New York, for example, between packing house products and dressed meat on the one part and live stock on the other, was submitted by all the railroads to arbitration in which Mr. T. M. Cood and another gentleman acted as arbitrators and fixed the rates which have been used since that time?

Mr. DAWES: I object to that. It does not appear that any of these parties were parties to that proceeding.

The COURT: I think he may answer, he is cross-examining him.

468 A. I understand that the question was submitted to arbitration some years ago. Just how long I don't know. The Illinois C-ntral is not interested, and just how long ago it was I don't remember. It must have been at least a dozen years ago or fifteen, perhaps, and possibly longer.

Mr. COWAN:

Q. That has been the established relation of rates east bound since that time, has it not?

A. Well, I am not quite certain as to that, I think there has been some variations. There have been a good m-ny variations. Directly we are not interested in that way and my knowledge would be only general, what I might happen to run across or hear of.

Q. Previous to the reduction in the packing house product and dressed meat rates, which was caused as you say, by the Great Western contracts (and I have no doubt you have truly stated it) is it not a fact that the published rates on packing house products and dressed meats were not lower from the Missouri river to Chicago than on the live stock?

A. They were the same.

Q. Is it not a fact that during that time and for several years previous to the published reduction in packing house products and

dressed meats rates, that the roads including your road customarily hauled packing house products and dressed meats at a rebated rate less than the published rate, isn't that true?

469 A. I shall not answer the question unless I am instructed to do so.

Q. How is that?

A. I shall not answer the question unless I am instructed to do so.

Q. Well, I am asking the question whether that is true or not and you decline to answer.

Mr. DAWES: Do you expect him to answer for the other roads as well as himself?

Mr. COWAN: If he knows, yes.

The COURT: He says he don't want to answer. Do you want to compel him to answer?

Mr. COWAN: I think he ought to be required to answer it.

The COURT: If you want him to answer it, I am ready to hear you on that subject.

Mr. COWAN: I don't care to take the time, but I think he should be required to answer the question as to whether that is the fact or not. I can prove it otherwise, I can prove it by the records and Mr. Stickney stated it in his statement and nobody has ever denied it. It is a matter of record.

Mr. SEVERANCE: Well, you have testified to it now, you have got in the record now.

Mr. LYNDE: You have testified to it.

Mr. COWAN: Mr. Stickney testified to it.

470 Mr. SEVERANCE: No.

Mr. COWAN: No.

Mr. COWAN: Leaving out the question of whether rebates were paid, I will ask you if it is not a fact that you did not increase your revenue that you collected from the packing houses for the dressed meat and packing house products $1.00 when you re-published the rate, that you did not increase your revenue a dollar?

A. Do you wish me to answer yes or no to that?

Q. Well,——

A. That is not correct.

Q. How much did you increase it if you increased it?

A. Perhaps I have the question wrong.

(The pending question was then read.)

A. When we publish a reduced rate, of course, we did not increase our revenue.

Q. Did you reduce your revenue?

A. No. Wait a minute, I beg your pardon. We did reduce our revenue. When we published a lower rate, when we published a 20 cent rate, we reduced our revenue to that extent.

Q. Did you reduce them, did you reduce your net revenue from the business?

A. We reduced our revenue from the business if we carried any.

The COURT:

Q. That is, you have been charging more than 20 cents before.

471 A. We had been charging 23½ on anything we got and didn't refund anything during the period that that change was made.

Mr. COWAN:

Q. You reduced it how much?

The COURT: He said 3½ cents.

A. Reduced it 3½ cents to Chicago and 5 cents going east or whatever the change was.

Mr. COWAN:

Q. Then you mean that there was no rebate paid?
A. I mean that we were not paying any rebates then.
Q. Were you getting the traffic?
A. Not a great deal of it.
Q. Now do you know whether anybody else was paying rebates or not?
A. No, of course I don't.
Q. How is that?
A. Of course, I don't. I have no evidence to that effect; I have been told they were, but that would not be considered good evidence.

The COURT:

Q. When was this, what perio- are you referring to?
A. 1902, February, 1902. The rates, as I recollect were not changed till later than that. They were not changed till the summer of 1902 and that is what I make my statement on with that understanding. It was after the injunction.
The COURT: That was in March?

A. March 24th. The tariff was changed as I recollect it

472 in July, 1902. We were not paying any rebates or anything of the kind.

Mr. COWAN:

Q. Now, you say that your road then—You would not answer my first question—Your road was not paying any rebates and you don't know whether the others were or not?
A. I don't think the others were, if you want my opinion. Your question was general before in such a way as would indicate that we had been practicing right along the paying of rebates. I did not think it was necessary to answer that.
Q. And now you mean that at the very time you changed your rates, rebates were not being paid?
A. I mean to say that after the injunction, the 24th of March, 1902, there had been no rebates paid.
Q. Previous to that time you decline to answer?
A. If you want to know about it I will answer it.

Q. I think it is barred by limitation, but it does not matter. You stated that you did not think these live stock rates were reasonable?

A. No.

Q. Isn't it a fact that you have testified a number of times before the Interstate Commerce Commission in regard to the reasonableness of rates.

Mr. BAXTER: He did not state that, did he?

Mr. COWAN: I should have stated that he said they were
473 unreasonably low. That is what you meant, isn't it?

A. Yes, I don't think they are too high.

Q. Is it not a fact that every time you have testified before the Interstate Commerce Commission in regard to the reasonableness of a rate, you have at no time admitted that any rate was too high but have generally contended that they were too low?

Mr. SEVERANCE: I object to that unless his attention is called to the particular time when he gave such testimony.

The COURT: I am not enforcing the strict rules of evidence.

A. The question I presume that you have reference to, what you mean is rates on live stock and I am firmly convinced in my mind that all the rates on live stock are too low.

Mr. COWAN:

Q. When you have testified in regard to rates on grain and corn and grain products, have you not testified that they were too low?

Mr. LYNDE: What materiality has that got here?

The COURT: I suppose counsel wants to show that he thinks they are all too low.

Mr. SEVERANCE: That is not a matter that is material to the issue. Why not insist on the rules of evidence being enforced? He should have his attention called to the testimony that he gave and the time that he gave it.

The COURT: It affects the credibility of the witness, whether
474 the witness has testified falsely on other matters and I suppose it is a matter that we should know about.

Mr. SEVERANCE: I don't think the court gets the point of my objection. My objection is just this. When it is sought to bring to the attention of the witness' previous testimony that he has given with the idea of impeaching testimony that he gives on the stand, the rule is well settled that his attention must be called to the specific occasion when he gave the testimony and the exact language used must be read to the witness.

The COURT: I won't start in at this time to enforce the strict rule. You may answer the question if you wish.

(The pending question was then read.)

A. I am not clear in my mind as to having testified in reference to the grain products. If I did I don't remember. I would like to have you tell me where and when it was.

475 Q. In the grain investigation had here in Chicago about two years ago in regard to an advance in the rates on grain

from the Missouri River to Chicago, did you not then express the opinion that the rate on grain was too low?

A. I don't believe I testified in that case at all, or if I did I don't remember.

Q. Did you testify in the lumber case too?

A. What lumber case?

Q. I don't recollect the style of the case.

Mr. SEVERANCE: Oh, take any old case, it don't make any difference.

Mr. COWAN: It does make a difference too. If his opinion generally is that the rates are too low, it shows a bias in his disposition. It is not that he is testifying falsely or anything like that.

The COURT: He has answered that question, now ask him another question.

Mr. LYNDE: As to the lumber case?

The COURT: He said he did not know whether he ever testified in such a case.

The WITNESS: I will say stronger, that I never did testify in it.

Mr. COWAN:

Q. Now, you say that the live stock rates are too low?

A. That is my opinion, yes sir.

476 Q. Do you know what it costs you to haul a car load of live stock from St. Louis to Chicago or from the Missouri River to Chicago?

A. There was a gentleman here this morning that has a great deal more experience than I have in that matter who said that he did not know, and I say that I don't know.

Q. You do know what the revenue would be?

A. I know what the freight receipts would be, yes. The revenue would be the net money.

Q. Are you able to tell whether the rates are too low or not, how can you tell that if you don't know but one side of the equation?

A. You have to judge largely by comparison and the general results. It is made up of a great many things. We know what our rates are generally. We know what is brought in and we know about the loading of the cars, the cost of furnishing the cars and getting them to a place where they had to be loaded. Whether they can go there loaded or not, the speed at which they can be run, the danger attending the handling of the freight and various other things.

Q. And from all that you conclude that the live stock——

A. The live stock does not bear the proper proportion. It does not contribute sufficiently to the general fund.

Q. Take the rate from Ft. Dodge, Iowa, to Chicago, 372 miles, have you ever estimated how much it is per car or per ton

477 mile?

A. Yes, I have got it right there if you want it and I will read it to you.

Q. Do you know or have you in mind what the average revenue per ton mile is on your road?

A. Yes, I know what it is.
Q. What is it?
A. It is 5.87 mills for the year ending June 30th, 1905.
Q. Do you know what your average revenue is per car mile?
A. No, I do not.
The COURT: What do you say?
A. It is 5.87 mills, 587 thousandths of a cent.
Mr. SEVERANCE: Please speak louder, we cannot hear a word you say.
A. Our revenue or our receipts, as we call them, per ton of freight, the average per mile was 5.87.

Mr. DAWES:

Q. Was that cost or revenue?
A. Freight receipts, we do not call it revenue.
Mr. COWAN: For 1904 the figures I think were higher.
A. It was 6.07, two hundredths of a mill higher than last year.
Q. Your revenue per car mile, have you that?
A. No, I have not any of those statistics with me.
Q. Have you the number of tons per car mile?
A. No, I have not got any statistics at all of our road in that regard here.

478 Q. It appears from the figures taken from your annual report, that the revenue per car mile was 9.70. Now, that is the average of all your freight. Isn't it a fact that all of your live stock rates in the State of Iowa will pay you 40 or 50 per cent. more per ton mile and per car mile than the average of all of your freight on the system?
A. It ought to pay more. The majority of our freight is such as takes care of itself.
Q. I am asking you as to the fact, as to whether it would do it or not and you say it would.
A. I say I don't know.
Q. Well, it is 23½ cents from Fort Dodge to Chicago?
A. Yes sir.
Q. And it is 22,000 pounds and 23½ cents, about $56 a car for 373 miles ?
A. 375 miles we call it.
Q. Isn't it a fact that you participate in the traffic of live stock received by you off the Union Pacific?
A. Yes sir.
Q. At South Omaha?
A. Yes sir.
Q. And you pay a bridge charge of $4 a car?
A. No, we don't. We don't pay it. We get the transfer of the gross rate.
Q. A percentage of the through rate you mean?
A. Yes, sir.

479 Q. How much do you get out of the transaction for hauling a car load or a train load of cattle from South Omaha to Chicago that you receive from the Union Pacific, that is shipped from points west, say at Denver?

A. I don't know. I don't remember now. It depends in a general way on so many things.

Q. The rate is 29 cents from Cheyenne. That is a prominent point. It is 29 cents from there to Omaha and it is about half the distance, Omaha is.

Mr. LYNDE: I think you had better produce what you are reading from.

Mr. COWAN: I have got it right here and it is a public record.

Mr. LYNDE: Well, you had better produce it.

The COURT: The witness can answer whether that is true

A. I have not anything beyond Nebraska to show our divisions of the rate, showing what we get from the Union Pacific.

Mr. COWAN:

Q. What do you get out of the rate from Cheyenne?

A. I have not anything to show the divisions from a point over 200 miles west of the Missouri River.

Q. What do you get there?

A. Well, there is a town by the name of Odessa and I think we get 21.1 cents per hundred on cattle and 23 cents per hundred pounds on hogs.

Q. Do you have any business with the Union Pacific at
480 any other points than Cheyenne in the west?

A. Do we get any?

Q. Yes.

A. Not much, very little.

Q. What is the lowest division that you accept from any railroad at Omaha, to Chicago?

A. Well, I could not answer that completely. Here is a distance of fifty miles, a place called Ames, Nebraska, our lowest division—no, there is somewhat—well, here is Ames any way and we get 18.9 cents per hundred on cattle and 18.6 on hogs.

Q. As you go west and the distance is further on the other side your proportion of the rate is less?

A. No, our proportion is greater. From Odessa we get 21.1 on cattle and 23 on hogs. I don't know how it would be beyond that. I don't know just what we would take on that, but that would be fair enough.

Q. Didn't you file in the cattle raisers' case a statement showing the divisions that you received?

A. I think I filed some illustrations there, yes.

Q. And the divisions had run down as low as 16 cents, hadn't they, at the Missouri River?

A. I think there was one point and perhaps possibly more than one where the division was 16 cents.

Q. Why do you accept business at these low rates if the published local rate is too low?

A. We don't assume and we don't try to haul any freight
481 less than cost. If we can get cost out of it we have to stay in the business, it is policy to do so.

Q. Do you participate in the lumber traffic that comes from the northwest into Omaha?

A. By the northwest you mean what?
Q. From points on the Burlington——
A. The northwest may be different as you change your position.
Q. Well, you can answer whether you get it from the northwest?
A. I don't know where you mean.
Q. I mean from Omaha, stuff that comes in from Billings.
A. I don't think we can get any of that business.
Q. Do you participate in the lumber traffic that comes from the southwest through Kansas City and Omaha?
A. Into Omaha from the southwest and from Kansas City?
Q. Yes.
A. We don't have any line in that direction, no.
Q. I say such that comes through Kansas City or Omaha from the southwest or from the south?
A. What is the destination, please?
Q. Do you participate in the lumber traffic that comes from south of Kansas City or Omaha, into Omaha?
A. I don't believe I understand you. If you mean business that comes through Kansas City and goes to Omaha I say no. You said from Kansas City or Omaha into Omaha.

482 The COURT: Do you participate in any such traffic south of Omaha?
Mr. COWAN: That comes from south of Omaha?
A. No.
Q. Or from south of Kansas City?
A. We might possibly get a little lumber from the south, Arkansas, but not very much though.
Q. Do you participate in the lumber traffic coming from the Texas lumber district via New Orleans to Chicago?
A. Some of it, yes sir.
Q. What is your rate on lumber from New Orleans to Chicago?
A. I think it is about 26 cents on that.
Q. Per hundred pounds?
A. Local, yes sir.
Q. What is the distance?
A. 912 miles.
Q. What is the rate from Beaumont, Texas?
A. I don't know. It is the same rate, I suppose. It ought to be the same rate all along there.
Q. Where do you haul lumber long distances except the lumber that does come from that district or from some point in Louisiana, or some point in Georgia, or Mississippi?
A. Long distances?
Q. Yes.
A. We would have to get it from some point down there in order to get it very long, to get the length of the road. That is about the only point. We might haul lumber from Cairo to Sioux City.

483 Q. What does the revenue from the lumber on those rates amount to per ton mile or per car mile?

Mr. LYNDE: I object to that as entirely immaterial.
The COURT: He may answer.

A. About 8 mills, I think, as a rule, some where along there.

Mr. COWAN:

Q. You have in your statement of rates from Kansas City to Chicago put lumber at $75.20 a car. That is one of the examples you have given in your examination in chief. Now, you say you do not haul any lumber, any of that lumber practically?

A. Perhaps I might say in explanation that that statement was designed to cover—it was supposed that that statement would call for all the Missouri River points although we do not participate directly in it. We have a line to Kansas City although we form a line with the Missouri Pacific, by way of Council Bluffs.

Q. The point I am getting at is, is not this a paper rate?

A. 20 cents on lumber from Kansas City to Chicago?

Q. $75.20 a car is practically a paper rate from Kansas City to Chicago. There is no lumber moves on that rate.

A. How about walnut lumber, there is some of that down there, isn't there?

Q. Well, I am asking you. You asked me if there was not walnut there. I don't know.

A. You said there was none *none*. If twenty cents was
484 the rate on lumber and some would move, that would be the charge.

Q. I am asking you whether you know of moving traffic on the rates that you have given here.

A. As to knowing absolutely of a car of lumber from Kansas City to Chicago, I don't.

Q. The facts that you have given—I notice that you have given one item of cement from Kansas City to Chicago, $67.50. Is there any such traffic moves on your road?

A. There may be, there could be. There is cement made in Kansas City. Does that read Chicago to Kansas City or Kansas City to Chicago, or between?

Q. This says from Chicago to Kansas City.

A. That is not what you stated.

Q. Then you have got it from Kansas City to Chicago the same?

A. That would apply also to the lumber.

Q. Is there any cement that moves between the two places?

A. I think there is, there is cement made in Chicago, large quantities of it.

Q. Is that shipped to Kansas City?

A. I don't know why it could not be, I have no knowledge of any particular shipment going there.

Q. Another statement is on brick. Is that shipped between the two places?

A. It could be probably.

Q. How is that?

A. I say it could be probably, enamelled brick or prepared
485 brick. Common brick would not be, of course.

Q. And coal between Chicago and Kansas City, is there any such movement as that?

A. I should think gas coal and hard coal. There would not be any soft cheap coal shipped, of course.

Q. Those are commodities on which you have named the revenue per car. Then you have named the revenue on cattle and hogs, wheat and corn, from Kansas City, St. Joseph, Atchison and Leavenworth, on 70,000 pounds of corn, you figure $105. What rate does that require, 15 cents per hundred pounds?

A. That would be fifteen cents per hundred.

Q. Is there any corn shipped from Kansas City to Chicago at that rate?

A. That is a basing rate. The first station this side would take the same rate. I can not say as to any cars shipped from Kansas City to Chicago at 15 cents per hundred.

Q. Well, having the large and wide experience in your business that you have, you must know that corn is not shipped on anything but a through rate?

A. This is used for basing purposes.

Q. Don't you know as well also that the intermediate stations don't move on a local rate to Chicago but move on the local rate from the Mississippi River and then take the export

486 rate?

A. I don't know that.

Q. Do you actually ship corn and wheat from your intermediate stations leading out of Kansas City to Chicago on a local rate from those stations, without regard to the Mississippi River proportional?

A. If you will change that so that it will say Omaha or Sioux City, it will be all right. I can say yes in connection with Omaha and Sioux City. The Kansas City rate is put down there simply for convenience.

Q. Well, take it at Omaha. You have got a line into Council Bluffs and South Omaha?

A. Yes sir.

Q. Do you ship corn and wheat at local rates from points this side?

A. Yes, they come at local rates. The rates on corn are not made on the Mississippi River basis. They are made direct to Chicago.

Q. What is the local rate from points in a zone 50 or 100 miles this side of Omaha?

A. It is the Omaha rate. There has been a little change in them since that was made up. I think the rate is a trifle different now. That would be the rate of the first station outside of Chicago.

Q. You have another comparison of rates from points on your line to St. Paul and from some points in Nebraska to St. Paul. As I understand you, you say your line does not reach St. Paul?

A. It does not reach there directly, no.

Q. Are there any live stock shipped from those points

487 in Nebraska to St. Paul?

A. I don't know. I took the tariffs, they are the rates that are printed and published and filed with the Interstate Commerce Commission. They are considered to be the correct rates.

Q. Then you have rates on coal from Chicago into Iowa. Is there any coal shipped from Chicago to Iowa?

A. Yes, more or less. There is hard coal shipped out there to all of these towns, there is more or less blacksmith coal and some gas coal to these various towns that make gas.

Q. Is there any place at which coke is shipped into Iowa?

A. Waterloo, Fort Dodge, Council Bluffs, and such towns as that.

Q. What kind of cars are used in the shipment of coal to Iowa?

A. Did you say coal or coke?

Q. Either, do you use stock cars for that purpose?

A. No, we would not use stock cars. The coke would come to us in foreign cars and the foreign road would deliver the cars to us.

Q. You have brick and cement, are those articles shipped from Chicago into Iowa?

A. Yes, cement is and a little brick. Not the cheap common brick, of course.

Q. Without enumerating any further articles, further, I will ask you if it is not a fact speaking generally, that the figures which you have made for the rates of freight or revenue that is to be
488 paid per car on the various items contained in this extensive comparison will show a revenue per ton per mile more than double for the average revenue per ton per mile?

A. No, they won't.

Q. Haven't you selected them with a view of showing higher rates than those rates on cattle and hogs? Haven't you selected them with a view to showing the higher rates and put them altogether on that basis, instead of selecting a fair average?

A. I put them down to show—let's see if I understand you. What articles are you referring to now?

Q. Well, here are about ten pages of them.

A. There are a good many different articles, yes.

Q. You have cattle and hogs and wheat and corn, and hard and soft coal, brick and cement and lumber on one page and the next page and the next page and the next page, between a great many different stations.

A. Yes sir.

Q. And in all cases it shows a rate or revenue which is above your average revenue per ton per mile notwithstanding they are considered no great traffic.

Mr. DAWES: I object to that. That is simply an assertion of counsel.

The COURT: He asks if that was true. Ask him the question if you want to.

Mr. COWAN: I am asking if he has selected these with a
489 view of showing the rates that are higher on these articles in order to show that they are higher than the cattle rates in question?

A. I don't think they do in the first place.

The COURT:

Q. Well, have you selected them for that purpose?

A. No, I did not, I selected them to show that the revenue derived on common low class freight is better and more remunerative business than the live stock business. In those cases they are a lower rate per ton per mile than live stock.

The question I ask you now is whether it was not the higher rate per ton per mile than the average of your freight?

A. No, it is lower. I think in most cases it will show a lower rate per ton per mile than our average.

Q. Do you know of a single car load of cattle or hogs ever being shipped from Columbus, Nebraska, or Silver City, Nebraska, or Ames, to St. Paul?

A. No. As I said a few minutes ago I took that tariff as the legal tariff, filed with the Interstate Commerce Commission showing the rates evidently in use and declared to be in use by the railroad issuing it and published for the purpose, and I used it for the purpose of showing that there are other rates that are much higher than those referred to now.

490 Q. Is this a fair representation of what the other rates are?

A. It is a fair representation so far as I know of the rates in that territory. You will observe that I have only taken a few in the same distance. I simply took half a dozen points in order to compare them properly with the distances to Chicago.

Q. Those rates are practically, so far as you know, paper rates from those points to St. Paul?

A. I don't know that they are paper rates or not. I know they are rates that are published by the railroads and if there is any business to move, it would take those rates presumably.

Q. You have also put in the list of rates there from Goodman, Mississippi, to East St. Paul on cattle and hogs.

A. Yes sir.

Q. To what extent are there cattle and hogs shipped from Mississippi to St. Louis?

A. There are quite a good many and the business is growing. It is not a great big extensive business like out in Iowa, but it is a business that is increasing and we have what we consider quite low rates. Those are rates that we made without much regard to competition. They are very fair rates, I think.

The COURT:

Q. Without regard to competition?

A. There was no competition there except the competition of the market. Nearly all that territory is local.

491 Q. What are they now?

A. They range more, 20 per cent. higher, I should think, or some where along there.

Mr. LYNDE: A little louder, we cannot hear you.

A. I said about 20 per cent. higher.

Mr. DAWES:

Q. Is the business increasing there, did you say?

A. Yes sir. It is not an extensive business but it is growing. They will have larger cattle after a while and then we will get better loading.

Mr. COWAN:

Q. How many car lengths do you think your road shipped in a year bringing from Mississippi or St. Louis, cattle and hogs?

A. I don't think there is any hogs, but when you are dealing with live stock you include hogs.

Q. How many car loads of cattle?

A. I could not say off hand; I don't know. As I said before, it is not a large business.

Q. It would certainly be a very accidental business, wouldn't it?

A. No, there is some stock raised there. You have not got across the Mississippi River yet, but there is some in that locality.

Q. Now, you have given a list here under the head of vegetables, I suppose——

A. Yes, that is light loading, you see.

Q. Showing the rates from Mississippi River points to Chicago and St. Louis on apples. Is there any such traffic on apples.

492 Is there any such traffic as that?

A. From those points to Chicago and St. Louis. There are apples raised in Mississippi as well as cattle, more apples than cattle.

Q. Well, I supposed that but the movement is very small, isn't it?

A. Why, Mississippi is a good fruit country.

Q. The movement over your road to Chicago from Mississippi is very small?

A. It has more than one kind of fruit, you know, there are half a dozen varieties.

Q. Well, you can say whether it is small or not, whether the volume of the traffic is small.

A. The volume of apples from the State of Mississippi is not very extensive.

Q. That is just the sour apples off the trees?

A. Yes, just ordinary common Mississippi apples.

Q. You have the rates from Jackson, Mississippi, on apples to Chicago, $124 a car. Now, take the direction of the actual movement of apples, from San Jose, California, to points on your road, what do you get out of it then?

A. I cannot carry all those rates and divisions in my head.

Q. What do you think that the rates on apples are from——

Mr. DAWES: I object to what he thinks.

The COURT: He says he don't know.

493 Mr. COWAN:

Q. I believe that Mr. Keeper knows that the rates on apples from San Jose, California, to Chicago are $1 per hundred.

A. Is that what you asked me? I thought you asked me the rate to Jackson, Mississippi, from San Jose.

Q. How is that?

A. I supposed that you asked me what the rate on apples was from San Jose to Jackson and the division.

Q. Oh, no.

The COURT: San Jose to Chicago.

A. The rate is about $1 or $1.25 at the outside.

Mr. LYNDE: I suggest that if you don't know what a rate is that you had just better say so and don't guess at it.

Mr. COWAN:

Q. Is it not a fact that you can take rate schedules and make up almost any sort of a comparison of rates that one desires to make?

A. No, I cannot answer that in any other way than that.

Q. Is it not a fact that a great many rates are made which cover very seldom shipments that do not require very much judgment of anybody and yet when rates are made that cover a large volume of shipments that that is made in view of competition in order to get the business and that it does reflect somebody's judgment?

A. Tariffs and classifications are made to cover everything. Items have to be added to it at every meeting of the Classification
494 Committee. New articles are made and some provision has to be made to cover them. It is occurring constantly and it seems to me there is something constantly coming up that is not in the classification. Agricultural products are the largest and they naturally receive the greatest attention. It is there that there is the strongest competition.

Q. You answered Mr. Baxter that these live stock rates were lower than other live stock rates in the country, or as low as any you knew of with the exception of the Illinois and Iowa rates and the rates to New York. How is it as to the rates to Buffalo and to Pittsburg?

A. You did not get the answer correctly. I stated the territory east of Chicago.

Q. Assuming that I left out some number of stations.

A. East of Chicago. These eastern territory rates are lower on live stock than they are west. That was included in my answer by inference at least.

Q. Is it not a fact that the balance of the rate on which live stock is really moved from the Missouri River to Chicago is less in all instances than the local rate of 23½ cents?

A. There is no balance of rate used north of the southwestern points, that is to say at Omaha.

Q. Is there not a balance of the rate used at Omaha?

A. No sir.

495 Q. Is it a division of a through rate?

A. A division of a through rate only.

Q. It is the balance of the rate to the shipper?

A. Well, you could put it that way.

Q. Say that he ships from Denver to Chicago at 49 cents, say he ships from Denver to Chicago at 49 cents. If he stops at Omaha and sells his cattle, he pays 33, and if he goes on to Chicago he pays 16 more. Now, to the shipper that is the balance of the through rate, isn't it?

A. No, to ship it to another market, it is the through rate. He don't bother himself about the balance of the through rate.

Q. Well, that is what he pays?

A. He pays the through rate to Chicago. He stops at Omaha and he pays the rate to Omaha, so far as he is concerned in the transaction. The billing is changed, but it goes through, the shipment.

Q. All the traffic men have been calling it the balance of the through rate.

A. There is a balance of a through rate down at Kansas City, I understand but nothing of the kind at Omaha.

Q. At all events, the shipper has to pay 16 cents more if he comes on to Chicago?

A. If your statement of the rate is correct, that is right.

Q. I have here a statement or comparison of rates and I desire to ask you if they are correct. From Mounds, Illinois, to Chi-
496 cago, on your line of road, 357 miles of 15.7. Do you recollect if that is substantially correct?

A. On what?

Q. On cattle?

A. Well, if it is given there as the rate I will say that is correct.

Mr. DAWES: You don't know what it is on.

The WITNESS: He says it is on cattle. I understand his statement to be that the rate was 15.7 on cattle from Mounds to Chicago.

The COURT:

From where to Chicago?

A. Mounds.

Mr. COWAN:

Q. Independently do you recollect what the rate is?

A. If that says it is 15.7 it is correct.

Mr. DAWES: How do you know?

Mr. COWAN: Well, it appears that way in the Commission record here. I am not saying it is in this record.

The WITNESS: Oh, the Commission record.

Q. The record of the evidence before the Commission in this case. My question is, is the rate 15.7 from Mounds to Chicago?

A. I don't recollect the rate.

The COURT: You don't remember?

A. I don't remember.

Mr. COWAN:

Q. Have you got a copy of your tariff from Illinois points?

A. I have not that with me, no.

497 Q. What rate do you charge from some points in southern Illinois?

A. I might have that in this Exhibit number four. You have got that there, look at Exhibit number four and see if you find it. It is a yellow sheet, I think.

Q. Well, there are the tariffs (handing papers to witness), refer

to Mounds and state what the rate is on cattle to Chicago, and the distance?

A. The rate on cattle from Mounds to Chicago is 15.7 per hundred pounds.

Q. What is the distance?

A. 357 miles.

Q. What is the rate from Webster City, Iowa?

A. To where?

Q. That is 356 miles. That is in the 23½ cent belt, is it not?

A. 23½ cents from Webster City to Chicago.

Q. And the distance?

A. 355 miles.

The COURT:

Q. Live stock?

A. Cattle and hogs, yes sir.

Q. That is a shorter distance than the Missouri River points?

A. It is quite a distance this side.

Q. And about the same rate?

A. That rate is carried back some distance.

Mr. COWAN:

Q. I did not understand what was being said there.

A. He says the Missouri River rate and I said yes, this
498 rate is carried back for some distance.

Q. What is the rate on hogs from Mounds to Chicago?

The COURT: He said cattle and hogs 23½ cents.

Mr. COWAN: No, I said cattle before, cattle from Webster City, Iowa, and that rate is 23½. Now I am asking——

A. Hogs 19.2 cents, 100 pounds.

Q. Now, take Carbondale, Illinois, and I will ask you to state the distance and the rate on cattle.

A. 308 miles from Chicago and the rate on cattle is 15 cents and on hogs 18.4.

Q. Take Aplington, Iowa.

A. 22 cents a hundred pounds on cattle and on hogs.

Q. What is the distance, 306 miles I have it here.

A. Well, it is probably not very far from that. I make it 308 miles, but it is along there some where.

Q. Now, without going further into detail I will ask you if it is not true that that represents about the relation of the rates and distances from Iowa points to Chicago and from Illinois points to Chicago?

A. It would for those distances you mention.

Q. Well, what other distances would be different?

A. I don't know.

Q. Well, take Dubuque, Iowa.

The COURT: Can't you use those schedules and statements in your argument and save a little time here? They will be in
499 evidence I assume.

Mr. COWAN: Yes, I understand it is so stated.

A. Take Dubuque, the rate on cattle from Dubuque to Chicago is 14 cents and on hogs 15. The nearest point that I can recall the distance is Neoga, Illinois, 184 miles to Chicago, as I recollect it the rate is 11.7 per hundred pounds on cattle and 15.9 on hogs. The rates I have given you from Illinois are not rates of the Illinois railroads but are the rates of the Illinois Commission. We did not make them.

Q. Now, isn't it a fact that the rates established by the Iowa Commission in the State of Iowa for 350 miles are considerably less than the Interstate rates from Iowa to Chicago for 350 miles?

A. I think not, but I have not the tariffs with me.

Q. You have not the tariffs with you now?

A. No. I could not make the exact comparison. I don't think there is very much difference along there, 350 miles.

Q. What is your opinion as to whether or not the relation of rates of 25 cents on cattle and 15.7 on dressed meat is a proper relation of rates as between those commodities?

A. Well, I am not thoroughly familiar with the conditions. I presume that refers to the St. Paul rates. I am not thoroughly familiar with the conditions prevailing up there and our
500 line does not extend there. We haul the business such as may come to us by our connection, but I had nothing to do with the making of rates. I don't think I am competent to express an opinion on that.

Q. In your experience is that a proper relation of rates, from your general knowledge of the situation?

501 A. I don't know that there is any very great relation between rates on packing house products and the live animals. Under some conditions there might be. Under others I don't think it makes any difference.

Q. How do you determine what is a proper relation in rates between dressed meat, we will say, and live stock?

Mr. SEVERANCE: I object to that if the Court please. He has just stated he does not think there are any relations.

The COURT: I think that is a proper question.

Mr. COWAN: Somebody has to determine it.

A. I don't think that there is any relation necessary.

The COURT: Read the question.

(Question was read.)

A. (Continuing:) As a rule it has been determined for us. We haven't had any opportunity to determine it ourselves. Somebody else fixes that. The conditions and one thing and another fix the rates. Conditions make the rates on both articles one way and another. The competition on one is strong; on the other not so strong. They reduce the rates where the competition is strong, and the other may not be reduced perhaps. It finally settles down to a fixed basis and stays there a while; as in the case of the 23½ cent rate, the Commission made an announcement of its dues and it was followed by the railroads for several years. That wasn't done by

the railroads voluntarily. There is no fixed relation in any-
502 body's mind, in any railroad man's mind as to what it should be exactly.

Q. What is the basis of a reasonable rate? You stated that these cattle rates were unreasonably low?

A. The only basis you could say would be fair compensation for carrying the freight, what would be fair and reasonable to encourage the business and not kill it.

Q. What is the fair compensation?

A. Nobody knows exactly, no more than you could ask a merchant what a fair return would be on his investment, what profit he should have from his goods, what he should get to keep things going.

Q. Can you name any factors in determining a reasonable rate which would apply generally in fixing rates?

A. Yes. The factor is to not kill the business; encourage the business.

Q. The lower the rate the more the business will be encouraged?

A. Perhaps it may be, and perhaps to the detriment of everybody concerned eventually. The carrier might conclude to go out of it entirely.

Q. What other factor can you name that would apply generally in determining what a reasonable rate should be?

A. It is so very long since we have had a right to make a rate ourselves or could do it deliberately, or fix a basis, it is pretty hard to answer that kind of a question. It is already done for
503 the railroad business. They don't make rates, railroad men.

Q. With this little knowledge you seem to possess as to what makes a reasonable rate, how are you able to determine that these cattle rates are unreasonably low?

A. Because they bring in a very small amount of money per car, considering the expense of doing the service, furnishing the cars especially for that service, which are of no other use hardly, running them empty in one direction; the fast time that is necessary; the liability for damage to the animals themselves and to the men in charge; haul of the men free, hauling a man free with one car of live stock in this territory, returning him back on a first class passenger train, if he has two cars, risks in that; and it costs something to haul him, because he takes up room of the people that pay money.

Q. Your rate from Ft. Dodge to Chicago is 23½ cents, is it not?

A. Yes.

Q. Three hundred and seventy miles you call it?

A. Yes.

Q. On thirty cars of cattle that would be $1,551.00 for that train. How much does it cost your road on an average per train mile for operating expenses?

Mr. SEVERANCE: I will object to that unless there is some evidence offered that he figures it right. We have only Mr. Cowan's statement as to what the revenue will be.

The COURT: He assumes that is true.

504 Mr. SEVERANCE: That is not the way he puts his question. He states it as a cold fact.

Mr. COWAN: I ask him if the rate is 23½ cents. He states it is.

Q. On thirty cars of cattle that would be $1,551.00, if my figures are correct; assuming they are.

Mr. SEVERANCE: That is a proper question.

Mr. COWAN:

Q. I would like to know what the operating expenses of your road are, per train mile, what it costs you on an average per train mile on the Illinois Central?

A. I don't know.

Q. How much would it cost you to haul that train from Ft. Dodge to Chicago?

A. I don't know.

Q. How much profit would there be in that transaction?

A. I don't know.

Q. What would be a fair return as a profit?

A. It is absolutely impossible to say, to fix in one's mind what would be a fair return without knowing a fair return for any one transaction, depending on the way rates are made, or the way business is done.

Q. How do you know then that 23½ cents is an unreasonably low rate?

A. I say it is an unreasonably low rate because the general results of the operation of our road are no greater than they should be, to be fair and reasonable as we regard it. The hauling of a
505 cattle and hogs, with all the incidents of danger attending them, is less remunerative than the hauling of other freight generally, and a low-grade freight particularly; it is less desirable from every standpoint.

The COURT:

Q. How long has the rate been 23½ cents?

A. I think ten or twelve years. It seems to me it was made in—well, over ten years anyway. I have forgotten exactly when it was made.

Mr. COWAN:

Q. What other traffic do you pull through Ft. Dodge that pays you a revenue as great per ton per mile as the live stock, in the same train or in other trains coming to Chicago?

A. I can answer that by saying that I don't recall any large volume of business, anything sufficient for me to call to mind at once that pays as high a rate per ton per mile as live stock would, but there is freight that pays very much more per car, which is a better basis to make an estimate upon—any freight that pays more per car.

Q. What freight pays more per car?

A. Grain is one thing I think of.

Q. Per car mile?

A. Yes, any way.

Q. What grain, aside from that taken from local stations, in weight, business as much per mile?

A. The proportion on grain, on the proportional rate from
506 Omaha.

Q. On how much?

A. Take it on the basis of eleven cents on coarse grain and twelve cents on weight to Chicago.

Q. And when it pays that per car mile it is on what basis of weight per car?

A. It is on the basis that is used there, which is low, 70,000 pounds to the car.

Q. Do you know whether or not in the actual transaction of business you pull trains which contain as many loaded cars which do not have live stock in the train as the trains in which there are live stock coming through Ft. Dodge and out of Ft. Dodge to Chicago?

A. I can only give a thing of that kind in a general way, because I have nothing to do with movement of trains. It has never been necessary for me to look up any particular train to see what it contained, at least not for that purpose in that particular territory. I feel quite convinced, if I should express my opinion simply, what I believe to be so, I would say yes, but our operating department people can answer that question more definitely than I can.

Q. Mr. Keepers, the relation of the rates on hogs and cattle from Illinois points seem to be that the hog rate is higher than the cattle rate?

A. Yes.

Q. Do you know of any reason why it should be?

A. It was made by the Illinois Railroad Commission. I think the reason is——

Mr. DAWES:

Q. Do you know whether they made it?

507 A. Do I know if they made it?

Q. Do you know what the reason was, if it was made by them?

A. Not absolutely.

Mr. DAWES: Then I object.

Mr. COWAN:

Q. Do you know of any reason why it ought to be higher on hogs than on cattle?

A. Yes, I know a good reason for it.

Q. What is it?

A. Because there is lighter weight of hogs per car than of cattle. The risk is not quite so much, but pretty nearly. The cost of the service is about the same and it ought to pay a higher rate to produce somewhere near the same revenue per car that cattle do.

Q. When you load double decks?

A. Double decks are not used much in this country. I believe we have got six double deck cars.

Q. Can you give any reason why the hog rates from Sioux City to Chicago are higher than the cattle rates by two cents per hundred pounds?

A. The only reason I can give for that is that the railroads found that they could hold a slightly higher rate from that point than Omaha.

Q. I have my question wrong—as to why the cattle rates are higher than the hog rates?

Mr. DAWES: Is it?

A. The rate is 25 cents on cattle; 23½ cents on hogs, if I am not mistaken. It is not exactly easy to answer that question. The railroads found that they could hold two cents or one cent and
508 a half higher, and they held it. It has never caused any trouble and brought that much additional revenue.

Q. Do you think the relation of 27 cents on hogs and 25 on cattle from St. Paul to Chicago, a 25 cent rate on the cattle from Sioux City as compared with the dressed meat packing house product rates, represents a correct relation of those rates?

Mr. SEVERANCE: If the Court please, he has already stated two or three times there was no relation between the two rates.

The COURT: Let him answer.

A. I don't think there is any fixed relation. There can't be any well-defined or clear logical relation. The rates are just made according to the circumstances and conditions, sometimes voluntarily and frequently not; they are forced upon the railroads.

The COURT:

Q. Do you think if the rates were changes back to where they were that there would be any difference in the amount of live stock that would come to Chicago from that neighborhood?

A. On the packing house product?

Q. If the packing house products and live stock were the same as they used to be would there be any difference in the carriage of stock from Western points?

A. I don't think it would make a difference of a car a year.

Mr. SEVERANCE: May I ask one or two questions?
509 The COURT: Certainly.

Mr. SEVERANCE:

Q. Is it not a fact that rates are often fixed by conferences between shippers and railroad companies?

A. Yes.

Q. The representatives of railroad companies?

A. Yes.

Q. And isn't it a fact that you are in the habit of receiving remonstrances from shippers if rates are unduly high?

A. If they think they are unduly high, we do.

Q. Isn't it a fact, Mr. Keepers, that you haven't had from any shipper of cattle in this territory under discussion, the Missouri river valley zone, any protest or objection to the rate that is in force?

A. We haven't had one for many years.

Q. Has anybody made any objection to that cattle rate with the exception of a crowd of commission men here Chicago, so far as you know?

A. I know of no others.

Mr. SCHAVER: We object to that question, on the ground that it calls for irrelevant matter, it is not relevant to any issue in this case; it is immaterial whether or not any shipper has complained to this witness or to anybody else. Of course he can't say whether complaints have been made to other railroad men or not, but it is wholly immaterial. The question in this case is whether the relation
510 between product rate and the live stock rate is an unjust relation. Whether or not complaints have been made does not shed any light upon that question. We could not introduce evidence that complaints had been made in support of our contention, nor can the defendants introduce evidence to show that complaints have not been made, in support of their contention. It is wholly irrelevant.

The COURT: You are not through are you, Mr. Cowan?

Mr. SEVERANCE: How is that?

The COURT: Mr. Cowan had not finished.

Mr. COWAN: Yes.

Mr. SEVERANCE:

Q. Isn't it a fact that you have had no complaint from any shipper of cattle or hogs or from any manufacturer of the product of cattle and hogs complaining of the relation between these rates, as it is called?

A. I have had no complaint.

Q. From any source?

A. From any source whatever.

Q. Anything about these rates or anything whatsoever, except from these commission men?

A. They haven't made it to me.

Q. But you understand they have made it?

A. Yes, in these proceedings.

Q. Now counsel called your attention to certain Iowa rates and certain Illinois rates; it appeared that the Illinois rates were lower than the Iowa rates. Isn't it a fact that the rates generally are lower in Illinois because of the density of the traffic and the
511 fact that there are large manufacturing towns in Illinois and that there are not in Iowa?

A. I don't think that the rates on live stock would be caused by that?

Q. I am not asking you about live stock; I say rates generally.

A. Rates generally?

Q. Yes.

A. The scale of rates in effect in Illinois the regular schedule of

rates promulgated by the Railroad Commission, are higher than in Iowa. The rates referred to by Mr. Cowan were inter-state rates and not Iowa rates.

Mr. SEVERANCE: I misunderstood his question, then.

Redirect examination.

By Mr. BAXTER:

Q. You were asked about the rates on cattle and hogs from Mounds, Illinois, and perhaps one or two other Southern Illinois points to Chicago?

A. Yes, sir.

Q. And you were asked to compare them with rates from points in Iowa?

A. With rates from points in Iowa to Chicago for similar distances.

Q. Yes. My question is whether the rates from Mounds and the other points in Southern Illinois with reference to which you were asked are not the rates made by the Illinois State Railroad Commission?

A. They were, yes.

512 Q. My question to you on the original examination was for a comparison of rates made by other railroad companies in the United States for similar distances?

A. Yes.

Q. You were asked on cross-examination if you had not selected certain commodities in order to make a comparison favorable to the defense in this case, with reference to the revenue which is realized per car load from different commodities as compared with live stock, cattle and hogs. I ask you if you know of any commodity that moves in car loads from which the revenue realized per car is less than the revenue realized from live stock per car for the same distance; if so to state those points?

A. I don't recall anything in staple commodities, anything of any importance, on which the revenue per car is not greater than on live stock. There may be a few articles that happen to be classified not high in the classification and that loaded very lightly, on which the revenue per car would not be great, so great perhaps even as cattle, but they are very few and far between and they ought not to be allowed to remain so. I merely say that because there may possibly be some of that kind. When I began to speak I had the idea of furniture, some classes of furniture load very lightly and they might produce a rate—the minimum rate and classified rate may produce a low carload rate. There may be a few such things, but the general volume of business that

513 moves, with almost no exception, the revenue is greater per car, for the same distance, than it is for live stock as far as my knowledge and information goes.

Q. Does the Illinois Central Railroad haul a large or small amount of tonnage of very low grade freight?

A. We haul a very considerable amount of very low-grade freight

or very low rate freight. I might say low-grade and low rate. Some freight is not a low grade but it is a low rate. For instance we haul a large amount of export corn from Illinois points to New Orleans. Our rate has been as low as ten cents per -undred pounds on that, has been twelve cents, has been and is now fourteen cents.

Q. But where a railroad tonnage consists largely of low-grade, low rate freight, does not that have a tendency to reduce the average freight received per ton per mile on that road?

A. Yes, especially when joined with the carrying of that commodity long distances, because the rate is bound to be low on low grade freight, will be very low in proportion on greater distances than on shorter distances.

Q. You were asked with reference to an arbitration that was said to have been had between the Eastern lines relative to the adjustment of rates as between cattle and hogs, on the one hand, and packing house products on the other?

A. Yes.

Q. Do you remember what the relation between those rates was prior to that arbitartion, which was the highest?

514 A. No, I do not. I do recollect this only, that there was a long, very serious warfare on rates in connection with that and the matter was finally submitted to arbitration. What the rates were before that I don't believe anybody knows now. I don't know what the regular basis was. I can't remember. I had no direct interest in the thing.

Q. Your line does not extend East of Chicago?

A. No, it did not then at all. It does not extend east of Chicago now. We do run down into Indiana, in the southern part.

Q. I mean in the direction of New York?

A. No, sir.

Q. Do you know whether the roads leading from Chicago to New York carry a large tonnage of live stock as compared with their tonnage in packing house products and dressed meats?

A. Oh, their tonnage on packing house products and fresh meats is larger than live stock. What the exact comparison would be I don't know, but I should say it is a great deal larger, the products in fresh meat, than it is in live stock—very much larger.

Mr. COWAN: I neglected to ask one question.

Q. I neglected to ask you the rate to Buffalo and Pittsburg from Chicago on cattle. Do you happen to know?

A. I have a memorandum that will give that. The rate on cattle from Chicago—this you understand is not our rate, because

515 we don't handle the business. I take it from the published tariff of the lines that do carry that freight, common information. The rate from Chicago to Buffalo on cattle is 17 cents per hundred pounds; on hogs 18 cents.

Q. What is it on dressed meat and packing house products?

A. On packing house products 18 cents; on fresh meat 27 cents.

Q. Is that the same rate to Buffalo?

A. To Buffalo and Pittsburg? Did I say that? I meant to.

Q. What is the distance?

A. 538 miles to Buffalo, I think, by the Short Line, and 438 miles to Pittsburg.

Q. Shipments by your line from St. Louis to points in the East, the rates are higher on dressed meat and packing house products than on the live stock, are they not?

A. St. Louis has the same relative basis to the East as Chicago; 116 per cent. from Chicago to New York, in proportion.

Q. When you are shipping from St. Louis to Nashville and Atlanta and Southern territory, that same relation between the rates exists, does it not?

A. No, I think not. You mean the relation between fresh meats and packing house products?

Q. Yes, there is a higher rate for the packing house product and dressed meat than on the live stock?

A. No, I can't answer that. I don't remember.

Q. The conditions with respect to traffic between the Mis-
516 souri river and points eastward, like Chicago, are of the very best and so considered in railroad circles, are they not?

A. Excuse me, I couldn't hear that.

Q. The conditions for handling traffic east of the Missouri river are good?

A. They are of the Western lines, yes, the lines in the West.

Q. There has been a growing density of traffic from year to year generally, has there not?

A. Yes.

Q. The volume of traffic is large and regular, isn't it?

A. What kind of traffic do you mean?

Q. Well, all kinds, constantly a heavy traffic on those lines?

A. Well, generally I would answer yes to that; large traffic; of course it isn't all uniform.

Q. The rates on corn, which you spoke of participating in to New Orleans, the present rate of 14 cents for export is from Kansas City?

A. No, that is from our Illinois stations.

Q. From the Illinois stations?

A. We haul, say a distance of 800 miles, or nearly.

Q. You participate in the transportation of corn that comes from Kansas City to New Orleans?

A. Yes.

Q. That is on a basis of 11 cents for your part from St. Louis to New Orleans, isn't it?

A. I didn't get your application of that rate.

Q. Seventeen cents from Kansas City to New Orleans?

A. Yes.

517 Q. Six cents difference between Kansas City *to* New Orleans?

A. That isn't exactly the way it divides, but we participate in the traffic.

Q. What is your revenue out of that class of traffic coming to Kansas City by way of St. Louis, to New Orleans?

A. We get about $75.00 a car.

Q. Do you recollect about the basis per hundred pounds?

A. About 11 cents.

Q. Well that is what I thought; six from 17 would leave 11?

A. It is not quite 11. I figured it would be about $75.00 a car, the way the loading is done, $75.00 to $78.00, somewhere along there. The distance is 700 miles.

Q. Do you handle California fruit?

A. Yes, by way of Omaha and some by way of New
518 Orleans. Not very much.

Q. That all comes on the basis of as low as 10 cents per car mile, does it not?

A. I do not ordinarily figure it that way, unless there is some special reason for it. The through rate is $1.25, the division is about 18¾ cents Missouri River to Chicago. It loads, I think, about 25,000 or 26,000 pounds, I have forgotten the exact loading, somewhere along there, 24,000 to 26,000.

Q. Do you participate in the other Pacific Coast traffic?

A. Yes, sir.

Q. All of the rates on Pacific Coast traffic are very low, are they not?

A. Yes, Oh yes, a low basis.

Q. All of that traffic would be moved at a lower basis of rate than the live stock per car mile, or per ton per mile?

A. No, the oranges would be somewhat better than live stock—Oh, on the present basis, no. I had in my mind figuring on a 20 cent basis. On that basis it would be a little bit in favor of the oranges, a good deal perhaps.

Q. Do you recollect what your rate is on bananas from New Orleans to Chicago?

A. It is on one of those sheets, I think, there. 47 or 48 cents a hundred pounds.

Q. And your rate on cattle, I believe you said was about 52?

A. No, I didn't give you any rate on cattle. No cattle are shipped from here to New Orleans. Oh, from New Orleans up here—I don't know what the rate is on cattle from New Orleans up here.
519 Q. I thought you said about 52?

A. No, I said about 50 cents a hundred on fresh meat from Chicago to New Orleans. I am not absolutely certain as to that.

The COURT: Call the next witness.

Examination of the witness KEEPERS by Mr. RANSOM:

Q. I understood you to say, Mr. Keepers, that if this 20 cent rate was put in—if the 23½ cent rate is supplanted by the 20 cent rate, you will lose about $67,000 a year?

A. Directly, yes, on the basis of last year's work.

Q. On the basis of last year. Now, would the traffic move in that zone, the 23½ cent zone, just the same as it did before you reduced that to 20 cents, or wouldn't it work a dislocation of those rates?

A. Well, I was going on the idea that business would be handled

the same way, of course, as showing what we would have lost on the previous year's business, done for 3½ cents less.

Q. Yes. But as a matter of fact, would the cattle and hogs move out of that zone in the same way they do now. They move now to the Missouri River and to Chicago out of that zone, don't they?

A. Yes.

Q. Yes. Now, then, wouldn't you lose also, in addition to what you have stated, something out of that zone that would add to your losses?

520 A. Do you mean on west-bound business?

Q. Yes.

A. Well, we might be compelled, perhaps, to reduce our rates into Missouri River points.

Q. They are properly adjusted now, reasonably related now?

A. There are no complaints that I know of, so I can safely assume that they are.

Q. If they are reasonably adjusted now, to change the through rate, as you might call it, of 23½ cents, would work a dislocation of the rates on each side, would it?

A. Probably people so regard it out there on business to the Missouri River.

Q. If they are properly adjusted now they would all be readjusted?

A. They no doubt would.

Mr. Ransom: That is all.

Mr. Cowan:

Q. If the rate to the Missouri River from Fort Dodge were not reduced, but the rate from Fort Dodge to Chicago were reduced 3½ cents per 100 pounds, how would that affect the market at Omaha?

A. I do not know much about the markets, how they would take care of their market.

Q. I mean the supply of live stock from Fort Dodge on the Omaha market?

A. Well, it would increase the advantage of Chicago and decrease the advantage, or work to the disadvantage of Omaha to the extent of at least 3½ cents a hundred.

521 Q. If it did not change the direction of the traffic, how would that be to the advantage of one or disadvantage of the other?

A. I don't know as to that. It might not change the direction of the traffic, because the river people might be willing to pay that additional amount, that loss or reduction, and still get their share of it.

Q. I understood you to answer the Judge that it would not change the direction of the shipment of a single carload, and I am puzzled to understand how that would be if it reduces the cost of shipping to Chicago, compared with what it would be at Omaha.

A. I don't think he asked the question in that way.

The Court: I so understood you.

Mr. COWAN: I just wanted to know now if the reduction of the rate to Chicago would not have the tendency of directing the traffic in that direction unless it was also reduced to Omaha in like manner.

A. Well, of course you might say in a general way that the reduction of a rate would have some tendency in that direction, in the way of inducing shipments the way the rate was reduced.

The COURT: I understood you to say it would not change a carload in your judgment if it was all put at 20 cents.

A. Your question was this, if I recollect it right: what would be the effect if the rate on packing house products and fresh meats were advanced to 23½ cents per 100 pounds, to the other basis, to the basis that was in effect before the Great Western's contract
522 came in effect—that, I understood, was your question—what would the effect be on business, would there be any change in business, and I said not a car.

The COURT: Well, suppose you put the live stock down, then what?

A. If you put the live stock down to 20 cents, with no other changes anywhere, it might result in an increase of business to Chicago, it probably would.

Q. That is what the General asked for, to 20 cents, how would it affect the Chicago market and Chicago shippers and Chicago commission men.

Mr. SEVERANCE: Not the Chicago shippers. The shippers are not complaining; they are satisfied—the Chicago commission men.

The COURT: I understand that this Association may be supposed to be acting in the interest of the shipper, they may be acting in their own interest.

Mr. SEVERANCE: It is a violent assumption.

The WITNESS: It is difficult to say whether a reduction of the rate——

The COURT: As I understood you, if your theory is right, the gentleman from Omaha and St. Paul are out of this case, there is nothing for them to talk about, because it would not affect them. The result would be, you people would lose a whole lot of money and it wouldn't help anybody at all.
523 Now, if that is true, that is one view to be taken of the case. If it is not true, that is another thing.

A. Well, they think they are affected.

The COURT: If it would not help anybody it would not hurt anybody except the railroad companies. Then the action should not be taken.

A. I think it would hurt the railroad companies, without any doubt, but my idea was that if the rates were restored to the original basis as they stood two or three years ago, I did not believe there would be any particular change in handling the business, because business would accommodate itself to it. The packers would pay the prices necessary to keep things going.

The COURT: You think that is true if you raised the 3½ cents, you think that would not change it.

A. I don't think it would.

Q. Now then, have you figured on the proposition if it was cut down to 20 cents?

A. I don't know that. Of course, the first natural thought is, it would induce shipments to Chicago, as a fresh thing coming up, just starting, everybody would be going in with the idea that it would bring in more shipment here, and the Missouri River packers would probably stir themselves pretty lively. They would think they ought to have some reduction, and they would appeal to the railroads for it. We might be compelled to make a reducton to the Mis-
524 souri River perhaps.

Mr. COWAN:

Q. Now, suppose it did increase the shipment to Chicago on the higher rate than prevails from that zone of country to South Omaha, wouldn't the question as to how much revenue you lose or gain depend upon the extent to which that traffic would be thus diverted to Chicago from your line rather than to Omaha or some other place?

A. Well, the rates of course to Omaha are lower than they are to Chicago, lower than the 20 cent rate would be to Chicago.

Q. Do you recall what it is from Fort Dodge to Omaha?

A. That statement, Exhibit No. 4, will show the rates. I don't remember what it would be for that distance, 135 miles; I don't recollect.

Q. Assume that it is 12 to 13 cents, then if it doubled the amount of your shipments from Fort Dodge to Chicago, it would more than compensate for the loss you sustained by reason of the reduction of 3½ cents in the freight rate.

A. We do not know that. Suppose we are hauling at just cost now, then we would suffer a good deal of loss.

Q. Now, where does the bulk of business go to today; take the hogs for example, shipped from Fort Dodge and from Western Iowa, to Omaha or Chicago?

A. To Chicago from Fort Dodge?

Q. From points west of there.

A. Points west of there, of course the nearer you get to Sioux City or to Omaha, why the more hogs go in that direction.

525 Q. In the zone where the 23½ cent rate applies, is it not true that the larger proportion of the traffic in hogs moves to the Missouri River market?

A. No. Of course, on our line to Omaha, my opinion is that more would go to Omaha, but there are not so many hogs down there, more cattle. But the old line, the direct line to Sioux City, the hogs would go to Sioux City largely. To put it another way: There are more hogs than cattle going to Sioux City, but there is more of both kinds going to Chicago until you get near Sioux City; then the hogs go in there of course.

Q. You give the total amount of damage claims, I understand, as about $39,000.

The COURT: You have been over that a good deal.

Mr. COWAN: I didn't go over that. I just wanted to ask him how

many carloads of live stock they handled during the year for which that statement was made.

A. There isn't anything made up on that, Mr. Cowan; I cannot answer.

Q. Do you have in mind approximately?

A. No, I could not answer it approximately.

Q. Where would you look to find that, to the Stock Yards' reports?

A. I could take the Stock Yards' reports from Chicago, Sioux City and Omaha, and tell.

Q. Or St. Louis?

A. Yes. I don't think I have the East St. Louis report. I could get it.

526 Q. If you had it, that is the source to which you look to ascertain?

A. No, I would look at them approximately, because there is a good deal of stock cattle moved on our line that does not go to the market. Simply bought, say, at Sioux City and shipped over our line in Iowa. There may be loss and damage on such shipments. Of course, it would be a small percentage probably of the whole.

FLETCHER C. RICE, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. Please state to the court your name?

A. Fletcher C. Rice.

Q. What is your occupation?

A. I am general inspector of transportation for the Burlington Road.

Q. With which of these defendants are you connected at present?

A. The Chicago, Burlington and Quincy.

Q. Have you been connected with any other railroad? If so, in what capacity?

A. I have been exclusively in the service of the C. B. and Q.

Q. I say have you heretofore been?

A. No, I say I have always been exclusively in the service of the C. B. and Q.

An adjournment was here taken until the following day, September 21, 1905, at 10 A. M.

527 SEPTEMBER 21, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Mr. DAWES: If your Honor please, at the time the petitio was filed in this case, the original petition before the Commerce Commission, the Chicago Burlington & Quincy Railway Company or Railroad Company then, the Hannibal & St. Joe Railway Company, the K. C. & St. Joe, The Council Bluffs, Omaha & Kansas City &

Eastern were made parties. Since that time the properties of the—of all except the Omaha, Kansas City & Eastern have been acquired by the Chicago Burlington & Quincy Railway Company of which company Mr. Rice is an officer, and the Omaha Kansas City & Eastern is also controlled but not acquired by the Burlington System. I wish it to appear that Mr. Rice is giving testimony in behalf of these different defendants as well in the whole case. In other words, they are practically eliminated as individual defendants and all owned by the defendant C. B. & Q. Railway.

528 JOHN H. RICE, resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. Mr. Rice, I understood you to state that your railroad experience has been altogether with the C. B. & Q. system?

A. Yes sir.

Q. I wish you would state in what capacity you have acted?

A. I commenced with the company as a telegraph operator and clerk, and since that time I have been despatcher, chief despatcher, train master, Division superintendent and superintendent of the Illinois Lines and general superintendent of the C. B. & Q. system, and then my present position.

Q. Well, have your duties related to freight matters or to transportation matters?

A. Entirely to operating matters.

Q. On that portion of your road which lies between the Missouri River and South St. Paul on the one hand and Chicago on the other, what is the maximum number of loaded cars of live cattle and hogs that can be handled by one engine at the speed that is required for that service?

A. About thirty cars.

Q. On that portion of your road, what is the maximum number of loaded cars of ordinary dead freight that can be hauled
529 by the same engine at speed which is required for that service?

A. About fifty cars.

Q. What is the average weight of the cars employed on your road in the transportation of live cattle and hogs?

A. The empty cars strictly empty, about fourteen and one half tons. With the ordinary bedding, about from fiftern to fifteen and a half tons.

Q. What is the average weight of the cars employed on your road in the transportation of ordinary dead freight?

A. From thirteen and a half to fourteen tons.

Q. On that portion of your road, what is the average rate of speed at which a train of live cattle and live hogs is moved?

A. From fifteen to twenty miles an hour.

Q. What rate of speed are ordinary dead freight trains moved at?

A. Five miles an hour.

Q. What is the average tonnage rating——

A. I perhaps should explain that. In arriving at the average speed

per hour for live stock, we divide the number of miles in the journey by the time consumed, from the time of starting to the time of delivery at the Union Stock Yards.

That does not imply that we do not run faster than fifteen or twenty miles an hour during the different conductors runs. We are obliged to make 25 and 30 miles an hour over conductors
530 runs, in order to make fifteen to 20 miles an hour from the point of starting to the point of delivery at the Union Stock Yards. In the case of dead freight, five miles per hour. It is generally agreed among railroad men that the speed of ten miles an hour during a conductor's run is economical and satisfactory and that it is necessary to make ten miles an hour during the conductor's runs in order to average five miles an hour from the point of starting to the point of delivery.

Q. By conductors runs, do you mean the time that you make between stations?

A. No, sir, I mean that in those different runs that you are considering, that is the different routes, the Missouri river to Chicago, for instance, there are four conductors runs.

Q. A conductor's run then means——

A. From Division point to division point, both through Iowa and from Missouri and that in order to overcome the delays of changing cabooses and changing engines and the necessary changes in the trains of live stock we must make faster time than fifteen or twenty miles an hour through conductors runs in order to average fifteen or twenty miles an hour from the point of starting to the point of delivery at the Union Stock Yards, and we require at least two hours after we leave our own lines in Chicago to arrive at the Union stock yards.

Q. What is the average tonnage rating of locomotives used
531 on that portion of your road in the transportation of live cattle and hogs?

A. From 800 to 850 tons.

Q. What is the average tonnage rating of locomotives used in the transportation of ordinary dead freight?

A. About 1250 tons.

Q. Take an engine that can pull a given number of cars over a given piece of railroad at the rate of 12 miles an hour, in your opinion what effect would the increase of speed to 18 or 20 miles an hour have upon the tonnage that could be pulled by that engine?

A. Increasing the speed from 12 to 18 or 20 miles an hour would decrease the tonnage 40 or 50 per cent.

Q. On that portion of your road what proportion of the trains in which live cattle and hogs are loaded is composed exclusively of cars containing live cattle and hogs?

A. I should say about one seventh.

Q. What proportion of the trains in which ordinary dead freight is carried is composed exclusively of cars containing that kind of freight?

A. About fifty per cent. In the answer to your previous question there, where I stated one seventh, that is a good deal of an estimate.

I could not give it with more accuracy than that. It is rather of an estimate.

Q. It is the best estimate that you can make from the re-
532 sult of your experience?

A. Yes, sir, the best estimate that I could make.

Q. On that portion of your road is preference given to trains loaded with live cattle and hogs over trains loaded with dead freight and packing house products or are all of them moved upon an equality?

A. Preference is invariably given to trains of live stock over trains of packing house products or trains of any kind, and frequently over passenger trains.

Q. Can you explain to the court instances in which a live stock train would be given preference over a passenger train?

A. Well, on our double tracks through Illinois it has been our practice for the last fifteen years to give stock trains the preference which is given no other freight train to run ahead of passenger trains. Until the last three years my headquarters has been at Galesburg, Illinois. Perhaps that is a point where there is more stock passing than any other point in the United States on any one railroad, and I have known hundreds of cases, yes, thousands of cases where we have started out three and four and five stock trains on the time of the passenger train which made Chicago ahead of the passenger train. I have personally held our No. 4 which was due to leave Galesburg at 11:45 at night I have held them until 12:30 at that station to let four or five stock trains *precede* ahead of her, on her time.

533 No. 4 was due at the Union Passenger Station Chicago at 7 o'clock. These trains all made, as a rule, made Western Avenue, a point about four miles from the passenger station ahead of No. 4.

Q. Well, was it only occasionally or frequently?

A. Frequently, very frequently. It was customary and it has been customary for twelve years anyway, to do that.

Q. What effect does that preference which you give to live stock trains over other freight trains, have in reference to delaying those other freight trains?

A. The effect is always or generally to retard the movement of the trains over which they are give precedence.

Q. On that portion of your road, what proportion of the cars intended for the transportation of live stock move to the points of shipment empty.

A. About eighty five per cent.

Q. What proportion of cars intended for the transportation of ordinary dead freight, move to the points of shipment empty?

A. About thirty per cent.

Q. On that portion of your road, is the movement of live cattle and hogs continuous throughout the year or are there periods when there is little or any movement?

A. The movement is generally continuous throughout the year.

There is no time at which it could be said that there was practically no movement.

534 Q. Well, is it uniform as well as continuous or does it fluctuate in quantity?

A. Yes, it fluctuates according to the market and the seasons of the year.

The COURT:

Q. Live stock you are talking about?

A. Live stock.

Mr. DAWES:

Q. Beef as well as hogs?

A. I understood you to say live stock.

Mr. BAXTER: I did say live stock.

Mr. DAWES: Including them all.

A. Cattle and hogs, live stock. I had in mind cattle and hogs.

Mr. BAXTER:

Q. You say it fluctuates in quantities during those periods when you are moving a larger quantity of live stock than usual? Does that increase or decrease the movement of other freight or does it interfere more or less than it would if your movement was not only continuous but uniform?

A. On certain days of the week when the live stock movement is the heaviest it frequently requires all the power that we have to move it. At such times ordinary freight must lie by and be delayed, and it frequently takes us two or three days to catch up and move the ordinary freight that has been stopped by the movement of the live stock.

535 I just recollect that our superintendent of transportation whom I met this week on Monday morning, and he had spent Sunday in Iowa. On Monday he reported that our Sunday night stock run into Chicago had 739 cars and that at Burlington on Sunday there were 500 cars of dead freight that could not be moved for want of power and that the Creston Division (that is the first division this side of the Missouri River) was entirely tied up so far as moving any freight except stock was concerned.

Q. Does that mean that you had to take the locomotives off of your dead freight trains in order to move your live stock trains?

A. Yes, it meant that we took every available engine to move the live stock.

Q. Are there any stock yards or stock pens on your road which are necessary for the transportation of live cattle and hogs that are not used for the transportation of dead freight. If so, state the number of them and their cost?

A. Yes, there are stock yards for the——

Mr. COWAN: I don't object to your stating the number, but I want to examine him about the cost and see what he knows about it.

A. Stock *yards* are necessary for the shipment of live cattle and

hogs and not necessary for the shipment of any other freight. Do you wish the number?

Mr. BAXTER: Yes.

536 A. We have 627 stock *yards* east of the Missouri River. Do you wish the cost?

Q. Yes.

A. About $1,054,000.

Mr. COWAN: I object to his stating the cost because it is not shown that he knows about it. I want to see where he gets his information.

Mr. BAXTER: That would be a matter for cross-examination.

The COURT: Objection overruled.

Mr. COWAN: I just wanted to note that I did not concede the competency of the evidence.

Mr. BAXTER:

Q. Are there any special facilities in addition to the mere enclosure that you provide at your stock yards, like tracks and water facilities and so forth?

A. At the ordinary stock yards?

Q. Yes?

A. Yes sir. It is necessary in all cases and we do have chutes and water. In many cases we furnish sheds, and in many cases we furnish in addition to the sheds, barns and bins and paving.

Mr. DAWES: Bins for what?

A. For sand. And then we have to furnish drainage and scales. In some cases tracks which are especially provided for the use of the stock yards and for nothing else.

Mr. BAXTER:

Q. Can you state the an-ual cost of the operation and main-

537 tenance of those stock yards, about?

A. About $100,000.00

The COURT:

Q. Per annum?

A. Per annum, yes sir.

Mr. BAXTER:

Q. What is the cost of box cars intended for ordinary dead freight to be moved in, and give me, also, the cost of your live stock cars, and state which of them deteriorates the faster?

A. The cost of our box cars is about $515.00. The cost of the stock *yards* is about $600.00, not including the cost of the feeding and watering facilities.

Q. Now which deteriorate the faster?

A. The stock car deteriorates very much faster.

Q. Which is the more expensive to maintain while it is in operation?

A. I have not any actual figures as to the cost of maintenance of stock *yards,* but I have the judgment of one of our most familiar

men who has said to me that it costs twice as much to maintain the stock car as the box car.

Q. When cattle or hogs get down in the car can they be gotten up without stopping the train, and if not, how much time is generally required?

A. As a rule, it is necessary to stop the train in order to get up the cattle. Ten minutes might be taken or one hour might be taken or it might be necessary to side track the train, to take the
538 car or cars to the stock yards, to the local stock yards and unload them and then re-load them.

Q. I suppose that is in cases where the——

A. The stock gets down and where they cannot get up without getting all the cattle out of the car.

Q. When live cattle and hogs arrive at markets in less than train load quantities, are the cars containing them carried immediately to the stock yards or are they held until one train load of cattle, a full train load of cattle and hogs can be obtained?

A. As a rule, they are taken immediately to the stock yards and not held for consolidation, but there might be cases and there are cases where if one train comes in with only one car or two cars or three cars and perhaps, another train and so on following each other with two or three, those will be held and thrown together and taken to the stock yards by one train; but as a rule that is not done. As a rule the stock goes immediately to the stock yards regardless of the number of cars that it has.

Q. Why do you hurry them from your point of intersection here at Chicago down to the Union Stock Yards, without regard to the number of cars that are on the train?

A. We are forced to do that, we are really compelled to do that in order to reach the market within the proper delivery time in order to overcome the obstacles we meet with on that road to the
539 stock yards where we come in conflict with trains of ten or a dozen other railroads.

Q. Are you required to do anything of that kind in the case of packing house products or ordinary dead freight?

A. No sir.

Q. Are any trains of live cattle or hogs run on your road in special trains?

A. Yes sir.

Q. What is the reason of that?

A. Why, on our branches or on any portion of the road where there is a sufficient number of cars in any cluster of stations or contiguous stations to make a train load, we almost invariably send out an extra and pick them up.

Q. Are there any other especial expenses incident to the transportation of live stock, live cattle and hogs, which are not incidental to the transportation of the dressed product of live cattle and hogs, or the transportation of ordinary dead freight? If so, I wish you would specify them as fully as you recollect them?

A. There are expenses that are incident to the transportation of live cattle and hogs that are not incident to the transportation of packing house products or of ordinary dead freight.

We receive all of our packing house products from a comparatively few points. The bulk of our packing house product is received at Kansas City, St. Joseph and South Omaha.

540 Packing house products is loaded by the shippers, the owners in carloads and it is delivered to the railroad company by those people in such shape and with such promptness and such regularity that we are able to depend upon it and on our schedule and regular trains to carry it.

Our passenger trains are not more regular or not so regular as the delivery of the packing house product to us in those three towns.

Well, then, when the trains are made up, whatever they may be like, packing house freight—if there is not enough packing house freight to make the required tonnage, it gives the railroad company an opportunity to gather other freight to put with it to make a complete train for Chicago.

The advantage of the schedule is, the time-table schedule is that it is an advertisement to everybody concerned, along the road of the time of that train. The train despatchers look for it and anticipate it. The yard masters anticipate it and they make arrangements for it. On account of its schedule and its regularity, it is very much more cheaply handled.

Then the packing house product train concludes when it arrives at our outer receiving yards at Chicago. The time is concluded there, our time-table is concluded there. Our basis of calculation on the time of the train concludes there and after it arrives there

541 the deliveries are made. The trains are switched and the deliveries are made by switch engines to the different places in the city.

But there is—that point is eight miles from the Union Stock Yards and while some of the packing house freight in those trains goes to the Union Stock Yards, it finds its way there by way of switch engines which deliver it. They consume a great deal more time than the road trains consume with the live stock that go immediately to the stock yards.

Then the live stock, the difference between the handling of the live stock and the packing house freight is that you do not receive full trains of stock at the Missouri River at any point. The stock that we haul in is stock that is picked up. It is not picked up on the main line between the Missouri river and Chicago, it is picked up on the branches that are tributary to the main line.

I should estimate that 70 per cent. of the stock that we bring in from Missouri and Iowa and Illinois into Chicago is loaded and hauled for a distance on the branch lines to the point of delivery on the main line. All of that costs. It costs more than it does to handle the same freight on the main line.

Q. Right there, I will ask you where the br-nch line intersects the main line, do you take off the locomotive on the main line and go up the branch line?

542 A. I was just going to say that we do not deliver the empty cars that are to be loaded on all these branch lines, on the day, as a rule, on the day that the stock is loaded. The cars, as a

rule, are distributed in advance. Oftentimes trains are required to go out on those branches extra trains with stock cars to deliver or distribute, and those trains frequently return light to the point——

Mr. DAWES: Light engines, you mean?

A. (continued). The engines return light, entirely light or with a very light tonnage. Now that operation goes on on most of the branches, that process and then when the stock is loaded, when the days come for the loading of the stock, these extra trains are run and then it becomes necessary to send frequently an entirely light engine and train out on the branches to pick up that stock and bring it in, bring it back to the junction point on the main line.

At that point, as a rule, we are through with that engine and crew. Occasionally it will run a few miles on the main line, to a destination, but as a rule it concludes with the main line.

Now, it becomes necessary for the main line train to pick that stock up, and the main line train that arrives at the junction point, to pick up ten cars of stock almost invariably comes to that
543 point loaded ten cars sufficiently light to pick that stock up. They don't bring other cars to that point and set them out and then replace them with the stock that they pick up. There is another thing that I meant to say about the packing house freight before I forget it.

The packing house stuff that is hauled from a comparatively few places is invariably hauled on our main lines. On our principal lines where there is the greatest economy. They are never hauled on any other line, and the empties returning are invariably returned by those same main lines and never by the branch lines.

Now, we have got the stock to take to the main line that has been loaded on the branch and it is picked up by the through main line trains and those main line trains must be loaded enough to make the run for the balance of the trip to the market fast enough to make up for the time or some of them time that has been consumed in the picking up of the stock at the different stations on the branches.

Slow time is invariably made on the branches, and it must be. When it reaches the main line it is expected that we will run faster and we do run faster.

Now the stock, when we start, say from Creston or Ottumwa—Well, I won't say Ottumwa, but a point west of Ottumwa, when we start for Chicago, say, with thirty cars of stock, that train
544 does not go through to Chicago with regularity as it started. There is a feeding point at Galesburg and a large part of the trains from Western Iowa feed at Galesburg. I was a few weeks ago at Galesburg and I personally saw a thirty car train arrive from the west when fifteen of the cars went through and fifteen fed at Galesburg. Now there we were in the midst of the run with a fifteen car train of stock. We could not afford to let that train go through to Chicago in that shape, and it had to be filled up and the train was held an hour and a half. Those fifteen cars were held an hour and a half so as to fill it up to go to Chicago. Those are some of the delays that are incident to the stock train and it

is a frequent delay and it is a serious delay and although we have tried, I have personally tried and others of our officers have tried to induce the shippers in western Iowa to refrain from feeding at Galesburg on the ground that it would be to their interest to go directly through instead of feeding, but they have persisted in feeding, through habit and with the idea that if they stop off at Galesburg and resting and feeding and leaving in the evening, that their stock will reach Chicago the next morning in better shape for the market. That is their principal reason.

Then the live stock en route must be looked after. We must stop to allow those in charge to look it over if they ask for it. In hot weather we are obliged to shower the hogs, to wet them,
545 which is done with water and oftentimes we have to pay for that water by the thousand gallons at stations. Then on arrival at Chicago, we run over the tracks of other companies in order to reach the stock yards from Rockwell street where we leave our own line, and we have to pay trackage and we have other expenses that foot up to about $2.25 a car; in some cases, $2.35 and in other cases $2.35 depending on the route that we take to the stock yards.

In addition to that expense there is the risk that we take in going over that four miles of road; a factor which we don't meet with on our own line, and which is owing to the fact that we are mixed up with the trains of several railroads, and we go there at all times of the day and night and in all sorts of weather, and frequently have accidents there that are expensive. Of course, there is the personal injury expense. Do you want me to mention that?

Q. Yes.

A. There is the personal injury expense in connection with handling the shippers of live stock that we meet with, which Mr. Crosby has testified to as being $5300.00 for the year ending June 30th, 1905. I presume that figure was correct but I never knew any other year to be correspondingly low.

Q. Do you provide accommodation for your stock men where they can get their meals along the road?

546 A. Yes sir. At Galesburg in 1889, I think it was, I arranged for the accommodation, I personally arranged for the accommodation of the stock men coming from the west and from the south to meet them at about a point a mile from our passenger station at the entrance to the stock yards, on about three days in the week and I assigned a switch engine and a caboose and a switching crew to meet each stock train when it came in and bring the shippers to the station so that they might get their dinners or suppers or breakfasts whichever it might be. In every case the train, when they finally left Galesburg for Chicago, stopped at the passenger house and picked these men up.

That practice has continued until, to my knowledge, until two years ago. Whether it has been continued since I could not say. I never heard that it was discontinued but I could not say that it is the practice now nor could I say that it is not. From 1888, or 1889 until that time, it was the regular practice. Also in Galesburg

yard I arranged a number of years ago and personally employed two men at certain hours of the day to patrol the point in the yard where the stock way cars and where the stock assembled so as to meet any men that might be there and to look after them and see that they were not injured.

Q. Do you have any special cabooses on your road?

A. Yes sir, we have a stock drover's caboose on our main
547 line. I had thirty of them made myself. I had thirty stock cabooses made that slept twenty-two men,—that slept comfortably twenty-two men.

Mr. DAWES:

Q. How much do they cost?

A. They cost about between ten hundred and twelve hundred dollars apiece. I also had eight way-cars made that cost about $450 apiece that did not provide for the conveyance of stockmen, way cars that would answer our purposes under all conditions—or under common conditions where stock was not handled. The large way car is a necessity of the stock men, we would not have it but for that.

Q. Do you have toilet rooms in those cars?

A. Yes, sir.

Q. And a lavatory?

A. No, sir, we just have one closet.

Mr. DAWES: Well, you have running water, don't you?

A. And running water.

Q. And bedding and all that sort of thing?

A. No.

Q. What amount of free transportation do you give per annum on your road to personal attendance of live stock?

A. We give free transportation to the men east bound in charge of two cars of stock. For the year ending June 30, 1905, if the men who came east in charge of stock had paid their fare in return to the points from which they started for that year, at the regular rate of fare, they would have paid $135,179.

Q. You give return transportation, do you not?

A. I said that if they had paid their fare—of course
548 we return them free, but if they had paid their fares at the regular rate they would have paid $135,179, during that year, but instead of that they were all returned free.

Now, for a long period, stock was shipped by the carload, and at that time the ordinary shipper thought it to his interests to put as many head of animals in a car as he could, and there were more heads put in the cars than could ride safely without injury. At that time the owners or *bona fide* employés were in the habit of accompanying stock and looking after it, and there was more of a necessity. At that time, however, the stock car facilities were much less than they are now and the speed on the road was much less, but since the change of basis from the per carload rate to the hundred pound rate, there is no longer the incentive for the stock

men to overload. It is for his interest to load the stock so that it will come through in good shape.

Now, since that time the habit and practice of the shippers and his *bona fide* employés of coming with the stock has very much lessened. The number of people that come with the stock is no less, but they are not the owners, and in a large majority of cases they had not even ordinary interests in the stock, sufficient to look after it.

549 Oftentimes they don't know how to look after it, but they are simply availing themselves of a comfortable ride, about as comfortable as a passenger train to Chicago and a free ride home.

Q. Do they go back on a freight train?

A. They go back on a passenger train. Now, I remember one case that occurred under my supervision, where we had a rear end collision, a few years ago, in the fog, between two stock trains, and there were five men killed in the car that was run into, which cost us over $20,000, the whole thing, the injured, and paying for the dead, the cost to us was over $20,000.

There was not one of those five men that had one cent's worth of interest in a hoof of stock in that train, and I happened to know each one of the five men personally. I knew that they were ordinary business men in little towns near my headquarters.

Q. Are they always stock men or do they belong to different callings or professions?

A. They were men in ordinary capacities of business. One of them was a lawyer and one of them was a doctor, and one of them was a merchant.

Mr. SEVERANCE:

Q. Was the lawyer killed?

A. Yes, sir, he was killed.

Mr. DAWES: That accounts for the large price.

550 Mr. COWAN:

Q. What did they have to pay for him?

A. I told Mr. Dawes at the time that I could pay for a dead lawyer, but I could not pay for a live one.

Mr. DAWES:

Q. Are any such privileges as that given to the shippers of packing house products or ordinary dead freight?

A. No, sir, people do not ride in charge of packing house product shipments and no passes are given on that account to my knowledge.

Mr. BAXTER:

Q. During the five years ending June 30, 1905, has the number of cattle and hogs moving over your road increased or decreased?

A. Increased.

Q. What was the size—what was your answer?

A. It has increased.

Q. What was the size and capacity in tonnage of your live stock cars in 1888, and what is the size and tonnage capacity of your present live stock cars?

A. In 1888 our live stock cars were 34½ feet long and eight feet wide, with a capacity of twenty tons. The present stock car is 36 feet long and 8 feet wide, may be a little more than that, and with a capacity of 50 tons—I mean 30 tons.

Q. How many live stock cars did your company have in 1888, and how many has it at present?

551 A. In 1888 it had 2633 cars. We have now 6345.

Q. In your experience how does the cost of transportation of live cattle and hogs, all conditions considered, compare with the transportation of the dressed product of cattle and hogs?

A. The cost of the transportation of live stock is considerably greater than the cost of the transportation of the product.

Q. How does the cost of the transportation of live cattle and hogs compare with the transportation of ordinary dead freight?

A. Well, it is very much greater.

Q. What is the difference between the cost of handling live cattle and hogs in through train loads from St. Paul and Missouri River points directly through to Chicago and the cost of picking up live cattle and hogs at way stations between St. Paul and Missouri River points on the one hand and Chicago on the other?

A. In my opinion the cost of handling live cattle and hogs from those points is much less in through trains than the cost of handling live stock which is picked up from intermediate points.

Now, in answering that question I don't refer exclusively to live stock that is picked up between—on our three main lines. We have a main line to St. Paul and had one to Omaha, and we had

552 one to Kansas City. They are three separate lines. I don't refer to the cost of picking up on those main lines exclusively. I include in that the cost of picking up the stock on the branches.

Those three lines,—the length of those three lines,—is about 1500 miles—a little less than 1500 miles. Those are 1500 of our best miles, but our stock comes from about 2700 miles of secondary or subordinate lines. There are really over forty separate railroads east of the Missouri River. They are districts or subdivisions to which engines and engine men and train crews are assigned particularly to those divisions and they are operated separately.

When you ask about the cost of picking up stock between the Missouri River and Chicago, I include those branch lines, because 70 per cent. of the stock comes from those branch lines, and in some cases travels as great a distance on the branch as it afterwards travels on the main line, to reach Chicago.

Q. What is the difference between the cost of handling the dressed or prepared product of cattle and hogs in through train loads from St. Paul and Missouri River points directly through to Chicago, and the cost of picking up live cattle and hogs at way stations?

553 A. The cost of picking up live cattle and hogs is much greater. The packing house freight is confined entirely to the main lines, and it has no connection with the branch lines. It is not handled on those interior lines as the stock is.

Q. Are there any packing houses located at stations on your road between St. Paul and Missouri River points on the one hand and Chicago on the other?

A. There is practically one.

Q. Where is that?

A. That is at Ottumwa, between here and the Missouri river.

Q. Does your road reach Des Moines?

A. We reach Des Moines with a branch but I am told we get no packing house freight there. It is on the main line of the Rock Island Railroad and we don't get any business there.

Q. State whether the live cattle and hogs which are transported from St. Paul and Missouri River points, on the one hand, and Chicago on the other, are transported in through trains, and state whether the live cattle and hogs are transported from intermediate points in through trains?

A. Live cattle and hogs are invariably transported from those distant points in through trains. The intermediate stop is uniformly picked up by local trains or special trains and not by the through trains.

554 Q. File as Exhibit No. 2 to your testimony a statement showing the names of all stations on that portion of your road which lies between St. Paul and the Missouri River points on the one hand, and Chicago on the other, at which stock yards and stock pens are located, showing the cost of the construction of said stock yards and pens, and the annual cost of maintaining and the operation of said stock yards, including weighing and other facilities peculiar to the stock business and solely used in the live stock traffic. I have already asked you for the aggregate.

A. It is in the paper there.

(Paper produced and filed as Rice Exhibit No. 2, attached hereto and made a part hereof.)

Mr. DAWES:

Q. I don't think you made any statement about the cleaning of stock cars. Did you ask him about that, Judge?

Mr. BAXTER: No, sir, I did not.

Mr. DAWES:

Q. Will you be kind enough to state, Mr. Rice, what is required in that direction, at the stock yards or where the *teaming* is done, and what the cost is, as far as you can estimate it.

A. We are obliged to clean the stock cars in order to preserve them and for the accommodation of the stock men. We clean some stock cars at Chicago, but mostly at Gales-

* * * * * * *

554*d* Valuation of stock yards, $1,053,983.00.
Annual cost of maintenance and operation, $100,000.00.
F. C. RICE.

555 burg.

Nearly all of the empty stock cars pass Galesburg on their return trip, and they are cleaned there. It costs us about thirty cents a car to clean them. *It costs us about thirty cents a car to clean them.* In the matter of the cleaning tracks, the cleaning tracks are always expensive tracks, and they are always in a remote position. They are a public nuisance, and it requires a long switch to switch the cars to and from that track, and I estimate that the cost per car is thirty cents, so it makes about sixty cents a car.

Q. Sixty cents, the switching charges thirty cents and the cleaning is thirty cents?

A. Yes, sir, and it makes sixty cents a car.

Q. Well, it is true, is it not, that all stock cars that are cleaned at Galesburg, all that are cleaned there, are hauled empty to that point?

A. Yes, sir.

Q. But they contain manure and offal and bedding, which is estimated at about how much weight?

A. Well, I have known cars to be unloaded with three tons in them.

Q. On the average they would contain?

A. I would call it about a ton.

Q. That is a very low estimate, is it not?

A. I should think that that is very conservative.

556 The COURT:

Q. What does that represent?

A. A ton.

Q. A ton of what?

A. Bedding of some description.

Mr. DAWES:

Q. And Offal?

A. Yes, sir, and offal.

The COURT:

Q. In one stock car?

A. Yes, sir.

Mr. DAWES: Bedding, your Honor will bear in mind, consists of gravel and sand. It is not straw bedding.

The WITNESS: I have often cleaned out cars that had three tons in them, actual weight.

Q. You heard Mr. Gardner's testimony yesterday, Mr. Rice. He stated, if I correctly remember, that if it were not for the necessity of cleaning these cars, his road would be able to do with perhaps 20 per cent. less stock cars, to handle their business, the same amount of business?

A. Yes, sir.

Q. Have you any ideas upon that subject? What do you think of applying that estimate to the C. B. & Q.

A. I think he is about right. I remember the time that he stated that it required to clean. It has always taken us a considerable longer time. It generally takes about two days, more often than it does one.

Q. We have something over 6,000 stock cars on the C. B. & Q., and 20 per cent. would be 1200, and the cost of 1200 stock
557 cars would be, in round numbers, $600,000?

A. Yes, sir.

Q. So, if we did not have to have facilities for cleaning the cars, and were not compelled to clean the cars, we would be able to save $600,000 in the investment in that particular direction?

A. Yes, we would be.

Mr. SEVERANCE: That would be over $700,000.

Mr. DAWES: $725,000 or $750,000.

A. Yes, sir.

Q. Now, by reason of the requirements of the law, or for any other salutory reasons, are you obliged to disinfect the cars?

A. Yes, various states have laws which we are obliged to observe, and it costs us about twenty cents a car.

Q. To disinfect?

A. Yes, sir.

Q. Do you mean that to apply to all the cars you use?

A. To those that are disinfected.

Q. What proportion of our cars are disinfected, or have you made such an estimate?

A. I think half of them.

Q. So you can probably say that ten cents a car on all our cars may be added for disinfection?

A. Yes, sir, easily.

Q. How much for cleaning and switching, what you said a moment ago?

A. Sixty cents.

558 Q. Then that makes 70 cents?

A. Yes, sir.

Q. By virtue of the 28-hour law, are we compelled to do anything in reference to these loads of stock, which we are not compelled to do with any other kind of freight?

A. Yes, but we are not very often caught, though, by that law.

Q. I don't mean the penalty provided by the law, but in order to avoid the penalty?

A. What I mean is that we usually handle the stock so that we are within the law.

Mr. SEVERANCE: That is, you mean to say that you run through in less than 28 hours?

A. Yes, because we don't haul any stock west of the Missouri River to speak of. We can generally make it, and if we don't make it, we stop to feed, but the feeding, as a rule, is the choice of the shipper.

Mr. DAWES:

Q. You stated that the average speed of the stock train from the Missouri River points to Chicago, was from 15 to 20 miles an hour?

A. Yes, sir.

Q. That includes the time taken up for delays and stops for picking up cars and everything?

A. I explained that, yes, sir.

Q. Did you mean that to be the time on through trains of stock cars?

A. I meant on all stock.

559 Q. The average pick-up train and the average through train?

A. All stock, yes, sir.

Q. Take the through trains, can you state what is the usual average running time?

A. Well, we don't handle many through trains. We used to handle through trains, and we used to make about twenty-four or twenty-five miles an hour with them.

Q. What is the time from the Missouri River to Chicago, do you know?

A. We have not any schedule trains.

Q. What is the running time which is usually required?

A. Well, about 24 or 25 hours.

Q. Is stock loaded regularly at Missouri River points, at definite times, as in the case of the Northwestern?

A. The Northwestern, you know, handles stock that originates on their own road from west of the Missouri River.

Q. Yes, that is a fact. Do we pick them up at definite hours?

A. Well, we don't pick up practically any at the Missouri River, but if we should have a train of stock, we do know of it sometimes for a week in advance, and we get ready for it. The Northwestern handles a good deal of stock.

Q. In reference to the ordering of the cars by the shippers on branch lines and other lines, how much notice do you usually have of that?

A. As a rule we have 24 hours' notice. That is, we get
560 notice today of a man's intention to ship tomorrow. Occasionally the market will change so that one part of the road—a man on one part of the road will want to ship some cars, or shippers will come in and want cars at the last moment, which you did not anticipate. Oftentimes that causes us expense by having to move empty cars from say over on this branch, to over here where they are wanted. Move them from the branch where they are not wanted over onto this branch where they are wanted.

Q. A redistribution of empty cars?

A. Yes, sir.

Q. You meet with nothing of that kind with packing house products or dead freight?

A. No, not with packing house products, because that all starts from a few places.

Q. Well, you do not meet with it?

A. Oh, no.

Q. Do you encounter any such difficulties as those which Mr. Gardner mentions, in the case of men ordering more or less cars at different localities?

A. Yes, sir.

Q. Because of their inability to tell what they will want?

A. That is one of the features of our branch expense. We will figure up today that we are going to have 20 or 25 cars of stock, we have orders for that many. We furnish the cars and send the crew out, and maybe it will all fall down and there won't be over 10 or 15 cars.

Q. That is a dead loss to you?

A. Certainly it is. You have got a half loaded train there,

561 you have got a train for half a train or less.

I have a hundred times sent out an engine and a crew on a branch thirty miles to get four or five cars of stock, just as an accommodation to that man. It is a service that we are giving to the stock, and always have given to the stock, that we don't give to any other commodity to my knowledge.

Q. Now, Mr. Rice, you spoke of frequent delays in Galesburg where stock was set out and fed, delays to the trade, and the train was therefore lightened and you therefore had to pick up other cars to make an economical train load into Chicago?

A. Yes, sir.

Q. That would necessitate the loss of the time to the extent of an hour or two or more in Galesburg?

A. Yes, sir.

Q. Is that time made up?

A. Yes, that is made up, and that is one of the obstructions that we have to contend with.

Q. So that it would run in under the circumstances which I have described, under a very high rate of speed?

A. Yes, we have that in mind. It reduces the running time.

Q. Does it increase the expense?

A. Certainly, it reduces the tonnage in the first place, and you have to cut off the number of cars that you would otherwise handle.

562 Q. How fast do you run under circumstances of such delay, from Galesburg to Chicago?

A. We come in at 25 miles an hour.

Q. You stated, I think, to Judge Baxter (and if you did I don't want to go into it again), that these stock trains took preference over all trains except passenger trains and in many instances over passenger trains. You described that?

A. Yes, sir.

The COURT: Cross-examine, Mr. Cowan.

Cross-examination by Mr. COWAN:

Q. Mr. Rice, to whom are these notices for cars given, when the orders are made, and what offices are they filed in in Chicago?

A. Well, the orders for stock cars are sent to the different Division Superintendents' offices. Either to him or to his chief train dispatcher who is uniformly the car distributer for the division, the chief train dispatcher is. There is no one in Chicago that undertakes to distribute definitely the number of cars.

Q. Have you examined the orders yourself to see whether it is a fact as you have stated, that the orders are given today for shipments tomorrow, for example?

A. Oh, yes, that has been by own experience for a great
563 many years.

Q. Will you get one month's orders—get the orders for a month, for the month of August, in your files of your Division Superintendent and have them sent over here so that we can examine them?

A. I think I can.

Q. Well, it is just on telegraph blank sheets, is it not?

A. Yes, as a rule, and that is followed, sometimes, but they are generally pinned on the ordering sheet.

Q. I wish you would get the orders for the month of August. I am under the impression that you are very much mistaken about that.

A. You mean as to the way of ordering?

Q. As to the date, a man ordering today for shipment tomorrow.

A. Do you think he orders today.

Q. I think he gives his orders two or three days ahead as a general rule.

A. Well, I think so too.

Q. I thought you said he would order one day for shipment the next.

A. I think, as a rule, he does, but I have had a letter come in three or four days in advance telling me that he wanted, some man I knew, wanted to ship on a certain date. I did not mean that stock cars were never ordered the second day in advance nor the third day in advance. I did not mean that. What I meant really was that they were not ordered later than that.

Q. It would be ordinarily perfectly foolish as a business
564 matter for a stock shipper to wait until the day before to order his cars unless he knew how you were situated about being able to furnish them?

A. Well, but the majority of orders, though, do come the day before, the majority do come that way, but there are many orders that come the second day before and the third day.

Q. Well, you get one month's orders and we will see how that is, will you?

A. Yes, sir.

Q. I am under the impression that it will average two or three days before the shipment?

A. Yes?

Q. I think you are mistaken about it.

A. Well, it might be a mistake, you know.

Q. Now, you spoke about there being a dead loss, in answer to

Mr. Dawes' question, to carry those stock cars out, if they are not used. Is it not a fact, Mr. Rice, and has it not always been the case in live stock shipments, that where you take and carry stock cars out from your division point to the point of shipment, that if the party does not have enough stock to fill your cars, that you use that car at that point for some other shipment, or some near by point?

A. Some other shipment on some other day.

Q. The loss to you would be the per diem cost for the car?

A. No. We have run a train out with those stock cars.

565 We have sent a train out and it is not loaded and we are losing the use of that stock car, if that is what you mean.

Q. The per diem loss of the use of the car is the loss to you?

A. Yes, and more.

Q. You don't claim that you lose the expense of carrying that car out there and bringing it back?

A. I certainly have made a wasteful use of expense if I have hauled a train of empties out and they are not loaded back.

Q. You simply lose the per diem cost of the car, don't you?

A. Why, no, sir, that is not all.

566 A. So if the stock don't load that day——

Q. You load somebody else's in the same car?

A. I know, but I have lost maybe all or a portion of the business I anticipated for that day for which I ordered my train sent there.

Q. Now do you mean to convey the impression to the Court that that is a usual course of business?

A. Of changing shipments?

Q. Of losing the use of the car, and parties ordering more cars than they want?

A. Oh, yes, that is an every day occurrence.

Q. In such class of business it *much* be an every day occurrence that such a thing would happen, but do you mean to say that men usually order more cars than they want?

A. I do not say usually, but frequently.

Q. They frequently order more?

A. He probably anticipates getting one bunch of hogs or cattle that he does not get for some reason or other, but he wants to be sure and so he orders more cars.

Q. It is the accident of his business that he orders more, not on purpose?

A. Oh, no.

Q. If the business turns out what he expected when he gives you the order a day or two before, then he only orders the cars he wants?

A. We do not complain of those things, but it is a matter we know about.

Q. I think your testimony has tended to leave the im-

567 pression that that is the customary course of business for the individual shipper.

A. It is very frequent.

Q. Name some of your prominent shipping points.

A. I don't think you will find a car distributer in the United States but what will verify that with me.

Q. That depends on what side of the case he happens to be on in my experience. Now name some prominent shipping points on your line?

A. Well, in what State, anywhere.

Q. Iowa, in this 23½ cent district.

A. Well, take Creston, or Red Oak.

Q. Creston. We will take that, stop at that one place. Who are the principal shippers from that place?

A. I don't remember the names.

Q. Can you name any one at all?

A. No.

Q. I want to see what the man says about it who orders those cars.

A. I could not call the names of any of our shippers but I would know them, and could get you the names, and perhaps you know them.

Q. Now what other, that is Creston, that is one.

A. Yes.

Q. What other point, name some other point.

A. Let us see——

Q. Don't you recollect the prominent shipping points?

A. Oh, I want to pick out good ones.

568 Q. You ought to have in mind two or three.

Mr. SEVERANCE: I don't think the witness should be lectured quite so much by counsel.

The COURT: I think counsel would better ask questions.

A. I could give you the Illinois points.

Mr. COWAN:

Q. Take Iowa points, is what I want.

A. Well, take Corning, Villisca, Cumberland.

Q. That will be sufficient. Now at any one of those points, can you name some of your principal shippers of live stock over your road?

A. No, I am not familiar with the Iowa names, that is, I do not remember them. I have met a great many of these stock men in Iowa, but I do not remember their names. But I would give you some names if you ask for them.

Q. Will you name an instance that happened in the last year at any one of those stations in which you have had to carry stock cars there when they were not loaded that you know of.

A. No, I could not, but I could find you plenty of them, I could not do it off hand.

The COURT: Bring them here some other time and that will dispose of that.

Mr. DAWES: Make a memorandum to do that.

Mr. COWAN: You said in answer to Mr. Dawes that you
569 would have saved $600,000 investment were it not for the fact that you have to clean cars, and you used the expression that it sometimes took two days?

A. Yes sir.
Q. Two days for what?
A. Two days for the cleaning process.
Q. Of how many cars?
A. Well, it would be say one hundred cars, 75 to 100 cars that we set in on the cleaning tracks.
Q. How much of your live stock do you bring into Chicago on Monday, what per cent.?
A. Of the whole week?
Q. Yes.
A. Why I should think we bring in a third of it.
Q. A third of it?
A. I think so.
Q. And how much do you bring in Wednesdays?
A. A third.
Q. So you have got two-thirds for those two days?
A. Yes sir. I should think the other third was distributed in the week. That is just an estimate.
Q. When those cars come in here on Monday you unload them that day don't you?
A. Yes sir.
Q. And you take them back to Galesburg don't you?
A. Yes sir.
Q. And you stop them off there for cleaning?
A. Yes sir, some of them.
570 Q. Now, what are you going to do with those cars between that and the time you are going to make shipments the next Saturday or Sunday for the Monday's market?
A. Why those cars are cleaned, maybe some of them are cleaned in one day and some are cleaned in two days, then they are picked up and sent on West.
Q. Yes. Now, as I understand you send stock cars back West at the same speed you bring live stock trains here?
A. No, I didn't say that.
Q. Some of the witnesses testified that.
A. I did not intend to say so.
Q. Is that a fact or not?
A. No sir.
Q. How much time do you take in carrying them back empty?
A. Well, we make ordinary time.
Q. About what is that?
A. About five miles an hour, five to ten. We may do a little better than that.
Q. Speaking in days, how long does it take you to get from Galesburg back to the points 100 miles east of the Missouri River?
A. I should say it would take two days.
Q. Forty-eight hours?
A. Yes, to take them back, and distribute them on the branches.
Q. Now, if you clean them Tuesday and Wednesday and you start back and get those cars out there in two days, you have got them back on Saturday and distributed?
A. Yes sir.

571 Q. Now why do you say that the cleaning of those cars delays you out of the use of the cars. You could not use them if you did have them cleaned?

A. I don't know about that. The cars may not all go to Western Iowa, they may go to points where they can be used.

Q. Now take Wednesday's shipments. You have got two-thirds of the total shipments coming in here on Wednesdays and Mondays, and take your Wednesday's cars and you clean them out there and you say it takes two days.

A. I said it often took two days. We may clean in one day, some of them.

Q. Then you carry them out in two days?

A. Yes sir.

Q. And you have still got them out and distributed before you need them for next Wednesday's shipments?

A. We load some stock every day in the week.

Q. But suppose you use the same cars in that identical service, isn't it plain that, considering the days on which the live stock comes in that you are not laid out of the use of the cars at all by the fact you have to stop and clean them?

A. We certainly are laid out of the use of them during the time that they are there.

Q. Well, what would you use them for?

A. Well, they would be used for loading perhaps.

Q. Who wants to ship any?

572 A. Or we could have a more economical haul of them going West if we could use our own time and crews in a natural way. We would not be forced to hurry them quite as much as we do. I know often times when stock cars should be cleaned, they are not cleaned. Orders will come from Chicago to those people out there not to clean any stock cars but let them all go.

Q. You don't clean them all here?

A. No, I never claimed we cleaned them all.

The COURT: You must clean the product too, refrigerator cars must be kept more clean than the others.

A. Yes. But we do not handle those packing cars, we do not do that.

Q. That comes in on the rate they pay for carrying of them?

A. Yes, the packers do their own cleaning.

Mr. COWAN:

Q. Do you use any private car line cars, Streets stable cars and the like?

A. Yes sir.

Q. Do you rent them by the month or year?

A. No, we pay six mills per mile.

Q. When you bring them to Chicago on a trip do you carry them back to Galesburg?

A. Well, we may or may not. We have a very fair supply of stock cars of our own.

Q. I know, but I was not asking you that. About private cars, do you deliver them?

A. I mean we try not to handle private cars if we can help it.

Q. So that you leave them in Chicago, you leave them to the private car company here?

A. Yes, sir.

573 Q. And when you get them, you get them already cleaned?

A. They clean them.

Q. Do you know what they pay by contract for cleaning cars here?

A. No, I do not.

Q. Does your road contract for cleaning cars?

A. We made one contract for cleaning cars.

Q. When?

A. Five or six years ago.

Q. Where?

A. At one place.

Q. Where?

A. A place called Gladstone, the first station this side of the Mississippi River where we have a place where we can unload.

Q. What do you pay for it?

A. 25 cents a car.

Q. Hasn't that been the usual contract price for years for most roads?

A. That is the only contract we ever made.

Q. Do you know of others contracting for it?

A. No, I do not.

Q. How did you know the basis of contracting at 25 cents unless you knew that to be the usual price?

A. Because we put section men in the cars and had them unload the cars for a number of years, cleaning them out and had them get at the cost as near as we could.

Q. Do you disinfect any cars for shipment from Iowa?

A. No sir.

Q. That is an expense that does not apply to that transaction?

A. No sir.

574 Q. The report of the Union Stock Yards and Transit Company will show the cars you deliver here per week, per months and per day?

A. Yes sir.

Q. Will you explain why it takes two days to clean the cars? You have say 30 cars in a train of cattle that come in from Galesburg to Chicago. You deliver the cars back that day or that night to Galesburg. Why does it take two days to clean those cars?

A. Well, at Galesburg for instance, my recollection is that we have two tracks that will hold about 60 cars each, about 120 cars. Of course if the track is empty the switchmen will go out, if the tracks are empty, and fill them up with cars; and perhaps if the cars are badly wanted we will turn in and clean all those cars in one day. If cars are not so badly wanted, we won't make so much of an effort and we will take a longer time. And sometimes the men fail us you know, they play out, they don't work at it.

The COURT: How long does it take to clean one car?

A. I should say that ordinarily a man would clean four cars in a day.

Mr. DAWES:

Q. In winter or summer?

A. Ordinarily I should say it would take longer in winter, and it depends on the condition of the car too.

Mr. COWAN:

575 Q. Now isn't it a fact that the cost of cleaning your cars out there which you estimated on the basis of 30 cents is for labor?

A. Yes sir, the labor of cleaning.

Q. Now you estimated another 30 cents for furnishing these side tracks for switching the cars out there?

A. Yes sir.

Q. How far do you have to switch those cars on to that track?

A. It makes about a four-mile switch.

Q. How many cars do you switch at a time?

A. Carry out at a time?

Q. Yes, switching.

A. It might be 60, 50 or 60.

Q. How many trains can a switch engine switch out there a day if engaged in that business?

A. Well, I could not say, but the figure that I gave you as 30 cents was the cost of switching in that yard per car for a month and I just took that figure.

Q. For all switching?

A. For all switching. Of course that took a train of stock——

Q. But in this instance you switched 30 or 60 cars out?

A. Yes.

Q. And your engine, if they are cleaned, brings back 30 or 60 cars?

A. Yes sir.

Q. Do you believe as an operating man that it is fair to say it costs as much per car for switching those cars as it does the average
576 switching and making up of cars and trains in your yards?

A. Yes sir, I would say it ought to cost more for the reason that this 30 cents, that is not a figure that was arrived at for use here, it was for our own convenience and that took in every car that came into the yards, and that figures it for some trains that come into the yards that do not require any switching, practically any switching, so that we get the advantage of that. And then there are cars like the Stock Yards cars, and the Industry track that cost more, but we took the whole number of cars and arrived at it in that way for the month and that was for our own information. Now I think those stock cars you are talking about would certainly cost as much almost — any car we have.

Q. Now, does it take 30 cents per car for all trains passing through Galesburg for switching service?

A. Yes sir.
Q. And that includes all cars in all trains?
A. Yes sir.
Q. Although some of them are not switched but come in in through trains?
A. Yes sir, but the cars are counted once.
Q. How much does it cost you for switching service at Chicago; what do you estimate the switching service per car at Chicago?
A. I think it is a good deal more. I have forgotten what the figure is, but it is a good deal more.
577 Q. Being an operating man you must have some idea about it.
A. I would just guess at it, that it is pretty near one dollar.
Q. That is in your own yard?
A. Yes sir, just in our own yards.
Q. What does it cost you on an average for delivery service made to other lines in Chicago, what do you estimate it costs you per car for delivery service?
A. I never made an estimate of that.
Q. What is your judgment about it from experience?
A. It depends on the line, it depends on where the delivery is made. I know of one delivery we make to the Belt Road at the end of our Hawthore Yards, of our main yards, which is a very short switch. I should say it costs less there to make that switch than it would one where we would have to go four or five miles to make it.
Q. Manifestly so?
A. Yes, but I haven't any figures on that. I don't think I ever saw any.
Q. There is a terminal expense at both ends of the line in handling that freight, isn't there?
A. Yes sir.
Q. And that is a considerable proportion of your operating expenses?
A. Yes sir.
Q. What is it at Kansas City, your terminal expenses there on the average per car?
A. Well, I could not say, I have not seen a figure on it—I don't know as I ever saw a figure from Kansas City.
578 Q. And you don't know?
A. I don't know.
Q. How much do you pay for the switching of packing house products and dressed meat cars that you receive at Kansas City?
A. That we receive?
Q. Yes?
A. I think $3.
Q. Three dollars a car?
A. I think Mr. Crosby told you just what that was, I think $3.
Q. What do you pay for switching charges on dressed meat and packing house products received at Omaha or Council Bluffs, wherever you get it?
A. Two dollars.

Q. Two dollars?
A. Yes.
Q. Now, is that on the west side of the river that you pay that?
A. On both sides. We get our packing house freight you know, from South Omaha principally, and that is $2.
Q. And that is $2?
A. Yes sir.
Q. And then you bring it across the Missouri River?
A. Yes sir.
Q. Do you own the bridge?
A. Yes sir.
Q. So you do not pay a bridge toll there?
A. No.
Q. What roads do not own bridges, and pay bridge toll?
A. I don't know of any. I think the Union Pacific owns the bridge at—do you mean at——
Q. South Omaha?
A. There is no other bridge there except ours.
579 Q. Except yours?
A. Yes sir.
Q. What is the bridge toll charged on your road to other roads for the use of that bridge?
A. None of them use it, no roads use it.
Q. How do they get across the river?
A. They get across you know, at Omaha.
Q. Well, Omaha then. I thought you meant Omaha.
A. No.
Q. What is the bridge——
A. We cross the river at Plattsmouth, just west of the Pacific Junction——
Q. I know where it is.
A. And run up to South Omaha.
Q. What do the other roads pay for bridge toll at Omaha in getting across to other tracks with packing house products?
A. I do not know.
Q. You do not know what the bridge toll is there per car?
A. No.
Q. Do you know what it has been at any time in the past?
A. No sir, I do not.
Q. Any live stock you receive at Kansas City you do not pay any switching charge on, do you?
A. Yes sir.
Q. What charge do you pay?
A. Oh, live stock, no, not any.
Q. You pay 50 cents a car for loading?
A. Yes sir.
Q. And that is your total expense on live stock, as against $3 for packing house products?
A. Yes sir.
580 Q. How far are the tracks where you receive the packing house products from the packing house?

A. I think about two miles, I am not familiar with that.

Q. When you take packing house cars back, do you take them to the backing house tracks, or leave them on your track?

A. We leave them on our track as I understand.

Q. And they get them?

A. And they get them.

Q. Do they charge you any switching charge for empties too?

A. I understand not.

Q. Now, when you come to Chicago with packing house products which you deliver at the Stock Yards, do you pay switching charges for that delivery?

A. We pay at the Stock Yards $3.40.

Q. And where do you deliver?

A. And providing the car is returned to us—providing the same car is returned to us, we pay $3.40 to the Stock Yards Company.

Q. Who do you pay that to?

A. To the Stock Yards Company and then if the car is not returned to us, we pay $1.40—if they should send the car on somewhere else, you know, and we should not get it back, we pay $1.40.

Mr. DAWES: You pay to the Junction Railway Company?

A. To the Junction Railway, yes sir.

Mr. COWAN:

Q. If they bring it back, $3.40?

A. Yes sir.

Q. So you pay $1.40 in and $2.00 out?

A. Yes sir.

581 Q. Do you receive back most of the cars that you take in with packing house products?

A. As a rule we do.

Q. And that is for the return of the empties?

A. Yes, sir.

Q. Received back loaded or empty?

A. Empty as a rule. Packing house stuff going through Chicago, we pay $2.

Q. And that is out of the 18 cent rate?

A. Supposed to be, yes.

Q. And when it is returned to you and you carry it back that is on the 20 cent rate, is it?

A. I presume so.

Q. You pay a cent a mile on the refrigerator cars both ways?

A. We pay three-quarters of a cent a mile on some, a cent on others, and 20 cents a day on others.

Q. Refrigerator cars?

A. Yes sir.

Q. Well the cars in which you ship dressed meat and packing house products for packers, you pay a cent a mile each way?

A. Yes sir.

Q. So the dressed meat and packing house products, it may be estimated at a cent a mile?

A. Yes sir.

Q. Now, do you settle on the basis of a cent a mile or on an arbitrary distance of 500 miles, making it $10 a car?

A. I suppose a cent a mile. I never have the settlement of those matters and really do not know any more than I am told by the Traffic Department.

582 Q. What distance is it by your line from Kansas City to Chicago?

A. 480 miles.

Q. Does that include the distance up to the Stock Yards?

A. It includes our tracks I think, to the River or just across the River, I don't remember just where the point is.

Q. It is estimated that $10 a car is the mileage on packing house products and dressed meat cars going to Chicago from the Missouri River and returning there, is it not?

A. You say it is estimated?

Q. I am asking you if that is used as an estimate of car mileage?

A. Yes sir.

Q. Now, if you use stock cars not belonging to your Company, you pay on the basis of six mills per mile for the use of those cars, both when going empty and loaded?

A. Yes sir.

Q. I understood you to say you load back 85 per cent.

A. Of the stock cars?

Q. Yes.

A. Yes.

Q. What do you load with?

Mr. DAWES: No, load back? No.

The WITNESS: No, I mean 85 per cent. go back empty. We load about 15 per cent.

Mr. COWAN:

583 Q. That is exactly what I meant. I stated it wrong. Of course I could not be misunderstood. I used my language wrong. In other words, 15 per cent. return loaded?

A. Yes sir.

Q. Where do you get those figures, Mr. Rice?

A. I got those figures from our Superintendent of Transportation, and that would be my judgment too, about the proportion that we load.

Q. And you load with what?

A. Well, we load oil and rails and ties and coal. We are in a coal district, and we load considerable coal in stock cars in winter.

Q. Where do you load the coal?

A. In Illinois, and Iowa and Missouri.

Q. Where do you carry the coal and railroad iron and stuff to?

A. It generally goes west towards Omaha, either on the main line in Iowa or to the River.

Q. You also carry back a small proportion of live stock sold as feeders to different places for feeding purposes?

A. Yes sir.

Q. In shipping in to and out of the Omaha Yards, isn't it a fact

that you ship in to the markets at Missouri River about as many loaded live stock cars as you return of live stock received at the Missouri River?

A. I think we do.

Q. Have you examined the report of the Omaha and Kansas City Stock Yards Company to notice how many you carried in
584 and how many you carried out?

A. I have not.

Q. That is the source to which you would resort to ascertain that information?

A. Yes sir.

Q. Is it not a fact that 90 per cent., or at all events a very high per cent. of the live stock shipped from western Iowa is bedded with hay and straw, furnished or paid for by the shipper, and a very small per cent. bedded with sand or gravel.

Mr. SEVERANCE: Shipped to Chicago do you mean?

Mr. COWAN: Live stock shipped from Western Iowa to Chicago?

A. Well, there are a good many cars that are bedded with straw and hay as you say, and perhaps more in western Iowa than any other point. I think in Illinois and eastern Iowa the Company does more bedding than it does in western Iowa. Some of those shippers prefer the hay and straw to sand.

Q. And they either pay for it, or supply it themselves?

A. Well, as a rule, if they do it themselves, we pay for it.

Q. If they do it themselves, then you pay for it?

A. We pay for it.

Q. You don't pay for the material?

A. Yes, we pay them for it.

Q. How much do you pay them?

A. 25 cents a car. We pay any bill that is presented.

Q. Twenty-five cents a car for the bedding?

585 A. For the bedding.

Q. Furnishing the bedding and putting it in?

A. Yes, and in some places we keep bedding of that nature ourselves, keep it there.

Q. When you keep the bedding there, you charge them for the material, don't you?

A. Oh, no. We keep the bedding and they put it in.

Q. And there is no charge?

A. There is no charge.

Q. What sort of bedding do you keep?

A. We keep sand and hay mostly.

Q. In hog shipments there is practically no bedding put in the cars, is there?

A. No, not for them.

Q. You said that the Stock Yards cost something over a million dollars, whatever the figures were?

A. Yes sir.

Q. Where did you get your figures from?

A. From the Division Superintendents.

Q. Have you taken the pains to ascertain what it would actually

cost now to build a set of stock yards of the description that corresponds with the classes of yards that you have?

A. Yes, they are estimated.

Q. Let us name some yard and see what class it is, and then we will get down to specific items.

A. The judgment of those men is, it would cost a good deal more to build these yards now than it cost previously.

Mr. DAWES:

Q. Why?

586 A. On account of the increased price of lumber.

Mr. COWAN:

Q. You don't mean to claim, do you, that your stock yards on your line as you have given there in Illinois and Iowa cost a million dollars?

A. And Missouri.

Q. Cost a million dollars?

A. Yes sir. That is, I do claim it because the Superintend-s have arrived at that estimate themselves with their Superintendents of Buildings, who have stock yards in charge and were asked to put a fair value on those stock yards, and that is their figures.

Q. Give me some one——

A. That includes our feeding yards.

Q. Well, give me some of your regular class of stock yards that you build on your line at some prominent shipping point. I don't mean the largest yard, you have two or three classes.

A. Yes. Well, I should say Monmouth, Illinois; Osceola, Iowa.

Q. Those are your large yards?

A. No sir.

Q. What size yards are they?

A. At Monmouth, we have got four stock yards. We have two roads that cross each other, of our own, and we have four stock yards there simply for the accommodation of the farmers, so that when they come in from the four directions, that they will be hit by one or the other. I was going to take one of those yards, or take the one at Kirkwood, the next station.

587 Q. Stick to the one station, what sort of a yard is it?

A. I will take Kirkwood.

Q. Why don't you stick to the first one?

A. The reason I dropped it, was because we had so many yards there.

Q. Take one of those yards at that place. Let us see what it is, what is the description of it.

A. Well, I couldn't describe the whole four, but I can think of one, which has pens, if that is what you mean, pens and sheds.

Q. I mean one of those yards you use there, estimating this cost on.

A. A well, and sand bin, I think.

Q. What is the size of the yard?

A. That I could not tell you.

The COURT: Scales?

A. And I think scales, but it doesn't make any difference whether we have scales or not. We either have to have scales or pay for the weighing.

Mr. COWAN:

Q. You have got a standard of stock yards of different classes. The Southwestern roads have, I don't know whether you have or not.

A. We have any standards for stock yards.

Q. You build any sort of stock yards?

A. We never had a standard.

588 Q. So there is no way to get at it to get any independent proof of what the stock yards cost because you have got no standards?

A. No.

Mr. DAWES: Yes, there is.

The WITNESS: No, there is not.

Mr. COWAN: Have you got any that were built by contract?

The WITNESS (to Mr. Dawes): He asked if we had any standard which he could use to arrive at the cost of the stock yards.

Mr. COWAN:

Q. There are certain specifications for certain classes of yards used by all roads in the Southwest, classes 1, 2, 3 and 4, perhaps.

The COURT: My understanding is, he says they are not so divided.

Mr. COWAN: No, he has given no classes.

A. No.

Q. So you have no regular specifications for stock yards?

A. We have no blue prints or specifications, or anything I could show you that would be a guide in arriving at the cost.

Q. Could you furnish a description of some of these yards? I would just like to have it.

A. I think I could, yes sir.

Mr. DAWES: What do you want, specifications and plans?

589 Mr. COWAN: I would just like to see—what is puzzling me is how these yards cost so much money.

The WITNESS: I understand.

The COURT: He will furnish you a description.

Mr. DAWES: I think he can give you a description.

The WITNESS: No, I cannot.

Mr. COWAN: He started out to do that but could only do it in a very general way.

Q. Your stock yards are about of similar construction, I suppose, except the size of the yards?

A. About.

Q. Is that true?

A. Yes, about. Of course, chutes are made in little different ways, different sorts, and different sorts of buildings—different super-

intendents and different superintendents of buildings have ideas of their own and they do vary, and their method of putting in the sand bins, or the barns or sheds may differ.

Mr. DAWES: And as to paving.

A. Yes, and of course, paving.

Mr. COWAN:

Q. Are your stock yards, the cost of the stock yards, carried on the Auditor's books of your Company as one of the items of expense of construction?

A. I don't think they are; I almost know they are not.

Q. When you build new yards, that is turned in as cost of new construction?

590 A. Oh, I don't think our Auditing Department keeps a record of the individual stock yards or stock yards as a whole, to know what they cost. I think any reference that we have ever had to make of it, we looked directly to the Superintendents. I know when I was Division Superintendent, I had a Superintendent of Buildings. At that time we made an annual report to the State of all the buildings that we had at each station, the character of them, and the value, and description, and I remember that that was one of the things that I reported.

Q. To whom?

A. To myself—well, I reported to the State.

Q. What State?

A. Our State, Illinois—I don't remember a number of years ago.

Q. To the Railroad & Warehouse Commision?

A. No, it was before that, a good while ago.

Q. Does the State Commission of Iowa estimate the value of your properties?

A. No.

Mr. DAWES: For taxes it all has to be estimated.

A. It was not for taxes. I have forgotten what the purpose was but I had to make a complete report of that sort.

Mr. COWAN: The reason I am asking you particularly about this matter Mr. Rice, is that where it has been actually estimated as to the value on plans and specifications of these stock yards, it shows enormously less than what is generally supposed.

591 Mr. DAWES: I object, your Honor.

The COURT: The objection is sustained, as a question.

Mr. COWAN:

Q. I wish you would examine when you leave the stand, or when it is convenient, in your Auditor's office, and see if you can find such construction of new yards as has been built in the last four or five years, the cost and if you can find the description of the yards, please do so.

A. Yes sir, I will be glad to do it.

Q. You said you didn't pick up live stock by through trains that left Kansas City with live stock?

A. As a rule. We might, you know, but we don't run, you know, through trains of stock from Kansas City.

Q. Do you run through trains from Omaha?

A. Very few from Omaha.

Q. Well, you do have live stock though, to carry almost every day from Kansas City and from Omaha to Chicago?

A. Well, I hardly think it every day.

Q. Well, every two days, then, or three days?

A. I don't think we have a half a train a week.

Q. Well, when you start out, suppose you have half a train, how do you carry them out?

A. Well, I think, my recollection is that we are quite apt what few straggling cars of stock we get into the meat trains, the packing house trains.

592 Q. That is just the point I wanted to ask you.

A. Either that or else into merchandise trains.

Q. And at what hour do you leave with those meat trains?

A. One o'clock in the afternoon.

Q. To reach Kansas City, or reach Chicago when?

A. They reach Chicago the next evening at six o'clock.

Q. How many cars of meat do you get a day?

A. We run two trains out of each of those places that carry meat, but it is very seldom that any one of those trains is full of meat.

Q. A full train of meat?

A. Yes sir.

Q. You fill that out with other freight if you have it?

A. Well, we most always arrange to have it for that.

Q. Those trains are regular scheduled, and regular numbered trains?

A. Yes sir.

Q. That will be 29 hours with that train.

A. Yes sir, that is 29 hours to our outer yard. Our time concludes at what we call Hawthore Yards. Of course the time for arriving at the Stock Yards is much longer than that.

Q. Now, you run your live stock through, you said in 28 hours, endeavor to do so?

A. In 24 to 28 hours.

Q. When you have a live stock train or a part of one that starts out from Kansas City or Omaha, if there is other live stock on your main line that they can put into the train, you always do it, don't you?

593 A. Well, I think that is done infrequently.

Q. If you don't have a train filled out and the live stock is there wouldn't you do it?

A. We would do it, but as a rule the shipper from those points, if we had one, would not want to be stopped for picking up. He expects a through run when he leaves Missouri River.

Q. If your cars come off of some other line into the main line, 10 cars, say, you could easily put them into the train and run along?

A. Yes sir.

Q. Doesn't that frequently happen?

A. It is not very often with a train that starts out from the Missouri River with stock.

Q. You run your engines light from Kansas City out East, just with the caboose for the purpose of gathering up this stock that comes in to your main line?

A. Yes, I think we do, I can't say.

Q. Name some of your branch lines where you ship most of the live stock off of?

A. Well, in Iowa, the Cumberland branch, the Hopkins Branch.

Q. Do any of those branches furnish as much as a train of stock in a day?

A. Yes sir.

Q. Take stock that arrives here Monday morning, don't those lines generally furnish a train or more for the Sunday shipment, Saturday's night shipment?

594 A. Yes, I think frequently they will furnish a train load, one branch will furnish a train load.

Q. Now, you run that train right on, do you not?

A. Yes sir.

Q. The engines making their regular division, your engines and crews?

A. Yes sir. That stock out there feeds you know, very largely stops at Galesburg and feeds quite largely.

Q. What proportion of the Western Iowa shipments stop to feed at Galesburg?

A. I should think 25 per cent. anyway of the stock that comes from West of Creston feeds at Galesburg.

Q. They don't feed there on account of the 28-hour law.

A. No, it seems to be—I tried to get them not to feed at Galesburg because I thought it was better for them and better for the railroad company, but they persist in feeding at Galesburg.

Q. What are the items of expense incident to carrying a train of live stock and a light engine and caboose through on your main line that picks up this live stock, that makes the latter more expensive than the former?

A. You are talking now exclusively about the main line?

Q. That is the one I am talking about now.

A. Yes, a train that starts out light has got work to do at the different stations.

595 Q. For what?

A. Picking up stock, you said picking up stock.

Q. Go ahead.

A. There is always more or less switching to do. Stock is not always ready loaded for the crew. They have to stop and help pick up. They are twice as long nearly, or much longer on the road than the other and apt to even get in overtime, although we aim not to be so long on the road as to get in overtime.

Q. As a rule you don't get in overtime, in picking up live stock?

A. You may in picking up live stock, but not as a rule, it would be the exception probably, when we do.

Q. Now, what are the items that make up the expense in doing

that business that are not incident also to hauling a through train over the same rails?

A. Well, the switching is the main thing, and the lightness of the load, the lightness with which you finally run, and the fact that you may go over half of the time, or the principal part of the line with a very small part of a train.

Q. Suppose you get a full train by the time you get 125 or 150 miles out from the Missouri River?

A. Why, that will be the end of the run of course.

Q. Suppose you get a full train by the time you get to the end of the run.

A. Yes sir.

Q. You get as much freight per car and per hundred
596 pounds from that run on to Chicago as you would have got if you had carried it clear through. Why isn't it more advantageous to make that light run through than it is to have hauled it for the same rate of freight from the Missouri River through?

A. Why it certainly is not.

Q. I am asking why it is not?

A. You mean we get the same rate of freight.

Q. Exactly?

A. Well, you can't run——

Q. You get a greater rate of freight as a matter of fact, but assume it is the same.

A. You can't do that—I think it is cheaper to haul the full train right from Kansas City over the division.

Q. I am asking for the items of that cheapness. You pay the engineers and firemen the same, pay them by the mile don't you?

A. Yes sir.

Q. You pay for the coal you burn?

A. There is a great deal of extra coal burned and a good deal of wear and tear doing this extra switching.

Q. Do you think there is more coal burned on an engine that runs light out of Kansas City and doesn't get a load than it does with a full train?

A. I think quite as much.

The COURT: It is the switching?

A. Yes, sir, it is the switching.

The COURT: That is all he mentions up to date.

597 A. It is the fuel that is used in the switching of the cars. We do not go right in and get hold of one car or five cars and pull out with it, or even if we did, that consumes coal.

Mr. COWAN: Well, how much would be the difference?

A. You know with a fast passenger train, you take the fast mail, with four cars and we burn just as much coal as another train with fifteen cars, another passenger train with fifteen cars that is making slow time.

Q. What is the difference in the cost of the coal in the two cases of a full train from Kansas City up to some division point, the first division point this side whatever it is, and a light engine that does

the switching and picks up a train by the time it gets there, what would have been the difference in fuel?

A. I could not say what it is, but I think we will consume more fuel on that pick-up.

Q. Are you right certain, do you know that you would?

A. I don't know, but I think we would.

Q. Well, what other item?

The COURT: He said the switching item. Now, if you want to ask what makes up the switching item that is all right. He mentioned coal and wear and tear.

Mr. COWAN:

Q. The cost of the switching item is whatever wear and
598 tear there is in switching?

A. Yes, and the fuel you use.

Q. The fuel you have mentioned those?

A. Yes sir.

Q. The rate of wages and the like of that is all the same?

A. Practically, that is if there is no overtime made.

Mr. DAWES: It is for the engine men, it is not for train men is it?

A. Yes sir, the same for trainmen.

Q. Are they paid by the mile?

A. Yes sir.

Mr. COWAN:

Q. Do these packing house product trains that leave Kansas City at the time you have mentioned, one o'clock in the afternoon, one of them run on a schedule time?

A. Yes sir, every one of them.

Q. Do they make the schedule?

A. Well, they make it pretty regularly. We have no market to run to on those trains. There is no claim if we are late. We aim to make it. Because it is a schedule and because we want to accommodate our patrons, but if we are one hour late, or four hours late there is no claim for damages.

Q. And no damage done?

A. And no damage done. And the train stops as I said, out at our outer yard. That is where we stop figuring on the train.

Q. Well, what proportion of the time will it run on time at the different stations and be on schedule time?

599 A. Why I presume it is on time a third of the time.

Q. A third of the time?

A. Yes, sir.

Q. And when it is not on time it is not the occasion of any damage?

A. No.

Q. Does that train take sidings for live stock trains to pass?

A. Yes, sir, if it is in the way of them.

Q. Well, does it get in the way of them?

A. Yes sir, that is of stock trains.

Q. Do you run that train on Sundays?

A. Yes sir.
Q. You run that every day in the week?
A. No, Mondays we don't run it.
Q. How is that?
A. We have the loading—no, no, we don't run it on Sundays.
Q. Your heaviest live stock movement, however, it does come out Sundays and Sunday nights?
A. Yes sir, our heavy stock movement in the week arrives here Sunday night between midnight and Monday morning at seven or eight o'clock.
Q. So that your heaviest stock movement does not interfere with that train and that train does not interfere with them because the heaviest stock movements are arrivals Monday morning or Sunday night?
A. Well, of course, that particular train is not apt to get in the way of stock trains in Illinois. In Iowa and Missouri I think it does get in the way of some of the stock trains, in fact I know
600 it does.
Q. And if *if* does it takes the siding?
A. If it does the despatcher puts it out of the way.
Q. And the stock train keeps going?
A. Yes sir, we give them the benefit.
Q. So that the stock train has the opportunity of a more regular run than that train does because it does not have to tak*ing* the siding for anybody.
A. Well, it has not the opportunity of more regular run. It is the most irregular train we have but it is given the preference.
Q. *What* is the stock train irregular if everything else gets out of the way after it is loaded coming to Chicago, what makes it irregular if you say everything else is out of the way?
A. The packing house product is on a regular scheduled train and the stock is on extras, as a rule and comes at irregular hours and we are likely to catch it at any time.
Q. Why should there be any irregular speed in a stock train if everything else gets out of the way?
A. Any irregular speed?
Q. Irre*f*ular speed?
A. Well I didn't mean irregular speed.
The COURT: Irregular trains he means.
A. Yes.

601 Mr. COWAN:

Q. What do you mean by irregular trains?
A. I meant an irregular train, not on the time table, stock trains are not on the time table as a rule on the main line.
Q. They are called "extra trains"?
A. Yes sir.
Q. And you know you are going to run them regularly at certain days in the week?
Mr. DAWES: No, he don't.
A. We know we are going to run those trains but they are so

unreliable as to the time that it would be foolish to schedule them because we could not hit the schedule.

Mr. COWAN:

Q. You don't know what hour you will leave the station?

A. No.

Q. But you endeavor to have them ready and leave at such times as you can get in here to the market?

A. Yes sir, we endeavor to do that.

Q. In doing that don't you have about as much regularity of your live stock trains leaving for the Monday's market from the different prominent shipping points in Iowa as you do for any other train passing those points?

A. Oh, no. The stock comes within a certain scope, within a certain limit, but within that limit you cannot tell whether it will be this hour or that hour, or some other hour.

602 Q. Do you mean to say you don't know what time of day you are going to get to the Stock Yards?

A. I mean the stock may be running between four o'clock in the afternoon or eight o'clock in the evening, and we may get that stock at five you know, and may get it at seven, just according to the success of handling it.

Q. Don't you have about a regular time for people to load out there in order to reach the market here?

A. Yes sir.

Q. And shippers all understand that don't they?

A. Yes sir.

Mr. DAWES: Do they do it?

A. Yes, as near as they can, but when I say a regular time, I don't mean time table time, but along about a certain time in the afternoon.

Mr. COWAN:

Q. That is what I mean?

A. The Superintendent or chief despatcher may telephone the agent that the train will be there about such a time.

Q. You said that you stopped trains to get up cattle?

A. Yes sir.

Q. Do you think that is a frequent or infrequent occurrence?

A. Well it is not as frequent as it used to be.

Q. Isn't it a fact that they are gotten up principally when you stop to take water, or at Stations for orders?

603 A. As a rule that is true but often times I have heard stock men ask the conductor if he would not stop at the next station and let him look over the stock. It is between those places.

Q. In running your stock trains from Galesburg into Chicago, you have no occasion to stop for stock then at any stations unless it is for orders, do you?

A. The through trains?

Q. Yes.

A. No.

Q. They run right on through without any occasion to stop?
A. Yes sir, except coal or water.
Q. Isn't that very largely the case after you get a full train load of stock from anywhere, that it makes more regular time, stops at less stations than other trains?
A. After it gets full, yes sir, it does not stop at any less stations that a through freight or through meat train.
Q. How is that?
A. It doesn't stop at any less stations than the through common freight train or a through meat train. It doesn't stop at any less stations, the through stock train.
Q. So there is no difference practically in the regularity of the run of the two?

Mr. DAWES: I object. The use of "regularity" is not a fair one.

604 The COURT: The objection is sustained.

Mr. COWAN:

Q. Is there any less regularity in the running of the two if it doesn't stop at less stations?
Mr. DAWES: He said so twenty times.
A. There certainly is.
Mr. COWAN: Why so?
A. Because of the very nature of the thing, the fact that you run fast, make fast time, you have hot-boxes, you have trouble with the train, the stockmen have got to see the train, we want to see the train, we want to look the train over and then there is more change, there is more apt to be changes in the stock train, even a through train than there is in the meat train or through freight train.
Q. At what time do you leave Western Iowa points, for the purpose of reaching Monday morning's market?
A. We leave, at some places, they leave along in the forenoon and then up to noon and in the afternoon. They aim to leave Creston about eight o'clock in the evening.
Q. Eight o'clock in the evening, what evening?
A. The evening that they ship, in the evening.
Q. For the Monday's market?
A. It would be for Monday morning's market, they would leave Creston about, they have been leaving Creston about eight

605 o'clock for Monday morning's market.

Q. Eight o'clock what day?
A. Sunday—Saturday.
Q. Saturday. How far is Creston from Chicago?
A. Four hundred miles.
Q. Now, taking the other shipments in that territory, is that about the rule, that you leave on Saturday night?
A. Yes.
Q. For the Monday morning's market?
A. Yes sir, about that.
Q. You said that you had 739 cars of live stock on Sunday to move, and that you had to tie up 500 dead freight cars?

A. I said we had—it was reported to me that we had 739 cars of stock in here Monday morning on the Sunday's run.

Q. Yes.

A. And that on account of the unusual number and the use of the power, that 500 cars of dead freight were tied up at Burlington on that day that could not be moved for want of power.

Q. Now when was that moved?

A. Well, I asked yesterday and I didn't find out.

Q. Well, it was probably moved within the next day or two.

A. Yes sir, within a couple of days.

Q. They probably moved within a couple of days after that?

A. Yes sir.

Q. Some the next day, some the next day and so on as your power came in?

A. Yes.

606 Q. What classes of freight do you pay loss and damage on for delay?

A. Well, I could not say all of the classes. I know we pay on live stock.

Q. And you pay on packing house product and dressed meat?

A. No, not unless it is a physical injury to the product.

Q. On ordinary dead freight don't you pay a lot of damages for delays?

A. Well, I don't know of any damages for delay, there may be, that don't come within my province.

Q. At all events you don't know of any?

A. I don't know of any.

Q. Will you *in*numerate the items that make up the cost of expenditures per train mile for moving a train from Creston into Chicago, not including the cost of maintenance of the way and the structure, the roadway, what are the items of cost of the mere matter of train service for moving that train from Creston to Chicago?

A. I don't think I could enumerate all of the items.

Q. What are the prominent ones that occur to you now.

A. Well, it would be the wages.

Q. At what rate?

A. Of a train, one train?

Q. Yes, the engine men?

A. Well, we pay our engine men 4.6 cents a mile, the engine men.

Q. And firemen?

A. Let us see, he gets 3.05 I think.

Q. Three and a half cents a mile?

A. 3.05 cents.

Q. 3.05 cents, excuse me. The conductor?

A. He gets 3.45.

607 Q. How many brakemen have you?

A. Two.

Q. How much do each of them get?

A. 2.30 I think it is.

Q. Do you know how much it costs per locomotive mile on the average on your system of road for operating your locomotives?

A. I don't.

Q. Do you know how much it costs per mile run for fuel, on the average?

A. No.

Q. Do you know how much it would cost for the fuel per hundred miles, for a run like that with 30 cars of cattle?

A. No, I never saw it figured.

Q. Those are all items which are contained in your annual report which your Auditor has?

A. I don't know, I presume so.

Q. At all events, that is the only source you would know to go to?

A. Yes sir.

Q. Do you know what it costs per mile on the average for the repair of freight cars per mile run?

A. No.

Q. Do you know what is estimated as an expense per mile run or per hundred miles run for repair of freight cars?

A. No, I do not.

Q. Is it not a fact that on your branch lines there are regular trains that have to operate in order to keep up the service you have to perform anyway every day?

A. Yes.

Q. Is it not a fact that all of those regular trains on the
608 days when you are moving stock, carrying live stock in and the empty cars back for distribution?

A. Yes sir, some portion of them.

Q. Have you any definite figures with respect to the life of a live stock car?

A. I have not. I tried to find that out.

Q. Have you inquired of the owners of private stock car lines here to ascertain that fact?

A. I have not.

Q. Have you any definite figures as to the average life of the ordinary box car?

A. No, not any definite figures.

Q. Or the refrigerator car?

A. No.

Q. Why do you say the stock car would deteriorate faster than the other?

A. Well, it is because of its construction and usage, the use it is put to, and the fact that the floor rots out much more rapidly than any other car that I know of unless it would be a refrigerator, those I don't know about; but they rot out much more rapidly than a box car and the water, you know, runs down the post into the joints and rots them out, and just the rotting process, it deteriorates in that way besides the usage which it gets from animals.

A recess was here taken until 2:00 o'clock p. m. Thursday, September 21, 1905.

609 SEPTEMBER 21, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon JOHN H. RICE resumed the stand for further cross-examination by Mr. Cowan:

Q. What part of the road of the C. B. & Q. System do you work on, Mr. Rice?

A. At the present time the whole system.

Q. The whole system?

A. The whole system, but my experience has been principally in Illinois, and for two years in Iowa.

Q. Do you know what the average number of loaded cars per train mile is on the system?

A. I could not give it. Twenty something, but I could not give it exactly.

Q. Less than twenty isn't it?

A. No, I think it is over twenty.

Q. More than twenty?

A. Oh, loaded cars, excuse me. No, I don't remember what the loaded cars are.

Q. I believe you stated what the average loading per loaded car was but I don't recollect it.

A. No, I did not, that is I did not only in the stock, I did
610 not, generally.

Q. Generally, what is that, if you know, the average loading per loaded car mile on the system?

A. Well, I could not give that.

Q. Is it not a fact in the conduct of the railroad business that you must have some schedule trains to carry the traffic or that in the actual operation you do have them?

A. Yes sir.

Q. Is it not a fact that those trains go, whether they have got a loading equal to the engine capacity or not?

A. Yes sir.

Q. Does it not happen——

A. That is not all of them, but some of them do.

Q. Well, it happens that some of them go that way?

A. Yes sir.

Q. Is it not a fact that it often happens that you must return the crews which do the service whether they have got a load to return with or not?

A. Yes sir. But for a great many years across the state of Illinois the only schedule freight trains that we have had have been local freight trains, way-freights and the product trains and the merchandise trains west bound. No other freight train has been scheduled for quite a number of years, just the local way freight and the packing house trains east bound.

Q. Without attempting to say what proportions of your
611 trains have been scheduled, whether they are scheduled or not, the crews which go with the train to the west must return to their division point in a certain time, isn't that true?

A. Yes sir.

Q. Otherwise you would have to pay them for overtime if they are regular crews?

A. Yes sir.

Q. The extra crews, what you call extra men, you can call where you please, is that true?

A. We can c-ll them when we please, but they are the particular ones to whom we pay the over-time. That is, a schedule train that goes from A. to B comes back to-morrow, has its pay adjusted for that lay over at the opposite end; but the extra man that goes on, his time counts from the time that he starts till the time that he gets back so that, if we hold him at the terminal we are paying him for the time that he lays over whether he does anything or not.

Q. Do you mean that if you start a man from Galesburg to the next division west, at Burlington——

A. Ottumwa would be the next point.

Q. That when he takes the train that is run as an extra that that conductor and brakeman and the engineer and fireman are paid for the time that they lay over at Ottumwa?

A. It does not happen to be so in that particular case, because it has been decided—Our schedule arranges that that is a
612 trip from Galesburg to Ottumwa and a trip from Ottumwa to Galesburg; but there is an intermediate place from Burlington to Ottumwa that is called a return trip so that if you will use that illustration, so that if you start a train from Burlington to Ottumwa and back, which is done every day, several of them, then you pay these men from the time they start till they get back so that if they are afforded a schedule rate of speed of ten miles an hour, you pay them all their time and that is the way with all of those trains that go on the branches for stock or anything else.

Q. So that when a man starts out, he is entitled to so many miles run or you pay him for the overtime if in making those miles he don't make ten miles an hour?

A. Yes, especially so with the extra trains.

Q. Now, doesn't it happen in the conduct of your railroad business therefore,——

A. What is that?

Q. Does it not happen in the conduct of your business that you have to run a great many trains with a light engine loading or you have got to pay more for the time of the crew when they are not in fact at work, do one or the other?

A. Yes, you have to pay for a good deal of light running, of course.

Q. You have got to do one or the other?

A. Yes, and our principal payments for light runs is on the branches.

613 Q. Doesn't it happen therefore, that your train loading, your average train loading can never show up to your locomotive capacity, isn't that true?

A. Well, it depends on the traffic, on the character of the traffic.

Q. Has it ever done it in any instance that you know of?

A. Yes sir.

Q. How is that?

A. Yes sir.

Q. Do you mean to say that the average for a year's time or six months time would show that your average train loading was up to your locomotive capacity?

A. I don't mean exactly that, but I do mean that we have sections of the road where the average tonnage is very close to the average capacity of the engine, that is our rating of the engines.

Q. Where?

A. Well, it is particularly between Kansas City and St. Joseph and it is between St. Paul and here. Not St. Paul and here possibly, but between St. Paul and Savannah and in our coal territories.

Q. You are talking about coal trains, are you?

A. I was not talking about coal trains, I just mentioned them there. I meant all capacities.

Q. It appears from the statistics in the report of your road that the average loaded cars per train for the year 1904 was 18 and the average number of empties on the train, 7. The tonnage
614 revenue, tonnage per train mile, 284. Now, assuming that those figures are correct, is it not a fact that that is very much below the tonnage rating of your engines hauling your business?

A. That is net tons, of course, that you are talking about.

Q. That is what I am talking about.

A. Of course, we have got some tare there that I don't know, you know, how much it will increase that.

Mr. SEVERANCE: That don't include the weight of the cars?

A. No, I say the tare, we have not got that.

Mr. COWAN:

Q. On an average, what are your high class engines capable of hauling of revenue freight per train mile?

A. That varies very many times, you know, in the different divisions and subdivisions of the road.

Q. Dependent upon the grades?

A. The grades, yes sir.

Q. Is it not a fact that an engine can haul a great deal more freight from Galesburg to Chicago than it can from Kansas City to Galesburg?

A. Well, not a great deal more, but it can some more.

Q. Is it not a fact that they can haul more from Galesburg to Chicago than over any division in Iowa?

A. No.

Q. What division in Iowa, can you haul as much over?

615 A. Well, they can haul about as much over the Ottumwa Division and over the Burlington Division. That would be

from Creston to Ottumwa and Ottumwa to Burlington. I would just like to qualify that by saying that we do haul practically as much between Ottumwa and Burlington and Creston and Ottumwa as we do from Burlington to Chicago, but it is done by assistance.

Q. Now is it not a fact, that you start out with a train where you have better grades from Ottumwa to Burlington, and you have got heavier grades from Burlington to Galesburg, that you cannot stop to load up your engine so as to secure your capacity over each division?

A. Oh, no, all trains must be loaded so as to get over the maximum grades on a conductor's run.

Q. Take thirty cars of cattle from Creston to Ottumwa and Ottumwa to Burlington, you would not try to load out that train from Burlington to Galesburg with other cars?

A. No.

Q. So that you get your maximum strength of the engine from Burlington to Galesburg, but you don't get it on any one of the other three divisions, is that true?

A. Well, that is not exactly true, but practically it is.

Q. Can you explain how it happens that on the average of your train loading, you load eighteen loaded cars with a tonnage equal to 15 tons per loaded car mile on an average for the year,
616 when your locomotives are capable of pulling very much more than that amount of tonnage?

A. Well, of course, you don't take the gross there, you don't take in the empties.

Q. I don't take the gross. You cannot figure any gross, that would make more than your engine rating. 284 revenue tons per mile.

A. From the figures as I understand that you read there, those are the train tonnage, which I understand to be the net tonnage.

Q. The revenue tons?

A. Revenue tons. I cannot consider that because I do not know what the tare was, that is the empty weight of the cars, the empty cars in the train.

Q. I have called the empties in addition to the loaded cars, seven empties and eighteen loads?

A. That is over the whole railroad?

Q. Yes.

A. That is not over the particular territory that you are considering, I don't think.

Q. Why not?

A. That is over the whole railroad, that takes all the inferior branches.

Q. Don't this live stock shipment take in the inferior branches?

A. Yes, Well, now, I cannot——

Q. What traffic—Were you going to say something more?

A. Well, go ahead.

Q. What traffic loads the least revenue tonnage compared to the weight, the dead weight of the car?

617 A. I think the stock does.

Q. Are you certain of that?

A. I should think it would.
Q. What is your minimum rate on dressed meat?
A. 22,000 pounds.
Q. 20,000 ain't it?
A. 22,000, I think.
Q. The minimum weight in your schedule?
A. I think so, I am not certain.
Q. Well, assume it is twenty. It averages about 22,000?
A. Yes sir.
Q. How much does a refrigerator car weigh?
A. About eighteen and a half tons.
Q. Are you certain that is correct?
A. Yes sir.
Q. And the ice and salt?
A. Yes, eighteen and a half tons.
Q. 37,000 pounds?
A. Yes sir.
Q. And the ice and salt?
A. With about five tons of ice.
Q. Not five tons of ice, you don't mean that?
A. 5,000 pounds.
Q. That would be 42,000 pounds?
A. Let me see.
Q. 37,000 and 5,000 would be 42,000?
A. Why no. The car weighs eighteen and a half tons.
Q. That is 37,000 pounds.
A. And the load is 11 tons.
Q. 5,000 pound of ice and salt making 42,000 pounds?
A. Yes sir.
618 Q. And 22,000 pounds of dressed meat?
A. Yes sir.
Q. Cattle will load about 23,000 pounds on the average?
A. Yes sir.
Q. A cattle car will weigh about fifteen and a half tons?
A. Yes sir.
Q. Plus the manure?
A. No, plus it, I mean including the manure.
Q. 15½ including the manure?
A. Yes, I think it would.
Q. So that the percentage of dressed meat to the gross weight of the car is less than the—than in the case of the cattle.

Mr. DAWES: That is a matter of figures, anyway. I don't think the witness ought to be called upon to take the time.

Mr. COWAN:

Q. Now let me ask you if in any case there would be more in a train than twice as much weight of the car as the contents of the car? The car would never weigh more than twice as much as the contents, would it?
A. No. Of stock, you mean?
Q. Of anything, is there any freight like that?

Mr. DAWES: Wouldn't it depend on how much there was in the car?

Mr. COWAN:

619 Q. Is there any carload freight where the car would weigh more than twice as much as the load?

A. I don't recall anything.

Q. Isn't it a fact that it costs more to handle less than carload lots and local freight, than carload freights per ton?

A. Yes sir.

Q. How much more, in your opinion?

A. Well, I could not give a figure on that.

Q. What are the ratings of the engines that do the business on your line of road?

A. Well, on the line of road we have a great many types of engines.

Q. Take the principal type that haul the live stock traffic and dressed meat products from the Missouri river on your main lines?

A. 180,000 pounds on the drivers.

Q. What is their capacity?

A. Well, they have 200 pound pressure and 180,000 pounds on the drivers. Now what do you mean?

Q. Their capacity on the different classes of trains.

A. We average from 800 to 850 gross tons on stock and about 1,000 tons on packing house freight, 1250 to 1500 tons on ordinary freight.

Q. Have you taken the pains to ascertain definitely just exactly what these engines will haul of the competitive products you have mentioned?

620 A. Yes, we have taken a great deal of pains, you know, to arrive at what is a train load for these different classes of freight.

Q. Those matters are all reported to your general office?

A. Yes sir.

Q. Were you in the service at the time when Dr. Darious Miller was Vice President of your company??

A. Yes, he is now.

Q. And Mr. Delano was your General Manager?

A. Yes sir.

Q. Whatever figures you ascertained in these matters are reported to your general office?

A. Yes sir.

Q. Do you use a 36 foot car in the carriage of live stock?

A. Yes, principally.

Q. What is the light weight of those cars? They have a stenciled weight upon them called the light weight of the car. What it that?

A. It is about 14½ tons.

Q. Are your cars built upon substantially the same pattern as the average 36 foot cars used by other railroads?

A. I think they differ, they are different than the Northwestern, anyway.

Q. In what particular?

A. I could not describe the difference, possibly the Northwestern is a little heavier car.

The COURT: How is that material. Do you want to go
621 into all those details now?

Mr. COWAN: I don't want to go into that with other witnesses, but Mr. Gardner, in my judgment inadvertently, perhaps, magnified a great many of those items and I am sure from the examination that he is mistaken in regard to them.

The COURT: The way to get at those things would be to get the size of the cars accurately without having the witness guess about it.

Mr. COWAN: We have no statistics unless we send somebody out to look after them, to look at the cars themselves.

The COURT: What good would it do if you got it? They would have to go out and look at them. Then they would have the right to say that that is not true. I will sustain the objection to that cross-examination.

Mr. COWAN: Your Honor would not sustain the objection on the question of the weights of their cars?

The COURT: The next man that came on you would say that you would want to cross-examine him because this man did not know.

Mr. COWAN: If I knew any other way to do it I would do it.

The COURT: Send a man out to examine them and measure and find out, if it is material. What I am trying to do is to stop unnecessary examination.

The WITNESS: I have not guessed at any of the weights that I have given you but of course, I don't know about the North-
622 western.

Mr. COWAN:

Q. Your 36-foot cars weigh about 14½ tons light, do they not?

A. Without anything in them at all.

Q. Do you know what the weight is of the private car line cars like the street stable cars, and others?

A. No, I don't. I think they are a little heavier.

Q. You spoke of your trains running five miles an hour with ordinary dead freight?

A. Yes sir.

Q. The schedule which you have furnished me shows the schedule of your regular schedule trains, does it not?

A. I don't think there is a dead freight on that schedule.

Q. What do you mean by "dead freight"?

A. I mean ordinary freight trains.

Q. Are they all run as extras?

A. They are run as extras, principally.

Q. What are those schedule trains intended to carry?

A. If you have the Creston Division there, from Omaha, the two first trains there,—there are six passenger trains there and then two

freight trains. No. 70 and 74. Those are both packing house trains and the next train is a local train.

Q. They carry packing house products and dressed meats?

A. The—Two trains there are carrying packing house products and dressed meat and the next train is a local or way freight
623 train.

Q. Do your packing house products and dressed meat trains afford sufficient tonnage to carry practically all of your through traffic from those points to Chicago?

A. No. That is, after taking the packing house freight we generally fill up with other freight, but not all.

Q. Are the trains which are run other than those which are scheduled run on a less rate of speed than the schedule trains?

A. Well, the stock trains are unscheduled, and of course they run faster.

Q. I mean the extras which carried other freight than live stock.

A. No, they don't make as fast time as the time of the two trains here.

Q. What do you consider the proper speed to get the maximum service out of an engine and the maximum service of an minimum cost from the crew?

A. It is generally thought by railroads and among railroad men and it is our judgment, that ten miles an hour is a profitable speed and we have tested our tonnage and rating and that is the capacity of the engines on the speed of ten miles an hour, assuming that they are confined strictly to dead freight. Now, if that is 100%, we call that 100%. Now, the stock or meat train is running some per cent. light of that.

Q. A train of that class is expected to run at whatever speed it can down grade and on level ground?

624 A. Yes sir.

Q. And at ten miles an hour on your maximum grades, isn't that true?

A. No, they won't make ten miles an hour on the maximum grade, they may not make over five, but we aim to have them make ten miles an hour from the commencement of their run to the completion of their run.

Mr. DAWES:

Q. Just one question. You stated that some of those stock cars went back loaded with coal. Stock cars from the Missouri river to Chicago. They don't get their coal loaded at Chicago, do they?

A. No.

Q. Where did they go for their coal load?

A. Some of it is loaded in Illinois and some in Missouri and Iowa. Middle Missouri and Middle Iowa and southern Illinois.

Q. It contemplates a considerably empty run before they get there?

A. Yes, the stock cars go out of their way quite a good deal in order to get the loads, if that is what you mean.

Mr. RANSON:

Q. Mr. Rice, you spoke of giving live stock trains coming to Chicago the right of way over passenger trains and freight trains and that ordinary freight trains laid by to give the live stock train
625 the right of way and that it required all your motive power to move the live stock trains at such times and that all this was done for the purpose of hastening the live stock trains to Chicago. Now, I will ask you whether if the same efforts were made and the same energy put forth and the same facilities offered in moving trains with live stock from the 23½ cent zone to Missouri River points there would not be a stimulation of the live stock shipments to those points?

The COURT: To where?

Mr. RANSON: Missouri river points.

A. I presume so.

Q. As a matter of fact such facilities and such energy are not put forth in that zone towards the Missouri River as are put forth to carry these trains to Chicago?

A. There is not the volume of business.

Q. There is not such care taken to hurry the stock to the Missouri River points?

A. No sir.

Q. You don't give the trains carrying live stock to the Missouri River market such preference over passenger trains or freight trains as you state are given to the live stock trains coming to Chicago?

A. Not in any respect.

Q. Your train schedules are all so arranged as to facilitate the shipments to Chicago, not necessarily arranged with that object in view, but your train schedules and train arrangements have
626 that effect?

A. Yes sir.

Q. No such care is observed as to the trains carrying live stock from the 23½ cent zone to the Missouri river?

A. No sir.

Mr. SEVERANCE:

Q. What you have said with reference to the character of the service that you give to Chicago as compared with Missouri river points would apply likewise to a comparison between Chicago on the one hand and South St. Paul on the other? You don't give any of this extra service to shipments into South St. Paul?

A. I don't think we have much of it, but then we would not, there is no occasion to do it.

Q. Your road runs up the Mississippi river into St. Paul?

A. There is no special effort made on the stock into St. Paul.

Q. Any more than there is to the Missouri river?

A. No.

Q. You bring out from South St. Paul cattle and products, both?

A. Yes sir.

Q. But you make no effort to stimulate the shipment of cattle

from Wisconsin points on your line which are much nearer to St. Paul than they are to Chicago, into St. Paul, do you?

A. No sir.

627 Re-direct examination by Mr. BAXTER:

Q. You were asked with reference to the average tonnage of live cattle and live hogs per train mile. You were asked about your annual report, what it contained in that regard. Did you include in that estimate the movement of empties out to the points of shipment?

A. No sir.

Q. You were also asked with reference to the weight of the empty live stock car. Did you take into consideration the sand bedding which is usedz?

A. Yes, I stated that our empty cars, our 36-foot cars weighed about 14½ tons, the naked car without any bedding of any sort.

Recross-examination by Mr. COWAN:

Q. How many empties do you haul back when you take home the empties with the engine going back to the western point, from Chicago to Galesburg, say?

A. Well, of course, we have to run just as many trains west as we run east, and we are not particular about that number of cars. We don't save any crews.

Q. Your crews have to return, anyhow?

A. Yes sir.

628 Q. Is it not a fact that the heaviest tonnage of freight is considered west bound?

A. No sir. It may not produce but——

Q. Take the average for the year.

A. When the conditions are normal our tonnage is supposed to be east bound.

Q. Heaviest for the east bound?

A. Yes, and for twenty years I never saw it a day other than east bound, but not recently, not within ten years.

Q. What is the capacity of your 36-foot cars in tonnage?

A. 30 tons.

Q. You identify this as being your schedule?

A. Yes sir. (Referring to a paper.)

629 J. H. HIGHLAND, called and sworn as a witness on behalf of the defendants, testified as follows:

Direct examination by Mr. BAXTER:

Q. Mr. Highland, what is your occupation?

A. Third Vice President of the Chicago Milwaukee & St. Paul Railway Company.

Q. How long have you been connected with the Freight Traffic Department of railroads in the United States?

A. In an official way upwards of twenty five years. Longer than that in other capacities.

Q. With what railroads have you been connected during that time?

A. Chicago, Milwaukee & St. Paul, the Chicago, St. Paul, Minneapolis & Omaha, and as arbitrator of various lines running from here to St. Louis and the Missouri River. I will, however, say that that was in passenger service only.

Q. Did your duties during that period have relation to the making of freight rates, and if so for what portion of that period?

A. Well, I should say more than twenty five years. I can give it to you exactly if necessary, but upwards of twenty five years.

Q. I wish you would file as Exhibit No. 1 to your testimony a statement of carload lots and less in cents per hundred pounds
630 now charged on cattle, hogs and packing house products respectively in carloads from the following points: Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Omaha, South Omaha, Nebraska City, Sioux City, St. Paul, South St. Paul, Ottumwa, Des Moines, Marshalltown and Cedar Rapids, respectively?

A. I have such a schedule here.

(Paper produced, marked "Highland Exhibit No. 1 F. B. D." and is attached hereto.)

629a HYLAND EXHIBIT No. 1.

Rates on Cattle, Hogs, Packing House Products, and Fresh Meats, in Carload Lots, to and from Points Shown Below, in Cents per Hundred Pounds, as Carried by the Chicago, Milwaukee and St. Paul Railway, September 21, 1905.

To Chicago		Local rates.	When from beyond.	When for points east of Chicago.
From—				
Kansas City	Cattle	23.5	20	
	Hogs	23.5	20	
	P. H. P	20		18.5
	F. M	20		18.5
South Omaha	Cattle	23.5	23.5	
	Hogs	23.5	23.5	
	P. H. P	20		18.5
	F. M	20		18.5
Sioux City	Cattle	25		
	Hogs	25		
	P. H. P	20		18.5
	F. M	20		18.5
South Saint Paul	Cattle	25	20	
	Hogs	25	17.5	
	P. H. P	15.7		14.6
	F. M	17		15.7
Ottumwa and Marshalltown	Cattle	22		
	Hogs	21		
	P. H. P	16		16
	F. M	16		16
Des Moines	Cattle	22		
	Hogs	23.5		
	P. H. P	18.5		18.5
	F. M	18.5		18.5
Cedar Rapids	Cattle	21		
	Hogs	18.5		
	P. H. P	13.5		13.5
	F. M	13.5		13.5

Q. I wish you would state Mr. Highland, whether the rates on cattle and hogs set forth in said Exhibit No. 1 and the rates from your intermediate stations to Chicago are just or unjust, reasonable or unreasonable and give your reasons for any opinion you may express?

A. The rates on live stock in my opinion do not bear a just proportion in the contribution to the total revenue derived for the transportation of freight carried by the Chicago, Milwaukee & St. Paul Railway Company as adjusted between the points mentioned. The reason for that is the stress of competition that exists at the lower end of our line, which makes it necessary to meet a short line rate over a longer distance as we go north on the Missouri River where the rates are, by reason of the competition and the markets,

631 necessary to be held on a parity in order to enable the industries located at the various points to market their products in competition with the markets located at near by, what we may call the source of supply or the originating points, that can handle the business from the Missouri River and the Mississippi river and Chicago. What I mean by the Mississippi River is St. Louis, being a distance of only 277 miles to Kansas City and the adjustment of rates as between St. Louis and Chicago holding arbitrarily between St. Louis rates and only five cents at the outside above the adjustment from the Missouri River, for the shorter distance to St. Louis.

Q. Are the rates on cattle and hogs mentioned in your Exhibit No. 1 in this case affected by competition between markets as well as between carriers?

A. Yes sir.

Q. Did the number of cattle and hogs produced in the territory affected by the rates on cattle and hogs mentioned in your exhibit No. 1 in this case, and the money value of said cattle and hogs increase or decrease during the period between 1900 and 1905?

A. Well, they increased. I say the business has increased. I think that the increase is due more to the general development of the country than it has to the influence perhaps of freight rates. I do not think that the question of freight rates as they exist at the

632 present time between the territory or between the points you mentioned, the Missouri River on the one hand and the large consuming markets on the other, that the increase has been influenced by the freight rates necessarily. That is the production of the raw material.

Q. Well, have the freight rates been so high as to prevent the business from increasing?

A. Have the rates been higher?

Q. Have the rates been so high as to prevent the traffic from increasing?

A. Not in my opinion, no sir.

Q. Are the freight rates on cattle and hogs from the points of shipment mentioned in your Exhibit No. 1 to points of final destination greater or less than the sum of the local rates between said points where the through line is made up of two or more railroads?

A. The local rates are higher than the proportion of the through rates from the Missouri river to the markets mentioned.

Q. But is the through rate from any Missouri river points to Chicago higher or lower than the sum of the local rates from the Missouri River or some intermediate place plus the local rate from that intermediate point?

A. No sir.

Q. Which is it, higher or lower, the through rates? My question is, are the through rates from points on the Missouri river to Chicago higher or lower than the sum of the local rates from the Mis-
633 souri river and some intermediate point plus the local rates from that intermediate point.

The COURT: Are they lower or just the same?

A. Well, I don't know that I quite catch that, but I will answer it in this way so as to be clear in answering what you want to ascertain, if I understand your question properly.

We will take the rate from Missouri River to Cedar Rapids local and the rate from Cedar Rapids to Chicago local *versus* the rate from the Missouri river to Chicago and the combination is higher.

Mr. BAXTER:

Q. That is what I wanted to know. How do the rates on cattle and hogs set forth in your Exhibit No. 1 and the rates from your intermediate stations to Chicago compare with rates charged by other railroads in the same or other parts of the United States for the transportation of cattle and hogs from other points of shipment to other points of destination and distance and other matters being relatively considered.

A. I can only answer that question by producing the rates as they exist for distances. I don't know what influences governs the making of rates to other markets outside of the territory that the C. M. & St. P. Railway serves and they fix their rates with reference to conditions as they find them in competition with the roads
634 reaching the same sources of supply and going to the same destination or consuming markets.

For example, I don't know what governs the rates between points in Illinois, Indiana, and Ohio to Chicago for the same distances that we make our rates from points west of the Mississippi river. I am not familiar with that territory and therefore I am not competent to state how they compare, I don't know. I can only file what the tariffs indicate without expressing any opinion as to their reasonableness or unreasonableness.

Q. Have you prepared a comparative statement of that kind?

A. I have, I have a statement of that kind made.

Q. Will you file that as exhibit No. 2 to your testimony?

A. Yes.

(Paper produced marked Highland Exhibit No. 2 F. B. D." and attached hereto.)

635a HILAND EX. 2. No. 14.

Compared Statement Showing the Rates in Cents per 100 Pounds on Live Stock to Chicago, Ill., as Compared with Rates on Live Stock to Other Markets for Like Distances

Actual distance.	From—	To—	Group.	Cattle.	Hogs.
297	Bidwell, Iowa.	Chicago, Ill.		22	21
300	Hershey, (4) Neb.	So. Omaha, Neb.	300 mi.	22	29
298	Winship, S. D.	Sioux City, Iowa.		27	30.3
304	Newark, S. D.	So. St. Paul, Minn.		22	25
326	Maxwell, Iowa.	Chicago, Ill.		22	22.5
329	Benkelman, (2) Neb.	So. Omaha, Neb.	325 mi.	23	30
323	Bowdle, S. D.	Sioux City, Iowa.		26	30
321	Harlem, N. D.	So. St. Paul, Minn.		22	25
347	Sewall, Iowa.	Chicago, Ill.		22	23.5
353	Spearville, (1) Kan.	Kansas City, Mo.		24	28
357	Big Spring, (4) Neb.	So. Omaha, Neb.	350 mi.	24	31
353	Zeeland, N. D.	Sioux City, Iowa.		27	32
351	Bowdle, S. D.	So. St. Paul, Minn.		24	30
376	Jamaica, Iowa.	Chicago, Ill.		21.5	23.5
374	Sears, (1) Kan.	Kansas City, Mo.		24	28.5
368	Julesburg, (4) Colo.	So. Omaha, Neb.	375 mi.	25	32.5
373	Straburg, N. D.	Sioux City, Iowa.		27.5	32.5
371	Selby, S. D.	So. St. Paul, Minn.		27.5	32.5
403	Churdan, Iowa.	Chicago, Ill.		23.5	23.5
394	Ingalls, (1) Kan.	Kansas City, Mo.		24.5	30
410	Sidney, (4) Neb.	So. Omaha, Neb.	400 mi.	28	36
402	Chadron, (3) Neb.	Sioux City, Iowa.		28	35
391	Evarts, S. D.	So. St. Paul, Minn.		28	34
427	Manilla, Iowa.	Chicago, Ill.		23.5	23.5
420	Wallace, (4) Kan.	Kansas City, Mo.		25	30.5
429	Potter, (4) Neb.	So. Omaha, Neb.	425 mi.	28	36
414	Whitney, (3) Neb.	Sioux City, Iowa.		28	37
421	Oberon, (5) N. D.	So. St. Paul, Minn.		24.5	31
452	Portsmouth, Iowa.	Chicago, Ill.		23.5	23.5
448	Hartland, (1) Kan.	Kansas City, Mo.		25.5	31
447	Kimball, (4) Neb.	So. Omaha, Neb.	450 mi.	29	38
456	Harrison, (3) Neb.	Sioux City, Iowa.		28	39
450	Leeds, (5) N. D.	So. St. Paul, Minn.		24.5	32.5
473	Underwood, Iowa.	Chicago, Ill.		23.5	23.5
477	Medway, (1) Kan.	Kansas City, Mo.		25.5	31
479	Dixon, (2) Colo.	So. Omaha, Neb.	475 mi.	31	41.5
463	Van Tassel, (3) Wyo.	Sioux City, Iowa.		29	41
477	New Salem, (5) N. D.	So. St. Paul, Minn.		26.5	
502	Luton, Iowa.	Chicago, Ill.		24	23.5
501	Granada, (1) Colo.	Kansas City, Mo.		26.5	34.5
503	Hardin, (4) Colo.	So. Omaha, Neb.	500 mi.	33	42.5
503	Keeline, (3) Wyo.	Sioux City, Iowa.		33	45
506	Glenmullen, (5) N. D.	So. St. Paul, Minn.		28.5	

(1) A. T. & S. F. R'y. (2) C. B. & Q. R'y. (3) C. & N. W. R'y.
(4) Un. Pac. R'y. (5) Nor. Pac. R'y.

Q. I will ask you in your experience and observation as a freight traffic man whether there is any such invariable rule as necessitates that the same rate shall be charged on the raw material as is charged upon the manufactured product?

A. I have in mind a case where the manufactured product is charged materially less than the raw material. I have no doubt but that investigation will disclose numerous cases where the
635 manufactured product is less than the raw material.

Q. Mr. Highland, in the south a great deal of cotton is produced. In the New England states there is no cotton produced. There are cotton mills in the south that manufacture what is known as cotton factory products and there are also mills in New England which manufacture cotton factory products. Would the rate on the raw material, the raw cotton in this case, necessarily have to be as low as the rate on the cotton factory products from southern points to New England?

A. If I was engaged in the handling of the traffic I would make the raw material, if possible, I would make the rate so that the raw material would be used as near where it is raised as possible and to ship it out to New England if I could get a higher rate than the manufactured product, I would make it.

The COURT: Why would you do that?

A. Why would I do that?

Q. Yes.

A. I would do that for the purpose of developing the country that the railroad for which I was employed might increase their traffic and they would increase it by reason of getting a great population, more passenger traffic and more incidental freight traffic and would encourage the further development of the soil itself. Instead of having 160 acres cultivated I would want 640 cultivated and to do
that I would make it an object to have the material manufac-
636 tured so that it could be placed in less bulk and distributed where it would in the end realize to the producer a greater value than would the raw material it shipped into New England in the larger volume.

Q. Wouldn't you take into consideration what would pay your company the most in doing all this?

A. I am figuring on what would pay the company the most in my opinion.

The COURT: In the end, but that is the number of years, perhaps. Would it not be your duty to your railroad company to figure the tariff so you would get the most out of it?

A. Well, we are not figuring, Judge, on the immediate future. When we built our railroad into South Dakota, if we had figured in that way we would have a very much less population. Now, the greater the population the greater the revenue produced for the railroad serving it and developing it.

Q. You have not followed that theory in this most business in this country, have you, except in the last year or two?

A. Well, that is true, but if you will go back to the history of the rate making and the difference that is charged on cattle and packing

house product, you will find that the theory upon which the rates were originally made was entirely different. The conditions were different, and in the course of evolution, these things have
637 come on so that it is now possible to carry the finished product at a great deal less than we were able to carry the perishable article when the rates were originally established.

So that the theory in making of rates on this particular commodity that I am testifying about, the theory of making the rates on the cattle higher or the same or less than on the finished product, has been reversed. When we moved the finished product of hogs 25 or 30 years ago, it was not the way we move them now. They could only be moved from December until March and they were moved dressed. Therefore, the rates made and the risk assumed was a great deal more than they are now.

The revenue produced was less relatively and therefore we charged a higher rate so that in the fixing of rates we have been governed very largely, I admit perhaps not through good judgment, altogether or a careful study of the question but by tradition rather than conditions. Tradition is what has had a great deal to do with the making of these rates and the continuing of them.

638 The COURT:

Q. Away back before any public authority had anything to do with a rate on the finished product of hogs and cattle, the rate on them was two or three times as much as on the live stock?

A. The rates on live hogs, or what we used to call dressed hogs, they were rated in the merchandise class, and we used to get second-class rates. In those days we got a car rate for live stock and the cars were much smaller. The conditions for handling them were very inferior. The time was much slower and the expense of taking care of them at the point of shipment and destination was entirely different from what it is now.

Q. Refrigerator cars have made the difference, have they?

A. Yes, sir, refrigerator cars.

Q. Nobody discovered that, this difference, until the Great Western came in and made this contract, is that true?

A. I cannot admit that that is so.

Q. They didn't put it into effect anyway?

A. The rates on dressed meats and finished products between the Missouri River and Chicago have been reduced from the points that I have suggested so that they gradually got down below or in the neighborhood of the cattle rates. They were reduced still lower by competition prior to the Great Western contract. That has been done by competition, but the Great Western contract carried it to a point where it was the minimum. It got to a point where
639 there was no opportunity to go under or below that, without carrying it—I won't say at a loss, but the roads determined that they would not make any less rate than that. Instead of adopting their usual practice of one road cutting a rate and the other cutting it lower, they finally got down to what we might term rock

bottom. They said, "This rate has got now to a point where nobody wants to go any lower."

Q. This twenty-cent rate on the product was fixed entirely by competition among the carriers, competition among the railroads that carry that product, that is what fixed that and there was not any market consideration about it?

A. Competition fixed the rates as they exist at the present time on both the finished product and the live animal.

Cross-examination by Mr. COWAN:

Q. Are you familiar with the circumstances which led up to the making of the Great Western contract with the packers?

A. Well, I don't understand that question. What do you mean by "familiar with the circumstances?"

Q. Are you familiar with the circumstances which led up to the making of that contract? I will ask you more particularly if you cannot answer that in general terms? Do you know whether it is a fact that previous to that time the railroad had been engaged
640 in the business of carrying the product for the packers at a published rate apparently of not less, and I believe equal to the live stock rate, and paying to the packers a rebate which made the net revenue to the railroads as little or less than the present published rates on the dressed meat and packing house products? Do you know whether that is true or not?

A. I don't like to answer that question without advice from my attorney. I don't want to answer the question.

The COURT: What was the date of this contract, do you remember that?

The WITNESS: What is the basis of the contract?

Mr. SEVERANCE: 1902. What has your Honor in mind, the statute of limitations?

The COURT: The railroad injunction was in March, 1902, and this contract was made two or three months after that. Now, I guess it is safe enough for you to tell the truth about that.

The WITNESS: I don't hesitate to answer it so far as any of the circumstances that I may know of by hearsay since the injunction, because I have nothing to fear since the injunction.

The COURT: Well, that is all, since the injunction; you need not talk about anything before the injunction.

The WITNESS: In answering that question, I do not know
641 of my own knowledge but only by hearsay as to what led to the contract and the making of it by the Great Western road. In my opinion the Great Western road, in making that contract, were governed by hearsay in the making of that rate the same as we have all been governed in the making of rates when we want business. We ascertain, as near as possible, what the other fellow was getting, and then we meet that rate or as near that rate as would enable us to carry what we want.

Mr. COWAN:

Q. Is it not a fact, Mr. Hiland, that you were carrying for the Chicago, Milwaukee & St. Paul, dressed meat and packing house products from Omaha to Chicago at a net revenue to you not greater than 18½ cents when destined east and not greater than 20 cents when local to Chicago, previous to the making of that contract and previous to the first of January, 1902?

A. So far as my knowledge goes, I don't believe that we ever carried the dressed beef or the packing house product as low as the Chicago Great Western contract. We did it pretty near as low, I will admit, but not as low, and I would not undertake to say how near the rates were, but I don't believe we ever carried it quite as low as the present Great Western contract.

Q. You carried it somewhere below your then published
642 rate?

A. Yes, sir.

Q. Now, is it not a fact that that condition of secretely, or at all events apparently secretely carrying below the public rates, led up to the establishment of the present relation of rates?

The COURT:

Q. What is your opinion, he is asking for your opinion?

A. Yes, sir.

Mr. COWAN:

Q. Through the means of the Great Western coming in and getting a good big bite by making the contract?

A. Yes, sir.

Q. Do you believe that the present relation of the rates of less on the packing house products and dressed meats than on the live stock, is a proper and just relation of rates, if you dismiss from your equation, or from your consideration the fact that those conditions of making the published rate and the making of this contract, if that is not considered. If you dismiss that?

A. I do believe that. I do believe that the present relation of rates are as favorably adjusted—I don't want to put it exactly in that way—but I don't believe that we could bring the present adjustment of the live animal rates and the packing house product any closer together.

Q. Why?

A. Well, because to reduce the rate on live stock would be
643 to lessen the relative profit in carrying that shipment more than I think we ought to be asked to carry it for, and the rate on the packing house product is fixed so that we cannot advance it, neither can we advance the rate as now adjusted in our opinion above the present relation of rates.

Q. But supposing that you could, and that as an independent proposition, not surrounded by these peculiar conditions which happen to exist in this particular locality; supposing you were left free to make what, to the producer of live stock and the shipper of it, and the producer and shipper of the finished product, would be a just,

fair and reasonable relation of rates, commercially and otherwise, what would you fix that relation of rates at? What do you believe ought to be the relation, if you could dismiss these particular conditions which happen to surround it? In other words,——

The COURT: I guess he understands it.

The WITNESS: Yes, I understand it.

Mr. COWAN:

Q. In other words, suppose you were called upon as an independent arbiter to determine what the relation of the rates ought to be between some points where these conditions did not exist at all, what, in your judgment, ought that relation to be?

644 A. Well, I will answer that question in this way if you will permit me. If I had the making of the rate from the Missouri River to Chicago and to the Mississippi River, and it was wholly in the hands of the Chicago, Milwaukee & St. Paul railroad, in order to make an intelligent rate, I would want to figure out and see what we could earn in the handling of a train load of love stock *versus* a train load of packing house product, and the service, the relative service that was performed, and I would endeavor then to fix a rate with relation to the profits that could be derived in handling the business and not make it prohibitory in the movement or in the development of the country that we serve, in getting an increase in the live animal movement and the product of it.

Q. Now, Mr. Hiland, if you make it upon that basis, you would be making it from the standpoint of the railroad interests, would you not?

A. No, sir.

Q. Why, it would be the basis of profit and the basis of the developments of the country which you mention would lead only to additional profit.

A. Well, if you take one side of my answer, yes. I say, the development of the country, that is not entirely—I say, when you make a rate that will develop the settlement of the country, we are also serving the public and the people that are located in that

645 community.

Q. And co-extensively serving the purposes and benefits of the railroad?

A. Well, it is mutual.

Q. Mutual, yes, but it is true?

A. Yes, sir.

Q. Now, supposing you made a rate where the manufacturer can ship the finished product at a cheaper rate per hundred pounds than the live stock producer can ship the live stock, to the extent of the difference, wouldn't it enable the manufacturer of the live stock into the product, wouldn't it give to him to that extent the preference, so that he could compel the direction of the shipment where he established his packing house?

A. Yes, it would. I want to go a little further with your argument on that.

It would also establish between Chicago and the Missouri River a

great many packing houses where none exist today and where, in my opinion, it would be better for the railroads and for the public rather than assembling all of the business in these large distributing centers. It would be serving the people in a way that would produce the greatest good for the greatest number.

Q. Since the reduction was made in the public rates on the live stock product, as compared to the live stock, has there been established any considerable packing plants within the territory
646 intermediate between Chicago and the Missouri River.

A. No, there has not, but there has been some that have gone out of existence, and there are others that are existing now by main strength, in my opinion. They are languishing. The packing houses at Ottumwa, at Cedar Rapids, Des Moines and Mason City, and other points where they have managed to creep along, instead of just existing, they would have been quite respectable markets.

Q. Let me ask you, Mr. Hiland, if it is not a fact that the rate on packing house products and dressed meat from Ottumwa and Cedar Rapids is very much lower than it is on live stock from those localities to the Missouri River?

A. The same relative reduction on the products from those points has been fixed, and the basis upon which they have been fixed has been the relative adjustment that has existed before this present demoralized condition, if I may so term it, was introduced. In other words, the unit of rate has been fixed on the Missouri River, on the one hand, and the Mississippi River and Chicago, and the various destinations have been adjusted at Des Moines and Ottumwa and Cedar Rapids, and that same adjustment exists today.

It has been hard work bringing it about at times, but we have been able to accomplish it.

The COURT:

Q. If your theory is carried out, I imagine, according to
647 your view, there would be nobody hurt, unless it would be the commission men in Chicago that are selling the cattle here?

A. That is exactly it.

Q. If you will—have you made any comparisons according to your theory of what comparisons ought to be made, have you got the figures?

A. I have not.

Q. Can you get them, will you make such comparisons?

Mr. BAXTER: I have some of those comparisons to introduce by the next witness.

The COURT: Well, I would like to have him carry his theory out.

Mr. COWAN:

Q. Now, pursuing the point a little further, in order to get a direct answer to my question, is it not a fact that the same tariff reduction was made from Cedar Rapids as was made from the Missouri River to Chicago on dressed meats and packing house products?

A. Well, if I was going to answer that off-hand—I do not want to be held down to the absolute facts in the case, but I am quite sure——

Mr. DAWES: Nobody has up to the present time.

The WITNESS: I don't fix those rates myself.

Mr. COWAN:

Q. Well, assume that the same relative reductions were made?

A. I know they ought to be.

Q. Assume that they have been made.

A. Yes.

648 Q. Why has not that resulted in an increase of business from those places, if the rate of freight would increase the business established there by packers?

A. Well, I will explain that. It is, perhaps, a theory, also. The reason is that the manufacturer now of the raw material in any line of manufacture, is curtailed by the volume of business. If the manufacturer had the zone of territory that would enable him to establish these markets that I had hoped for, and the same volume that has been built up by reason of the assembling of a large number of carloads that have been brought into Chicago, the business would have increased. But the adjustment of rates has been such that the circle or zone from which the interior packer was to get his hogs was so limited that he could not avail himself of the different kinds and qualities of animals that are necessary, and that the packer at Chicago can get by reason of the diversified territory that he draws his animals from to produce his material.

The COURT: According to your idea, then, they ought to have a dressed meat lower, and a live stock rate higher, from Cedar Rapids to Chicago?

A. Well, that is true, that is the theory.

The COURT: I think so.

The WITNESS: That is the theory of it, precisely.

Mr. COWAN:

649 Q. Do you mean, Mr. Hiland, that if the rate of freight into Cedar Rapids on live stock were higher, and the dressed meat rate lower, that that would enable the manufacturer at Cedar Rapids to get his hogs?

A. No, I hardly think that is a correct inference from my reply.

Q. Well, I understood the Court's question to imply that that would be the case. Do you mean that if the rates on the live stock were adjusted so that the manufacturer at Cedar Rapids could buy or induce shipments to his point of the hogs, he would then have the opportunity the same as the manufacturer at Chicago?

A. If the markets in the interior could have been built up the same as they have in Chicago, and a rate apportioned that would enable the manufacturer in the interior to increase his production, he would then necessarily decrease the expense of reducing that, and therefore would broaden his market as he broadened his ability to serve it.

Q. Isn't it a fact that the rates of freight on hogs from points in Western Iowa which take the 23½ cent rate to Chicago, that the rates of freight on hogs from those points to Cedar Rapids is very considerably less than the rates of freight to Chicago?

A. No, I should not say that they were, not for the same distance.

650 Q. Well, count out the question of distance.

Mr. SEVERANCE: What is the question, if the rates are not lower to Cedar Rapids?

Mr. COWAN: The rates to Cedar Rapids from points in Iowa which pay 23½ cents to Chicago.

Mr. SEVERANCE: Of course they are, it is nearer to them.

A. I will answer that in this way, that the rates are less, but you take the rates on the live animal in and the product out, *versus* the product rate and the rate on the live animal to Chicago manufactured, the rate is higher in that combination.

Mr. COWAN:

Q. Are you certain of that?

A. How am I certain of it?

Q. Are you certain of it?

A. Well, I am certain of that with the exception of very near by points.

Q. Take points 100 or 150 miles from Cedar Rapids, I want to ask you first if it is not a fact that the great volume of hogs are shipped from that district are shipped to Chicago, are they not?

A. Oh, certainly. They have not the opportunity to manufacture hogs at Cedar Rapids, their capacity is limited.

Q. Your theory is that the capacity would increase if they did have a rate of freight that would make it desirable to do so?

A. Yes, that is true.

651 Q. Do you happen to know now in your mind the rate now, what the rate on hogs is from Cedar Rapids to Chicago?

A. Well, I would venture the opinion that the rate is 13½ cents.

Q. Do you know what the Iowa distance tariff is for a hundred miles to Cedar Rapids?

A. I do not.

Q. Now, if you take a carload of hogs and estimate the rate on that carload of hogs to Cedar Rapids from points a hundred miles away, and add to it the rate of freight on an equal amount of dressed meat and the dressed product of hogs or finished product, is it not a fact that the rate is less to Chicago from the original point of shipment than it would be if the hog shipper shipped right from the original point to Chicago?

A. No, sir, it would be higher.

Q. Do you know what per cent. the hogs dress out? What per cent. of the hog goes into the dressed meat product?

A. That is a matter I am not familiar with.

Q. If it is 12 cents per hundred pounds into Cedar Rapids, and is 13½ cents out, to Chicago, is it not a fact that a carload of hogs, if

the product dresses out 82 per cent.—the total rate of freight will be less to Cedar Rapids dressed out, and then shipped on than it will if the same hogs are shipped alive from the starting point to Chicago?

652 A. I would say that the rate per hundred pounds into Cedar Rapids and the rate per hundred pounds out of Cedar Rapids, the combination of the two is greater. When it comes to the shrinkage and other matters in connection with it, I don't know, but I say that the rate per hundred pounds on a carload of hogs into Cedar Rapids, and the rate per hundred pounds on the finished product out, the combination is higher.

Q. Whatever the rates of freight are, and whatever that would be, and whatever the hogs would dress out, would be a matter of figuring as to whether it would be cheaper so far as the other rate is concerned, to ship into Cedar Rapids and ship the product out than to ship the live hogs into Chicago, that would be simply a matter of figuring?

A. Yes, but that is getting into railroading and slaughtering at the same time.

Q. But, if the manufacturer can buy the hogs at a price that will enable him to lay them down cheaper for the product than the product could be dressed in Chicago, that would give a preference to the manufacturer there?

A. Yes, but I am answering all these questions on the theory that there is a complaint as to the reasonableness of the rate and that the shippers are complaining. We have not had any.

Q. Did you ever have any complaint from shippers on any freight rate?

A. Oh, yes, we have.

653 Q. Didn't you testify before the Committee on Interstate Commerce in the Senate; you appeared before it, did you not?

A. I did.

Q. Didn't you there testify that you had had no complaints?

A. No, sir; my testimony was that substantially we had no complaints. We do have complaints every day of our lives that we usually adjust between ourselves and our patrons. It would be a very easy berth for a traffic man if he had no complaints. We do have complaints every day but there is nothing serious in the complaints.

Q. As to the amount of the rate?

A. As to the amount of the rate and the reasonableness of the rate or the adjustment of the rate in any way, but no serious complaints.

Q. I read your statement and had that understanding. I am not asking the question to try to trap you.

A. That is then simply a difference of recollection between you and I, Judge.

Q. Now, Mr. Hiland, getting back to my question as to what the relation of the rates ought to be, you said that if you would be permitted to answer in this way that you would answer that if the St. Paul road were left alone to make the rates, you would just figure the profit in the business and then the development of the country?

A. Yes, sir.

654 Q. If you were called upon to fix the rates independently of the St. Paul road, whether the relation of the rates ought to be that the manufactured product pays a higher rate than the raw material in cases like this, what do you say?

A. My answer to that would be substantially what I have already said. If I was selected to make a rate I would elect to make that rate so as to serve, as I said, the greatest good to the greatest number, and the general welfare instead of the individual welfare.

Q. Well, would that be to make it lower on the manufactured product in this case than on the live stock?

A. In view of the present conditions that have been developed by reason of the Great Western contract, I should say yes.

Q. But my question originally was, independent of that? What would your answer be?

A. Well, my answer would be to that that I don't know. I don't know what I would do on a question of that kind.

The COURT: You would figure out, first, wouldn't you, what it cost on each kind of traffic? That would be your basis?

The WITNESS: Yes, sir.

Mr. SEVERANCE: I think that is what Mr. Highland said before.

655 Mr. COWAN:

Q. Are rates made on different products with a view that each shall produce the same profit for the transportation?

A. Profits of transportation?

Q. Yes, to the railroad?

A. Well, we most assuredly make our rates with the idea in view of making something out of the transaction.

Q. Are they made with a view of making the same percentage of profit in each transaction?

A. No.

Q. It is not possible to do that, is it?

A. No, I don't think so.

Q. It never has been done, has it, that you know of?

A. No, sir.

Q. Take the class rates, for example, they are pretty well adjusted for the main transportation districts in the country from New York to Chicago and from Chicago and Missouri River crossings and to the Pacific coast? Is it not a fact that there is no attention paid to the profits in the transaction as between the first-class and second-class and the second-class and third-class, and the third-class and the fourth-class, and so on?

A. I hardly know how to answer that question in order to convey, perhaps, the information you desire, except in this way; that the present theory of making rates is to give to the producer the lowest possible rate that can be obtained with a reasonable profit,

656 and then when furnished with the various articles where the rate of freight is so small that you cannot figure it, and the railroads in such cases get as high a rate as they can.

Q. The business is done for the purpose, is it not, from the stand-

point of producing the greatest revenue under the circumstances and yet retain the business and not cripple the future business of the road in the country where it is doing business?

A. Yes, sir.

Q. Mr. Hiland, there is no relation between coal and lumber so that one rate may be governed by what the other is, is there, except that each is expected to produce some profit?

A. No, I should say not, and the rates on coal and lumber vary in different localities and the relation of the rates also.

Q. In some places the lumber rate would be much cheaper per ton per mile than the coal rate?

A. Yes, sir.

Q. Without going into detail, is not that the case in respect to practically all the rates, when you get into the commodity tariffs?

A. Yes, sir.

Q. In fixing classifications in the various territory in which the classification governs the rates, I will ask you if it is not a fact that live stock is always classified, when it is classified at all, lower than the dressed meat product of live stock? I don't say live

657 stock product but the dressed meat product?

A. The question of classification of live stock is not considered at all in the classification of freight. The question of live stock——

Q. How is it in the Central Traffic Association territory?

A. There is no classification in existence that classifies live stock. That is handled in every community as a commodity rate.

Q. Have you the Central Traffic Association's schedule of rates?

A. There is one in the office, yes sir.

Q. Will you kindly send us one and identify it so that we can look at that? I have been informed that it classifies live stock in the fifth-class?

A. Well, if they classify it as fifth class, it is because of an innovation, making fifth-class rate cover various articles that were originally established on the commodity basis. The classification of freight as understood among traffic men, is the less than carload freight as distributed, or which is distributed in the so-called fourth and fifth-class freight. The other classes are innovations that have been made from time to time as the business has developed and new commodities have been introduced into the transaction.

Q. Isn't it a fact that dressed meats and packing house products is classified in the Central Traffic Association territory, the

658 fresh meat as third-class, and packing house products and dressed meat in the fifth class in both carloads and less than carloads?

A. Well, it may be, but you started out on the live stock question.

Q. Yes, that was the first. Of course the live stock, if it is classified, would be classified for carloads, because it is practically not shipped otherwise except occasional shipments. It is the classification—does the classification represent the judgment as to the relative rates that ought to apply, considering the circumstances in the territory to which the classification applies, do they not?

A. Yes, sir.

Q. With the exception of the territory between the Missouri River and Chicago and between the Missouri River and St. Paul, do you know of any locality where the live stock rates, whether commodity or class rate, are higher than the packing house product and dressed meat rates, whether class or commodity?

A. I don't know anything about it because I am not familiar with every classification, or the rates in the territory beyond the territory in which I am particularly interested in the making of rates.

Q. You do know that it is a fact, do you not, that between Chicago and New York where there is a large volume of packing
659 house products and dressed meat, a considerable volume of live stock, that the packing house product rate is about 30 cents per hundred, dressed meat, 45, live cattle, 38, and hogs 30 or 35, you know that?

A. About those rates, yes, sir.

Q. That same relation practically applies also to intermediate points like Pittsburg and Buffalo?

A. Yes, sir.

Q. Now, in the shipments which are carried out to southern territory, or shipped south of the Ohio River, do you not know, in a general way, that it is a fact that the rates of freight on live stock and dressed meat and packing house products is greater than the rates from that territory to Chicago on live stock or on live stock going that way, if any went?

A. No, I cannot say that I do. When you mention the eastern territory naturally our relations with the trend of traffic is in the direction of east and west. When you come to north and south traffic I have very little if any knowledge in regard to it.

Q. Between St. Paul and Chicago it appears that the rate of freight on live hogs is 27 cents and on the hog product or the dressed meat, I believe it is 17 and a fraction, but whatever it is there is something like that difference, about ten cents per hundred?

A. Yes, sir.

660 Q. And almost ten cents per hundred difference in the live cattle and the dressed meat of live cattle. That relation of rates did not exist prior to this adjustment of the published rates brought about by the Great Western contract, did it?

A. I don't know as to that. The rates from the northern and northwestern part of the country, however, are governed entirely by the circumstances, which are entirely different circumstances than the rates from the southwest.

We have Lake Superior only 156 miles from St. Paul on the one hand, and we have the Canada competition of the "Soo" on the other, so that they are enabled to market the products of live animals in the same territory, and in the same consuming markets that the products of the southwest are marketed in and therefore the rates on the finished product must be made with reference to placing that finished product in competition with the southwestern products at the consuming markets.

Q. If the rate from Missouri river on the finished product had

not been reduced, it would not therefore have been necessary to have reduced the rate from St. Paul in order to meet that competition?

A. I would not want to admit that because we still have the other conditions that I refer to. They might or might not. It is only aggrivated to an extent by reason of having competition on
661 both sides of us.

Q. Do you believe that the fact that a railroad thinks that it must make a lower rate in order to carry the traffic from St. Paul, in order to meet that competition, justifies a 10 cents per hundred pounds on live stock more than is charged on packing house products and dressed meat?

A. I do, because the competition in live stock does not exist, and it does on the finished product.

Q. At what point in the east does that product come in competition?

A. All of the eastern markets, New York, Philadelphia, Boston and for exports from Montreal particularly.

Q. Take the rate of freight on live stock from the Missouri River to Chicago, and add to that the rate from Chicago to New York, and then take the rate of freight on the packing house product from the Missouri River to Chicago, and add to that the rate of freight *and* the packing house product to New York. Does not the total show that the rate of freight on the live animal is considerably less than on the packing house product or dressed meats?

A. Yes, but that brings back the same old question that we are going to build up Chicago at the expense of every other possible market in the country. We don't want to adjust our rates on that basis.

662 Q. You do?

A. We don't want to, we have to.

Q. Why, then make the rate of freight on dressed meat and packing house products 15½ cents to Chicago from St. Paul when the live stock rate is 25 and 27?

Mr. SEVERANCE: The testimony shows there is no live stock carried on that rate.

Mr. COWAN: If there isn't, then the building up or not building up don't cut any figure?

A. Well, I can answer that question, I think. It is necessary to have a rate in order to adjust your rates that are not affected by the competition at intermediate points and the rate of 27 cents, which is the governing rate and the adjustment of rates from intermediate points is not unreasonable for the service performed. Now, the rates that are fixed and make it absolutely necessary to adjust the rates from the other direction are fixed by the short line as I mentioned, in fixing the rate to St. Louis and in that way work back to a point where it meets the competition from the other direction so that we are enabled, and it may be possible it may appear or appeal to the ordinary layman in making the rates that if our rates from the Missouri River are 23½ cents that that should be the reasonable and fair rate for the rates from the Northwestern District. That is not so at all. The reason for making the rates in the Southwestern

District, as I have explained, is by competition, and if we were
663 going to fix rates and adjust them all over the country, we would fix it with reference to the actual service performed and the distance we haul it, and the relative cost and so forth. Now, we are not able to confine ourselves to either one condition or the other. We have to take the various conditions that enter into the making of rates and that produces this competition.

Q. Well, doesn't it come to this Mr. Hiland, that wherever the conditions are such that you can adjust it with a view to producing a certain profit on each, you claim that makes it reasonable, and wherever there isn't any competition, you claim you can charge whatever you please and yet be reasonable?

A. We don't charge whatever we can. If we did we would determine what the man pays for his stuff and what he gets for it, and take the difference. We don't do that.

Q. You wouldn't get the traffic if you did that, that wouldn't move the traffic?

A. I have known traffic to move on that basis, that is in the old days of railroading. It is not the modern way.

Q. Have you ever known a time when the live stock rate was higher than 27 cents from St. Paul and vicinity to Chicago on hogs, that is what it is now. You spoke of the old days, can you name a time that it was ever higher than that?

A. Well, I should say, yes.

664 Q. About how long ago?

A. And on the theory that it is not so very long ago when we used to get 80 cents a barrel for hauling flour from Minneapolis to Chicago. We get 15 for hauling it now. On that theory I don't hesitate to say that the rates on live stock were also relatively, that they were higher than the present rates, a good deal higher.

Q. Well that has been a good many years ago hasn't it?

A. Oh, it is not so long ago.

Q. Whatever it is, the tariff will show.

A. Twenty-five or thirty years ago.

Q. Is it not a principle in rate making that has been generally applied, with numerous exceptions no doubt, that the rates on the manufactured products are made higher than the rates on the raw material?

A. I cannot admit that, no sir.

Q. Is it not true that if that were not a fact the manufacturer and the railroad combined could direct in all cases the point of manufacturing development?

A. I didn't catch that.

Q. I said, if it were not true that you made a lower rate upon the raw material than the manufactured product, could bot- the railroad and the manufacturer in all cases direct the point to which the producer of the raw material must ship?

A. Well, I would not want to admit that because there are
665 natural conditions affecting the manufacturing and the transportation that no rate adjustment of that kind could govern. You have got to be governed by natural conditions.

Q. Do you know whether or not the manufacturers of the finished product of live stock on the Missouri River compete with the manufacturers of the finished product at Chicago?

A. Why, yes. He competes with every place where there are animals manufactured for marketing. The Cedar Rapids man competes with the Chicago man in London and Liverpool, and if there was a packing house in Wichita, he would compete in the same way for the delivery of his goods in London or Liverpool.

Q. Are there not the same manufacturers at the Missouri River as at Chicago, the *same* persons?

A. There are *some* the same and *some* that are not.

Q. What ones are not?

A. Well, I think the Ruddy Brothers have no packing plant in Chicago.

Q. Well, that is a very small concern is it not, comparatively?

A. Well, they are small now, they may be larger. I understand they have ambitious hopes.

Q. How long have refrigerator cars been in use in the shipment of dressed meat and packing house products?

A. Oh, to be *safe*, I should say twenty years.

666 Q. Is it not a fact that *after the refrigerator car came into use*, common use in the shipment of dressed meat and packing house products that a new adjustment of the relative rates between Chicago and New York and other Atlantic seaboard points the trunk lines extending from New York to Chicago submitted to arbitration the question as to the relative adjustment of those rates about ten or twelve years ago, and they were then established by arbitration and have since remained on the same basis they are to-day?

A. Yes *sir*.

Mr. SEVERANCE: I preserve the same objection to that question as I did before, it is immaterial and has nothing to do with this territory.

The COURT: Well he, has answered.

Mr. SEVERANCE: I preserve my exception.

Mr. COWAN:

Q. Hiland, to what source did you resort in obtaining the schedule of rates which you have filed as exhibits to your testimony?

A. They were obtained through our general freight office.

Q. That is the regular printed schedules in common use?

A. Yes *sir*.

Q. You said that live stock did not pay its just contribution to the rates that were paid to the expense, I presume you mean?

A. Yes.

667 Q. What is a just contribution for freight to pay, what per cent.?

A. Well, I can't answer that question.

Q. How is that?

A. I cannot be *specific* in answering that question.

Q. There is no established principle upon which that is done?

A. No, that is more of an opinion than it is a statement of fact.

Q. Is it not a fact that the tendency when rates are reduced is to stimulate the traffic in the particular line, as a rule?

A. Sometimes it is true and sometimes it is not.

Q. I had another question I intended to ask you about those freight rates. Could you furnish us and compile, or rather present public schedules of the Central Traffic Association territory?

A. I would rather you would get that from the lines who serve the Central Traffic. I could get it but then I would rather you would get it from some other source.

Q. I thought maybe you had it convenient. To save asking you some questions in regard to particular expenses and the various matters pertaining to the operation of your road, I will ask you if that is the annual report of the Milwaukee & St. Paul Railway (showing witness a document)?

A. That is our road, but as to operation I have nothing to do with the Operating Department of the railroad, and if you
668 would permit me to suggest that you confine the question to the Operating Manager as you would get more correct replies.

Q. The point I wanted to know——

A. I will answer anything I can.

Q. What I wanted to know was regar-ing the annual report of the Chicago, Milwaukee & St. Paul Railway, whether it correctly states whatever it does state with reference to the matters therein contained?

A. That is to the best of my knowledge and belief, yes.

Examination by Mr. RANSOM:

Q. Mr. Hiland, do you make rates from Western Iowa into South Omaha?

A. Yes sir.

Q. With your road across the Union Pacific bridge?

A. Yes sir.

Q. And you have an arrangement with the Union Pacific by which you lease its tracks or right of way over its tracks from Council Bluffs to South Omaha?

A. Yes sir.

Q. And is that true of the Rock-Island road too, you understand they have a running arrangement?

A. I think so. I understand the arrangement is a joint arrangement.

Q. That is true also of the Great Western.

669 A. I don't know whether the Great Western uses that line or the other bridge.

Q. Don't you know that the courts so far up as the United States Court of Appeals has decided that the Union Pacific bridge is open to all the lines centering in Council Bluffs?

A. I know that by reading the newspapers.

Q. Of course that is not very good evidence, but that is an open bridge under certain contracts between the Union Pacific and lines centering in Council Bluffs?

A. Yes sir.

Q. So that you make your rates right to South Omaha?

A. Yes sir.

Q. And you do not have any extra toll for the bridge, you don't put in $4 *in* for bridge toll, do you?

A. I don't think we do, I don't believe we do.

Q. You don't think you put any $4 arbitrary bridge toll in for making rates from those points over into Council Bluffs from South Omaha?

A. No.

Mr. COWAN:

Q. Is it not a fact your rates that apply to Omaha are dependent on the Iowa Distance Tariff, and rates fixed by the Iowa Commission to Council Bluffs?

Mr. RANSOM: I object to that, it doesn't make any difference on this Interstate rate.

The COURT: The objection is sustained.

670 R. M. CALKINS, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. What is your name?

A. R. M. Calkins.

Q. What is your occupation?

A. Assistant General Freight Agent of the Chicago, Milwaukee & St. Paul Railway, in charge of live stock and packing house products.

Q. How long have you been connected with the freight traffic department of railroads in the United States?

A. For about ten years.

Q. With what railroads have you been connected, and in what capacities?

A. I have been with the Milwaukee & St. Paul, twenty-five years, ten years ago I was in the station service.

Q. Since that time you have been in the Freight Department?

A. Yes sir.

Q. Have your duties related to the making of freight rates in any part of this territory?

A. They do, yes sir.

Q. How does the amount paid by your company for loss and damage to cattle and hogs and for injuries to persons in charge of cattle and hogs compare with the amount paid by your com-

671 pany for similar claims in regard to perishable commodities?

A. I don't believe that we have any specific figures that would allow me to give a direct answer, but from my observation from handling the business, I should say that the claims that we pay on live stock would exceed by 70 or 80 per cent. the total amount that we paid on all other perishable property handled.

Q. What is the established minimum car load rate for cattle and hogs on your road respectively and how does the actual loading of cattle and hogs on your line compare with that minimum?

A. The minimum weights as carried are as follows: A 31 foot car and under, in length, inside measurement, cattle, 19,000 pounds, hogs, 15,000 pounds; cars over 31 feet to, but not in excess of 33

feet in length, inside measurement, 20,500 pounds for cattle, hogs, 16,000 pounds; cars 33 feet and over in length, cattle 22,000, hogs, 17,000 pounds; 40 foot inside measurement, cattle, 24,000 pounds, hogs, 19,000 pounds; cars over 40 feet inside measurement, cattle 26,000 pounds. I should say that the average loading of cattle would exceed the minimums about 500 pounds to the car. I don't think that hogs will any more than average the minimums as I have stated.

672 Q. Will you please file as Exhibit No. 3 to your testimony a statement showing a comparison per car mile charged by your road on cattle and hogs in carloads, and the revenue per car mile realized by your Road on wheat, tropical fruits, and classified freight in carloads for the same distances selecting for said comparison some fairly representative portion of your Road over which said kinds of traffic actually move?

A. I will.

Q. Have you prepared such an exhibit?

A. I have.

(The witness here produced a statement which was marked "Calkins' Exhibit 3" and filed with the court as part of his testimony).

672a EXHIBIT No. 3.

Freight Earnings per Car per Mile on Commodities Shown Below, Transported Between Chicago, Ills., and Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, During the Month of July, 1905.

Commodities.	Weight.	Freight earnings per car per mile.
Cattle,		
At Missouri River points..... ..	22,000 pounds	$.103
Hogs,		
At Missouri River points.....	17,000 pounds	.0799
Soft Coal, Eastern,		
At Chicago, Illinois.....	50,000 pounds	.113
Coke,		
At Chicago, Illinois.....	50,000 pounds	.12
Corn,		
At Missouri River points.....	50,000 pounds	.11
Wheat,		
At Missouri River points.....	50,000 pounds	.12
Lumber, Pine,		
At Chicago, Illinois.....	40,000 pounds	.128
Agricultural implements, Harvesters,		
At Chicago, Illinois...	25,000 pounds	.15
Agricultural implements, Mowers,		
At Chicago, Illinois.....	25,000 pounds	.15
Nails,		
At Chicago, Illinois.....	40,000 pounds	.216

Calkins Exhibit No. 3.

Q. Will you file as Exhibit No. 5 to your testimony a statement showing for the last three years ending June 30, 1905, the volume of cattle and hog business, and also the relative range of prices of cattle and hogs at Chicago, Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Omaha, South Omaha, Nebraska City, Sioux City, St. Paul, South St. Paul, Ottumwa, Des Moines, Marshalltown and Cedar Rapids.

Mr. COWAN: I don't think Mr. Calkins has been qualified on the price of hogs and cattle.

The COURT: If he has a schedule there, let him file it for what it is worth.

A. I was not able to secure the date in the way you put it, but I have it by years ending from 1898 to 1904. I have taken the quotations from the various stock journals that were current during that period.

Mr. BAXTER: Well, you may file it all right.

Mr. COWAN: For each year, Mr. Calkins, for *for* just two years.

675 Q. From 1898 to what inclusive?

A. 1904. Not complete as to each market, but then it is as near so as we can get it.

Mr. BAXTER: Please file a statement as Exhibit No. 6, to your testimony showing for the last three years, ending June 30, 1905, the volume of shipment of packing house products and fresh meats from St. Paul and Missouri River points to the north, west and southwest?

A. I have it.

Q. Does it separate the shipments?

A. No sir, it does not, it gives them as a total. I was unable to obtain the destination of all of them.

Q. Well, can you give me an approximate idea as to what proportion of the total shipments coming to Chicago, and what proportion goes south, north and west?

A. Well, there is a considerably greater portion of it comes east. through Chicago and St. Louis gateways, than there is going south and west. I should say fully seventy per cent.?

Q. And the remainder would be divided how?

A. It would be scattering shipments going to Texas points, Colorado points, Montana, California, and so forth.

Q. Is the existence of the Kansas City and the other Missouri River packing markets a benefit or injury to the section of country in which they are situated?

676 A. In my opinion they are of great benefit.

(The statement last produced by the witness was marked "Calkins' Exhibit 6," and filed with the court as part of his testimony.)

676a

Exhibit No. 6.

Statement Showing the Total Carload Shipments of Fresh Meats and Packing House Products from Missouri River Points During the Years 1902, 1903, *and* 1904.

Points of shipment.	Fresh meats.			Packing house products.		
	1902.	1903.	1904.	1902.	1903.	1904.
South Saint Paul, Minn....	*5,669	*6,519	*7,451			
South Omaha, Neb.	18,524	21,254	19,468	9,783	11,358	10,048
Kansas City, Mo.....	24,180	25,035	26,936	13,083	12,135	15,164
St. Joseph, Mo.	11,534	13,554	13,772	6,390	6,764	5,935
Sioux City, Iowa	*7,775	*4,501	*4,449			

* This includes Fresh Meats and Packing House Products.

Q. Why?

A. Well, they enable the shipper, grower of live stock at points intermediate thereto to make his selections as between these prices that are paid at the different centres. My observations have shown that live stock shippers watch the different markets very closely, and always patronize those that will pay the highest prices. There are certain seasons in the year that a market at a point on the Missouri River will pay considerable of a premium for a certain class of live stock over the Chicago market, and this is also true of markets or interior packing houses. Where the shipper has no yardage charge, or commission charge to pay. He sells his hog or his animal direct to the packer at that point, and in a great many cases it nets him much more money than it would if he sent it to the Chicago market and had to pay these incidental expenses which I have mentioned.

Q. What effect if any would the reduction on the cattle and hog rate at intermediate point on your Road east of the Missouri River have on the rates on cattle and hogs west of the River?

A. So far as the Milwaukee & St. Paul Road are concerned it is rather difficult to determine what the results would be in
677 territory in Kansas and Nebraska. However, my judgment would be that it would materially reduce them from quite a scope of country throughout those States. As to the territory north and west of Sioux City and Sioux Falls, or of Sioux City and South St. Paul, it would very materially affect our rates back to a considerable distance. We should have to make corresponding reductions from territory west of those points to meet the reductions that took place east of them.

Q. State whether said reduction of rates on cattle and hogs at intermediate points east of the Missouri River would have any affect upon the revenue of your Company, and if so, what?

A. Basing the calculation upon the amount of business that we handled during the year 1904, the reduction would approximate, $277,000.

Q. That would be per annum, that much per annum?
A. Yes sir.
Q. State what terminal or switching charges are paid by your company on packing house products and fresh meats at St. Paul, Minneapolis, and Missouri River points?
A. South Omaha we pay $2. per car on packing house products, one dollar on live stock. At Kansas City there is a varied price there from the different packing plants. We receive our packing house tonnage from different switching roads, and they have varied prices on movement to the following: from Swift & Company
678 $4. per car, and from other packers $3. per car. At South St. Paul we pay $2.50 per car, on packing house products, and $2.75 per car on live stock excepting on shipments of range cattle, in ten or more car lots, and on those we pay $1.25 per car, which includes the loading charge assessed by the stock yards company. At Sioux City we pay $1.50 per car on both packing house products and live stock.
Q. Will you please file a statement of Exhibit No. 7, showing the number of cars of packing house products and fresh meats received by your company during the year ending June 30, 1905, from St. Paul and each of the Missouri River points?
A. I will file it.

(The witness here produced a statement which was marked "Calkins' Exhibit 7," and filed with the court as part of his testimony.)

678a No. 34.

EXHIBIT No. 7.

Statement Showing Number of Cars of Packing House Products and Fresh Meats Shipped Via C., M. & St. P. R'y, from South St. Paul, Minn., Kansas City, Mo., South Omaha, Neb., and Sioux City, Iowa, from June 30, 1904, to June 30, 1905.

Point of shipment.	Fresh meats.	Packing house products.
South St. Paul, Minn.....	*1833	
Kansas City, Mo.....	2831	2341
South Omaha, Neb.....	1781	2637
Sioux City, Iowa.....	1213	1347

*Includes packing house products.

Calkins Ex. No. 7, vol. 5, p. 678.

[Endorsed:] Judge Baxter. Ans. to R. M. Calkins' questions.

Q. What does it cost your company per car for terminal expense to deliver cattle cars at the Union Stock Yards in Chicago?

A. On business that may be received through our Chicago and Council Bluffs gateway or through what is termed Franklin Park, it costs us $2.27½ per car in addition to the expense paid the train crews and train supplies which averages in the neighborhood of 50 cents per car, on business that may be received and handled through the Chicago and Milwaukee Division on business that would
679 pass through the St. Paul gateway, it would amount to $1.80. per car trackage; in addition to that would be added the same expense of 50 cents per car for train men's wages and supplies.

Q. There seemed to be published certain local rates from Missouri River to Chicago, and certain proportional rates. Do those proportional rates operate in favor of or against Chicago in your opinion?

A. Well, I could not say that they directly operated in favor of or against Chicago as a market. They are made necessary in order to permit the lines of the railroads which have no lines through the direct routes from Kansas City, if you please, to participate in the business through Chicago. It is a proportional rate meeting the through rate, which is fixed by the St. Louis gateway.

Q. State what amount of transportation your company has furnished drovers in charge of shipments of live stock coming from Missouri River and St. Paul, and station intermediate thereto during the years 1903 and 1904, if you have it.

Mr. SEVERANCE: Transportation to Chicago you mean?

Mr. BAXTER: To Chicago and return.

A. I have only obtained the amounts for the return part of it. It is reasonable to suppose that every man that we issued return transportation to we brought in and a great many more, because we furnished transportation with one car of live stock to Chicago with no return feature to it, so my figures include the
680 regular fares this transportation would have amounted to from Chicago, returning only to intermediate points between Chicago and Kansas City, Sioux City and St. Paul for the year 1903 $71,548.86; for the year 1904, $41,565.67.

I will say by way of explanation of the decreased amount for the year 1904 there are three months of that period that we did not issue any return transportation at all.

Mr. SEVERANCE: Was not that the year of the strike?

A. Yes sir, that had something to do with it.

Q. There was a great decrease in the receipts here, wasn't there, during the strike?

A. Yes sir, very material.

Mr. BAXTER:

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and St. Paul respectively from certain stations on the Chicago, Milwaukee & St. Paul Railway, west of St. Paul, also the straight rate from the said station to Chicago, Illinois, on cattle and hogs, and the combination of the rates on cattle and

hogs from said station to St. Paul, plus the packing house product rate of 15.7 cents from St. Paul to Chicago. If so please file such statement as Exhibit A to your testimony and state briefly what it shows.

A. Yes sir, I have.

681 (A statement was here produced which was marked "Calkins' Exhibit A," and filed with the court as part of his testimony.)

681a EXHIBIT A, R. M. CALKINS.

Statement of Rates on Live Stock.

So. St. Paul, Minn. September 19th, 1905.

From stations west of St. Paul, Minn.	Distance to		Straight rates to Chicago, Ill.		Rate to St. Paul, Minn.		Combination of the live stock rates from said stations to St. Paul, Minn., plus the packing house product rate of 15.7 cents from St. Paul to Chicago.	
	Chicago Ill.	St. Paul Minn.	Cattle	Hogs	Cattle.	Hogs	Cattle	Hogs.
Steward ..... Minn.	483	75	27	27.5	12.5	12.5	28.2	28.2
Olivia..... "	508	100	28	29	14	14	29.7	29.7
Minnesota Falls, "	533	125	30	30	15	15	30.7	30.7
Watson..... "	554	150	31	31	16	16	31.7	31.7
Correll..... "	578	175	32	32.	16.5	17	32.2	32.7
Wahpeton. .. N. D.	663	261	33.25	37	17.75	22	33.45	37.7
Fargo..... "	709	307	34.25	38.5	18.75	23.5	34.45	39.2
Aberdeen ..... S. D.	702	297	38	42.5	24	27.5	39.7	43.2
Evarts..... "	800	395	43.5	48	28	34	43.7	49.7

Calkins Ex. A, vol. 5, p. 681.

A. (Continued). The combination of the live stock into St. Paul plus the provision rate out is greater than the through rate from the point of origin*al* to Chicago?

MR. SEVERANCE: On live stock?

A. Yes sir.

MR. BAXTER:

Q. Have you caused to be correctly compiled a statement showing the distances to Chicago and St. Paul respectively from certain stations on your Road south of St. Paul, showing also the straight rates from said station to Chicago, Illinois, on cattle and hogs, and the combination of the live stock rates from said stations to St. Paul plus the packing house product rate of 15.7 cents from St. Paul

to Chicago. If so, please file such statement as Exhibit B, to your testimony, and state briefly what it shows?

A. I have and the results are the same as they are in Exhibit "A," that is, that the combination into St. Paul and out is greater than the through rates.

(The statement here produced by the witness which was marked "Calkins' Exhibit B," and filed with the Court as part of his testimony.)

681*b* EXHIBIT B, R. M. CALKINS.

Statement of Rates on Live Stock.

So. St. Paul, Minn. September 19th, 1905.

From stations south of St. Paul, Minn.	Distance to		Straight rates to Chicago, Ill.		Rate to St. Paul, Minn.		Combination of the live stock rates from said stations to St. Paul, Minn., plus the packing house product rate of 15.7 cts. from St. Paul to Chicago.	
	Chicago, Ill.	St. Paul, Minn.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Pratt.....Minn.	377	75	23	25	12	12	27.7	27.7
Austin..... "	350	100	23	25	12	12	27.7	27.7
Leroy..... "	324	125	22.5	24	12	12	27.7	27.7
Cresco.....Iowa.	300	150	22	23	14	14	29.7	29.7
Ossian ..... "	274	175	22	22.5	17	17	32.7	32.7
Beulah..... "	247	200	18.5	22	17	17	32.7	32.7

Calkins Ex. B, vol. 5, p. 681.

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Ottumwa respectively from certain stations on the Chicago, Milwaukee & St. Paul west and south-
682 west of Ottumwa, also the straight rate from said stations to Chicago, Illinois on cattle and hogs and the combination of the live stock rates from said station to Ottumwa plus the packing house product rate of 16 cents from Ottumwa to Chicago. If so, will you please file such statement as Exhibit "C" to your testimony, and state briefly what it shows?

A. I have the combination of the live stock rate into Ottumwa, and the packing house product rate out is greater than the through rate from the point of origin*al* to Chicago.

(A statement was here produced by the witness which was marked "Calkin's Exhibit C," and filed with the court as part of his testimony.")

682a EXHIBIT C. R. M. CALKINS.

Statement of Rates on Live Stock.

Ottumwa, Iowa. September 19th, 1905.

From	Distance to		Straight rates to Chicago, Ill.		Rates to Ottumwa, Iowa.		Combination of the live stock rates from said stations to Ottumwa, Ia., plus the packing house product rate of 16 cts. from Ottumwa to Chicago.	
	Chicago, Ill.	Ottumwa, Iowa.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Moravia.....Iowa.	316	25	22	22	6.71	7	22.71	23
Seymour..... "	339	50	22	23.5	8.68	8.67	24.68	24.67
Newtown..... Mo.	368	75	22	23.5	11.5	13	27.5	29
Laredo..... "	394	100	22	23 5	13 5	15	29.5	31
Dawn..... "	421	125	23	23.5	14 5	15	30.5	31
Cowgill..... "	439	150	23.5	23.5	14.5	15	30.5	31
Excelsior Springs "	465	175	23.5	23.5	14.5	15	30.5	31
Thornton..... "	488	200	23.5	23.5	14.5	15	30.5	31
Sigourney.....Iowa.	295	28	22	21	7.11	7.33	23.11	23.33
Washington..... "	246	46	20	19	8.68	8.67	24.68	24 67

Calkins Ex. C, vol. 5, p. 682.

Q. Now, in Exhibit A I failed to ask you what the distances are from those stations that are west of St. Paul to St. Paul, to what distances do they range?

A. From 75 to 395 miles.

Q. Now, with reference to "Exhibit B." What are the distances from the stations south of St. Paul to St. Paul?

A. 75 to 200 miles, taking the rates from the stations that are separated by a distance of 25 miles.

Q. Now, with reference to Exhibit "C," which you last filed, what are the distances from those stations to Ottumwa, located southwest of Ottumwa?

A. From 25 to 200 miles.

683 Q. Have you caused to be correctly compiled a statement showing the distance from Chicago and Des Moines, Iowa, respectively to certain stations on the Chicago, Milwaukee & St. Paul Railway west and north of Des Moines, also showing the straight rates from said station to Chicago, Illinois, on cattle and hogs and the combination of live stock rates from said station to Des Moines plus the packing house product rates of 18½ from Des Moines to Chicago?

A. I have.

(The witness here produced a statement which was marked "Calkins' Exhibit D," and filed with the court as part of his testimony).

683a EXHIBIT D, R. M. CALKINS.

Statement of Rates on Live Stock.

Des Moines, Iowa. September 19th, 1905.

From—	Distance to—		Straight rates to Chicago, Ill.		Rates to Des Moines, Iowa.		Combination of the live stock rates from said stations to Des Moines, Ia., plus the packing house product rate of 18.5 cts. from Des Moines to Chicago.	
	Chicago, Ill.	Des Moines, Iowa.	Cattle.	Hogs.	Cattle	Hogs.	Cattle.	Hogs.
High Bridge...Iowa.	353	25	22	23.5	6.71	7	25.21	25.5
Yale..... "	383	50	23.5	23.5	8.68	8.67	27.18	27.17
Farlin..... "	397	75	23.5	23.5	10	16.16	28.5	34.66
Rockwell City. "	421	100	23.5	23.5	11.32	10.96	29.82	29.46
Albert City.... "	453	125	23.5	23.5	12.58	12	31.08	30.5
Gillett Grove.. "	467	150	23.5	23.5	13.21	12.6	31.71	31.1
Hartley..... "	470	175	24	23.5	14.47	13.8	32.97	32.3
Boyden..... "	499	200	24.5	24.5	16	15.22	34.5	33.72

Calkins Ex. D, vol. 5, p. 683.

Q. State what that is?

A. The distances range from 25 to 200 miles. The combination on Des Moines using a live stock rate in and the provision rate out is greater than the through rate.

Q. Greater than the straight rate?

A. Greater than the straight rate from the same point to Chicago.

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Cedar Rapids, respectively from certain stations on the Chicago, Milwaukee & St. Paul Railway west of Cedar Rapids, also the straight rates from the said rates to Chicago, Illinois, on cattle and hogs and the combination of the live stock rates, plus the packing house product rate of 13½ cents
684 from Cedar Rapids to Chicago. If so, please file said statement as Exhibit E to your testimony, and state briefly what it shows?

(The statement was here produced by the witness which was marked "Calkins' Exhibit E," and filed with the Court as part of his testimony.)

684a EXHIBIT E, R. M. CALKINS.

Statement of Rates on Live Stock.

Cedar Rapids, Iowa. September 19th, 1905.

From—	Distance to—		Straight rates to Chicago, Ill.		Rates to Cedar Rapids, Iowa.		Combination of the live stock rates from said stations to Cedar Rapids, Ia., plus the packing house product rate of 13.5 cts. from Cedar Rapids to Chicago.	
	Chicago, Ill.	Cedar Rapids, Iowa.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Vinining.....Iowa.	270	50	22	21	8.68	8.67	22.18	22.17
Ferguson..... "	297	75	22	21	10	10.16	23.5	23.66
Collins..... "	321	100	22	22.5	11.32	10.96	24.82	24.46
Woodward ... "	355	125	23	23.5	12.58	12	26.08	25.5
Herndon..... "	378	150	23.5	23.5	13.42	12.8	26.92	26.3
Dedham..... "	403	175	23.5	23.5	14.47	13.8	27.97	27.3
Manilla..... "	427	200	23.5	23.5	15.53	14.8	29.03	28.3
Paralta..... "	219	14	20	18	5.92	6.33	19.42	19.83
Oxford Jct.... "	193	41	17	18	8.29	8.33	21.79	21.83
Monticello..... "	216	38	19	18	7.89	8	21.39	21.5
Greeley..... "	244	66	21	18	9.74	10	23.24	23.5

Calkins Ex. E, vol. 5, p. 684.

A. I have. The distances range from 14 to 200 miles, and show that the combination of the live stock rate into Cedar Rapids plus the 13½ provision rate out is greater than the through rate on live stock from the same stations to Chicago, Illinois.

Q. Have you caused to be correctly compiled a statement showing the distances from Chicago and Sioux City respectively to certain stations on the Chicago, Milwaukee & St. Paul Railroad north and west of Sioux City, and the straight rates from the said stations to Chicago, Illinois, on cattle and hogs and the combination of the live stock rates from said stations to Sioux City, plus the packing house product rate of 20 cents from Sioux City to Chicago, if so, please file said statement as Exhibit F. to your testimony and state briefly what it shows.

(A statement was here produced which was marked "Calkins' Exhibit F," and filed with the court as part of his testimony.)

6845 EXHIBIT F, R. M. CALKINS.

Statement of Rates on Live Stock.

Sioux City, Iowa. September 19th, 1905.

From—	Distance to—		Straight rates to Chicago, Ill.		Rates to Sioux City, Iowa.		Combination of the live stock rates from said points to Sioux City, Iowa, plus the packing house provision rate of 20 cts. from Sioux City to Chicago.	
	Chicago, Ill.	Sioux City, Iowa.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Burbank.....S. D.	547	25	26	25	9	10	29	28
Gayville..... "	567	50	26	30	11	13	31	33
Lesterville..... "	595	75	29	34	14	16	34	36
Tripp..... "	612	100	31	34	16	19	36	39
Ethan..... "	625	125	32	34	17	20 25	37	40 45
Letcher..... "	628	150	33	38	19	23 9	39	43 9
Alpena..... "	651	175	34.5	40	20	25	40	45
Bonilla..... "	680	200	35.5	41	22	26.7	42	46.7
Aberdeen..... "	702	266	38	42.5	25	29	45	49
Edgeley.....N. D.	708	339	39.5	42.5	29	31.5	49	51.5
Hornick.....Iowa.	692	25	23.5	23.5	7.11	7.33	27.11	27.33
Mapleton..... "	669	40	23.5	23.5	8.66	8.45	28.66	28.45
Manilla..... "	627	90	23.5	23.5	10.79	10.04	30.79	30.04

Calkins Ex. F, vol. 5, p. 694.

685 A. I have, comprising the distances from 25 to 339 miles, which shows that the combination of the live stock rate into Sioux City plus the provision rate of 20 cents out is greater than the through rate on live stock through the same points to Chicago.

Q. State whether or not there are any stations on your road other than those mentioned in your Exhibit "A to F inclusive," which have a rate adjustment in favor of Chicago as against other packing houses, and points referred to. If so describe those stations generally.

A. Did you say as against other markets in your question?

Q. In which the adjustment applies in favor of Chicago as against those packing house markets that I have referred to?

The COURT: What he asks is, whether there are any other similar points to the ones you have given?

A. Well, I had in mind Austin, Minnesota, Mason City, Iowa, both have packing plants, I think the results would be the same, if not in the case of Austin, Minnesota, more market than any we have shown.

Mr. Barnes:

Q. Now, for instance take Exhibit "A." You give Steward, Olivia, Minnesota Falls, Watson, Cornell, Wahpeton, Fargo, Aberdeen, and Evarts, they are in a distance of 75 to 305 miles. Are there any other stations in between those stations?

A. A great many, yes sir.

Q. Would the same principle apply to all the other stations
496 as between those you have enumerated?

A. It would.

Q. That is all.

Mr. Sevareid: It is a fact that in all cases where you go beyond St. Paul a distance of say 200 miles the local rate into St. Paul far exceeds the proportional rate from St. Paul to Chicago?

A. I think that would be true a distance of 200 miles.

Q. And the distance from St. Paul to Chicago is 400?

A. Yes sir.

Q. So that you get more money for hauling the product in the same cars over half the distance west of St. Paul into the St. Paul Union Stock Yards than you get for hauling it from there on to Chicago?

A. Yes sir.

Q. Now, this local rate on cattle and hogs from South St. Paul, or from St. Paul is merely a hauling rate, isn't it?

A. The local rate?

Q. Yes, the published rate is a hauling rate for the territory contiguous to St. Paul, below?

A. Usually points around St. Paul would take the same rate.

Q. What I mean by that is this, to practice there is no live stock moved to Chicago on that local rate, is there, it is all moved on the proportional rate?

A. Well, I have no knowledge of any being moved from South St. Paul on that basis.

497 Q. Well, you have no knowledge of any live stock being moved from South St. Paul on any other basis than the proportional rate?

A. No, sir, there isn't any originate there, except that which may come from points beyond.

Q. And consequently by reducing billing, they in all cases get the proportional rate to Chicago?

A. I believe that is true.

Q. And that rate in case of shipments from rather remote points on the northern line is sometimes as low as 11 cents, is it not?

A. I think the division would not allow the line south of St. Paul to exceed that in a great many instances.

Q. Austin, Minnesota that you spoke of on your road and also the Chicago Great Western, is it not?

A. Yes sir.

Q. And I believe that you stated that you labored under the disadvantage you have mentioned as to those other interior packing house points to a greater degree than the others?

A. I think the comparison would show more difference in the combination on Austin than it does on these other points. I did not prepare any figures on that at all.

Q. Well, wouldn't it be your judgment that if a change was made, such as was asked in this case, doing away with the three and a half cents difference between the cattle rate and the packing house rate, it would result in closing that packing industry at Austin, Minnesota?

688 A. The difference would be greater than three and a half cents in almost every instance at Austin, and if the provision rate was the maximum on live stock from the territory surrounding Austin, I should say that it would drive them out of business absolutely. They could not exist.

Q. And would you say that would be the result if such an iniquitious decision should be made as to Mason City?

A. I think it would.

Mr. SEVERANCE: That is a joke, Your Honor.

Q. Well, what would be the effect at Cedar Rapids, and these other interior points?

A. They would be put to just that much disadvantage and in addition to the rates, they have the Chicago competition, the lack of being in a position to select the class of live stock that they want, the same as the Chicago packer has, for that reason they have a very hard time of it to exist under the present rates.

Q. And if this additional burden were put on them, in your opinion they could not exist?

A. No.

The COURT: How long have they been running there?

A. Well, the Austin plant has been in operation, I should say, about four years.

Q. They were running before this rate was made as it is at present, weren't they?

A. In a very limited way.

Mr. SEVERANCE: Merely supplying local territory?

689 A. Yes sir.

Q. They were really running nothing in those days, your Honor, but what is commonly called a slaughter house, supplying territory right around there.

A. A very small affair.

The COURT: Who made this contract with the Great Western Railroad, was it the small houses, or the great packers, who maintain business in Chicago?

A. I have nothing but hearsay to go by, but my understanding is it was made by the large packers on the Missouri River.

The COURT: There wasn't much said then about the small packer?

A. No sir, I don't think so.

An adjournment was here taken until the following day, Friday, September 22, 1905, at ten o'clock A. M.

690 SEPTEMBER 22, 1905.—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon R. M. CALKINS, resumed the stand for further examination by Mr. Severance.

Q. Mr. Calkins, will you state a little more definitely to the court exactly your functions in connection with the Chicago Milwaukee & St. Paul Railway Company?

A. Well, my duties are assigned by having charge of certain commodities over the entire system. Among those that are assigned to me are the live stock and packing house products, fresh meat and lumber and one or two other minor commodities.

Q. How much of your time is devoted to the transportation and making of rates for fresh meats, packing house products and live stock, and looking after the tariff?

A. Well, it takes up more than half my time, considerably more.

Q. During what period does that cover?

A. The entire year.

Q. I mean for how many years?

A. Well, the last five years.

691 Q. In connection with that business how much are you brought in contact with producers of live stock in the West and in Iowa? I mean producers and shippers, by producers I mean shippers of live stock.

A. Well, I meet a large number of them every day, from not only our own immediate territory, but from Montana, Texas, Colorado and the western territory, a great many. I have quite an extensive acquaintance among them.

Q. Is it any part of your business to solicit that traffic,

A. Well, not especially so, still I never lose the opportunity to look after that part of the business if I can. We have men on the road that attend to those details.

Q. And they are under you, are they not?

A. Yes sir.

Q. Now, Mr. Calkins, having been brought in contact with these shippers to the extent that you have stated, will you tell the court what complaints, if any, you have received from these shippers as to the present rates that are charged by your road for the shipment of live stock or as to the comparative rate as between the product and the live animal?

A. You refer to the territory which——

Q. The territory in question here, yes.

A. Well, I don't recall having received a complaint from a live stock shipper of that character.

692 Q. Have you received complaint*a* from any persons at any time with reference to rates on either the product or the live stock during the five years you have mentioned?

A. Yes, I have.

Q. From whom?

A. Well, the packers at those interior points, Cedar Rapids and Des Moines.

Q. Now, Mr. Calkins, you were asked yesterday by Mr. Cowan something with reference to the shrinkage, or there was a suggestion in one of his questions as to the shrinkage in the weight of live stock when slaughtered at these interior points. Do you know what the shrinkage in the animal itself is when it is slaughtered?

A. Well, I believe the packer——

Q. I am asking about the animal itself now.

A. Do you refer to cattle or hogs?

Q. Well, take them separately?

A. The average figured by the packer, I believe, is about sixty per cent. on the—That is, they will get from a bullock sixty per cent. of dressed beef; in addition to that there is the hide and the offals. The hog, I don't know about, I could not answer that.

Q. Adding to the sixty per cent., the weight of the hide and the offal, what is the net shrinkage?

A. I don't think it would exceed 15 or 20 per cent.

693 Q. Now, Mr. Calkins, the hog will dress a higher — cent. than the cattle, will it not?

A. I believe it will, yes sir.

Q. Now in addition to the weight of the product upon which these interior packers have to pay freight, do they not also have to pay freight at the same time upon the boxes or barrels, or whatever may be used, in which the product is shipped out?

A. Yes sir, the rate is based on the gross weight of the package.

Q. Do they not also have to pay the railroad Company's tariff rates on these casings, whatever they may be, boxes, barrels etc., when shipped into the towns in which their packing houses are located?

A. They usually go in in the form of lumber or box shooks, as they are called, at the regular tariff rate.

Q. Now, adding to the weight of the product on which these interior packers pay freight, the weight of the boxes and barrels, the casings of whatever sort they may be, in which the product is shipped out, and adding to that the freight upon the materials of which these packages are composed, which weighs the most, the live stock or the product with these additions?

A. I think the product in addition to the supplies in—in fact I know it would exceed the weight of the live stock that they might receive.

694 Q. Now it appears that there is a certain territory east of the Missouri river which takes the 23½ cent rate into Chicago. That distance is how far east of the river on your roas?

A. Well, in round numbers, 145 miles before we begin to grade.

Q. Now, will you tell the court whether more or less live stock, cattle and hogs, are shipped to Chicago from that point at the present time than are shipped to Omaha and Sioux City combined?

A. There is more comes to Chicago, considerably more.

Q. Do any of those cattle from that territory go to any western packing house other than Sioux City and South Omaha?

A. Maybe a few go to Des Moines, but it is a very small amount.

Q. Well, add in those that go to Des Moines together with the cattle and hogs shipped to South Omaha and Sioux City, isn't it a fact that the shipments to Chicago exceed the aggregate of those three?

A. Yes sir, they would.

Mr. SEVERANCE: That is all.

695 Re-cross examination by Mr. COWAN:

Q. What is that?

A. Well, the market at Chicago has a wider scope, perhaps for different classes of live stock when it is produced.

Q. Do you recollect now what the rate is to Omaha from the 23½ cent zone, furthest east, say 140 miles, on cattle and hogs?

A. I don't think it would exceed 16½ cents on cattle, perhaps 15½ on hogs. I have not the exact figures.

Q. I thought possibly you might recall now?

A. No, I do not.

Q. Iowa distance tariff plus the bridge toll.

A. Yes sir.

Q. Do you pay that bridge toll on packing house products received by you at Omaha?

A. No sir, there is a switching charge but no bridge toll is assessed.

Q. How do you escape the bridge toll at that point?

A. Well, I presume we do pay it. It comes in another form, we could not escape it.

Q. How is that?

A. We could not escape it. It comes in the way of an annual bill.

Q. Annual rental?

A. Yes sir. I have no knowledge of how that is disposed of. It is an operating affair.

Q. That is an expense which is incident to the delivery
696 of packing house products and dressed meat in addition to the switching charge, whatever that expense should amount to?

A. Yes sir.

Q. Whether it is an annual rental of so many dollars or a wheelage rental of $4.00 per car?

A. Yes sir.

Q. The usual basis for the bridge charge at South Omaha is $4.00 a car in the absence of some annual rental?

A. I believe that is charged on live stock, it varies on different commodities.

Q. On packing house products and dressed meats it is $4.00?

A. No, I don't think it is.

Q. You won't say that it is not?

A. No, I would not say positively, because I have not looked that up.

Q. Speaking of the net weight of the product of live stock in-

cluding the dressed meat and the packing house product, you are not speaking by accurate knowledge with respect to what it amounts to?

A. Only what I have been informed by the various packers that I have conversed with, statements that have been rendered, I have also examined.

Q. Haven't you got that a little too high, Mr. Calkins?

A. Well, I have taken the comparison of tonnage in and out of these interior plants month by month and compared them in

697 that way. They show substantially what I have testified to.

Q. Well, they don't show that hogs will produce of product and dressed meat a certain per cent., those records don't show that?

A. No, my reports don't show that. They show the total of the live stock in and the product out and supplies, etc.

Q. You are speaking of the supplies in and the total live stock in and out?

A. Yes sir.

Q. There are definite figures as to what that amounts to in the report to the Bureau of Corporations, is there not known as the Garfield Report, which shows what the percentage is, how much product live animal produces?

A. I never read the Garfield Report and I have no knowledge of it.

Q. Is it not a fact that you know as a matter of common knowledge that the Interstate Commerce Commission had fixed a basis of rates that should not be higher than the dressed meats and packing house products a good many years ago and that that had been observed up to the first of January, 1902, I mean to say in the published rates, if the published rates had been observed?

A. I believe there was a ruling sometime back of that nature.

Q. That had been the published rate up to January 1902?

A. I think that was the date, yes sir.

698 Q. Now, isn't it a fact that the only change that was made in the rates on the first of January, 1902, was the reduction in the proportional rate on the packing house product east bound, consigned or destined to points east of the Indiana and Illinois state line?

A. No sir. The local rate was reduced as well.

The COURT:

Q. Was that January or August?

Mr. COWAN: In January.

The WITNESS: I don't recollect the date.

The COURT: This contract was in August, I understand.

Mr. COWAN: Yes. Let me call your attention to the history of that affair; that on January first, 1902, the change was made by the reduction in the packing house products and dressed meat rates using a proportional rate of 18½ cents on traffic destined to points east of the Indiana and Illinois state line, and no other change made in the published tariffs at that time. That subsequent to that time, and in August there was a contract made with the Great Western Railroad and the packers to ship on the basis of the present relation

Q. Will you state briefly to the court what it shows without reading it all?

A. Freight earnings per car mile on commodities which we have shown herewith between Kansas City and Chicago per car mile are as follows: cattle 10 3/10 cents a mile, soft coal 11.3 cents per mile, coke 12 cents per mile, corn 11 cents, wheat 12 cents; lumber 12.8 cents, agricultural implements, such as harvesters, 15 cents; agricultural implements, such as mowers and other light articles 15 cents; nails 21.6 cents per mile.

Q. How does the revenue derived by your company from a 50,000 pounds car for instance loaded with coal, lumber or other low grade traffic, compare with the revenue derived by your
673 Company from the transportation of cattle and hogs in a car of the same capacity between the same points or for similar distances?

A. That is per car?

Q. No, the revenue per car?

A. I think I have some figures on that, statements which we have filed, showing the per car earnings on certain commodities between the Missouri River, Sioux City and Chicago are as follows: cattle, $51.70 per car; 36 foot car; hogs, $39.95 per car, common brick $50. per car; soft coal from eastern mines $56.25 per car; coke $60. per car; corn from the Missouri River to Chicago $55. per car; wheat $60. per car; lumber, pine from Chicago to the Missouri River $80. per car; nails from Chicago to Missouri River $135. per car.

Q. Will you file that as Exhibit No. 3½ of your testimony the statement you have in your hand?

A. Yes sir.

(The witness here produced a statement which was marked "Calkins' Exhibit 3½" and filed with the court as part of his testimony.)

674a *Compared Statement Showing the Average Value and Freight Charge Per Car on Commodities Shown Below, Transported Between Chicago, Ills., and Kansas City, Mo., Omaha, Neb., & Sioux City, Iowa, During the Month of July, 1905.*

Commodities.	Weight.	Average carload value.	Transportation rate in cents per 100 pounds except as noted.	Average freight charge per car.
Cattle,				
At Missouri River points...	22,000	$1100.00	23.5	$51.70
Hogs,				
At Missouri River points...	17,000	850.00	23.5	39.95
Brick, common,				
At Chicago, Illinois	50,000	55.00	10	50.00
Soft coal, Eastern,				
At Chicago, Illinois...	50,000	75.00	$2.25*	55.25
Coke,				
At Chicago, Illinois.....	50,000	125.00	2.40*	60.00
Corn,				
At Missouri River points...	50,000	464.29	11	55.00
Wheat,				
At Missouri River points...	50,000	718.75	12	60.00
Lumber, Pine,				
At Chicago, Illinois.....	50,000	580.00	16	80.00
Nails,				
At Chicago, Illinois.....	50,000	800 00	27	135.00

* Rate in dollars and cents per net ton, (2,000 pounds).

Calkins Ex. No. 3½.

Q. Please file as Exhibit No. 4 to your testimony a statement showing the rates charged by your company on cattle and hogs respectively for Chicago, Illinois, from each intermediate point on its line between St. Paul and Missouri River points on the one hand, and Chicago on the other?

A. I have prepared it, and it is quite a lengthy document.

674 Q. Is it the tariffs?

A. No, it is the rates as they exist to-day named in station order.

Q. You need not take up time of the court to read those, it will go into the record.

(The witness here produced a statement which was marked "Calkins' Exhibit 4," and filed with the court as part of his testimony).

No. 26.
674 L.

STATEMENT OF RATES ON LIVE STOCK TO CHICAGO, ILL., FROM POINTS DIRECTLY INTERMEDIATE TO ST.PAUL, MINN., AND MISSOURI RIVER POINTS, WHICH INCLUDES THE C.& M. DIV., C.& C.B. DIV. IN ILLINOIS AND IOWA, LA CROSSE DIV., RIVER DIV., KANSAS CITY DIV., S.C.& D. DIV. MANILA TO SIOUX CITY, IOWA, INCLUSIVE.

(PRESENT RATES)

To Chicago, Ill.		Rates in cts. per 100 lbs.		To Chicago, Ill.		Rates in cts. per 100 lbs.	
From		Cattle	Hogs	From		Cattle	Hogs
C.& M. DIV.				C.& C.B. (Continued)			
Grayland,	Ill.	4	6	Savanna,	Ill.	10.5	14.3
Mayfair,	"	4	6	Thomson,	"	10.5	14.3
Forest Glen,	"	4.5	6	Fulton,	"	10.5	14.3
Edgebrook,	"	4.5	6	Albany,	"	10.5	14.3
Morton Grove,	"	4.5	6	Cordova,	"	10.6	14.5
Golf,	"	4.5	6	Fort Byron,	"	10.6	14.7
Glenview,	"	4.5	6	Rapids City,	"	10.6	14.7
Shermerville,	"	4.5	6	Hampton,	"	11	15
Deerfield,	"	5.5	6.5	Watertown,	"	11	15
Everett,	"	5.5	6.5	East Moline,	"	11	15
Rondout,	"	5.5	6.5	Moline,	"	11.1	15
Warrenton,	"	5.5	6.5	Rock Island,	"	11.1	15
Gurnee,	"	5.5	6.5	Davenport,	Iowa.	14	15
Wadsworth,	"	6	6.5	La Crosse Div.			
Russell,	"	6.5	7	West Allis,	Wis.	7	10
Ranney,	Wis.	7	7.5	Brookfield Jct.,	"	7	10
Truesdell,	"	7	7.5	Pewaukee,	"	8	10.5
Somers,	"	7	7.5	Hartland,	"	8.5	11
Corliss,	"	7	7.5	Nashotah,	"	8.5	11
Franksville,	"	7	7.6	Okauchee,	"	8.5	11.5
Caledonia,	"	7	7.5	Oconomowoc,	"	8.5	11.5
Oakwood,	"	7	7.5	Ixonia,	"	9	12
Lake,	"	7	7.5	Watertown,	"	10	13.5
Milwaukee,	"	7	7.5	Richwood,	"	10	13.5
C.& C.B.Div.in	Ill.			Reeseville,	"	10	13.5
Hermosa,	Ill.			Elba,	"	11	15
Cragin,	"			Columbus,	"	11	15
Mont Clare,	"	4	6	Fall River,	"	11.5	15.5
Franklin Park,	"	4	6	Doyleatown,	"	12	16
Mannheim,	"	5	7	Rio,	"	12.5	17
Bensenville,	"	6.2	7.5	Wyocena,	"	12.5	17.5
Wooddale,	"	6.2	7.5	Portage,	"	12.5	17.5
Itasca,	"	6.5	8	Lewiston,	"	13.5	19
Meacham,	"	6.5	8	Kilbourn,	"	14	19.5
Roselle,	"	6.5	8	Lyndon,	"	15	20
Ontarioville,	"	6.7	8.5	Mauston,	"	16	21
Bartlett,	"	6.7	8.5	New Lisbon	"	16	21
Spaulding,	"	7	9	Orange,	"	16	22
Elgin,	"	7.2	9.3	Camp Douglas,	"	16	22
Almora,	"	7.2	9.3	Oakdale,	"	16	22
McQueen,	"	7.5	9.6	Tomah,	"	16.5	22
Pingree Grove,	"	7.5	9.6	Tunnel City,	"	16.5	22
Hampshire,	"	7.9	10.4	Lafayette,	"	17	22
New Lebanon,	"	7.9	10.4	Sparta,	"	18	22
Genoa,	"	8.1	10.7	Rockland,	"	18	22
Kingston,	"	8.3	11.1	Bangor,	"	18	22
Kirkland,	"	8.3	11.1	West Salem,	"	18	22
Fairdale,	"	8.5	11.5	Medary,	"	18	22
Monroe Center,	"	8.7	11.8	North La Crosse,	"	18	22
Davis Jct.,	"	8.7	11.8	La Crosse,	"	18	22
Stillman Valley,	"	9	12.3	River Division.			
Byron,	"	9.2	12.5	River Jct.,	Minn.	18	22
Leaf River,	"	9.3	12.7	Dresbach,	"	18	22
Adeline,	"	9.6	13.2	Dakota,	"	18	22
Forreston Jct.	"	9.7	13.4	Lamoille,	"	19	22
Harper,	"	9.7	13.4	Homer,	"	19	22
Kittredge,	"	10	13.7	Winona,	"	19	22
Lanark,	"	10	13.7	Minnesota City,	"	19	22
Mt. Carroll,	"	10.2	14	Minneiska,	"	20.5	23.5
Hickory Grove,	"	10.5	14.3	Weaver,	"	21.5	25

530

No.26.

674 S

STATEMENT OF RATES ON LIVE STOCK TO CHICAGO, ILL., FROM POINTS DIRECTLY INTERMEDIATE TO ST.PAUL, MINN., AND MISSOURI RIVER POINTS, WHICH INCLUDES THE C.& M. DIV., C.& C.B. DIV. IN ILLINOIS AND IOWA, LA CROSSE DIV., RIVER DIV., KANSAS CITY DIV., S.C.& D. DIV. MANILA, TO SIOUX CITY, IOWA, INCLUSIVE.

(PRESENT RATES)

To Chicago, Ill. From	Rates in cts. per 100 lbs. Cattle:	Hogs.	To Chicago, Ill. From	Rates in cts. per 100 lbs. Cattle:	Hogs.
River Division.			C.& C.B. (Continued)		
Kellogg, Minn.	22.5	25	Bouton, Iowa.	23.5	23.5
Wabasha, "	22	25	Perry, "	23	23.5
Read's Landing, "	22	26	Dawson, "	23.5	23.5
King's Cooley, "	22.5	26	Jamaica, "	23.5	23.5
Lake City, "	23	26	Herndon, "	23.5	23.5
Frontenac, "	24	26	Bagley, "	23.5	23.5
Red Wing, "	25	26	Bayard, "	23.5	23.5
Eggleston, "	25	26	Coon Rapids, "	23.5	23.5
Etter, "	25	27	Dedham, "	23.5	23.5
Hastings, "	25	27	Templeton, "	23.5	23.5
Langdon, "	25	27	Manning, "	23.5	23.5
Newport, "	25	27	Aspinwall, "	23.5	23.5
C.& C.B. Div.in Iowa:			Manilla, "	23.5	23.5
Sabula, Iowa.	13.5	15	Astor, "	23.5	23.5
Lainsville, "	13.5	15	Defiance, "	23.5	23.5
Green Island, "	13.5	15	Earling, "	23.5	23.5
Elk River Jct. "	14	15	Panama, "	23.5	23.5
Teed's Grove, "	14.5	16.5	Portsmount, "	23.5	23.5
Miles, "	15	16.5	Persia, "	23.5	23.5
Preston, "	15.5	16.5	Yorkshire, "	23.5	23.5
Browns, "	15.5	16.5	Neola, "	23.5	23.5
Riggs, "	15.5	16.5	Underwood, "	23.5	23.5
Delmar Jct., "	15.5	16.5	Weston, "	23.5	23.5
Elwood, "	16	17	Kansas City Div.		
Lost Nation, "	16.5	17.5	Buffalo, Iowa.	15	15
Oxford Jct., "	17	18	Montpelier, "	15.5	15
Hale, "	17.5	18	Fairport, "	16	15
Olin, "	18	18	Muscatine, "	17.5	17
Worley, "	19	18	Ardon, "	17.5	17
Martelle, "	20	18	Medura, "	17.5	17
Paralta, "	20	18	Cone, "	18	17.5
Marion, "	21	18.5	Gladwin, "	18.5	17.5
Louisa, "	21	19	Haskins, "	19	19
Covington, "	21	19.5	Washington, "	20	19
Atkins, "	21	19.5	Titus, "	20.5	19
Newhall, "	21	20	Rubio, "	21	21
Van Horne, "	21	20	Richland, "	21	21
Keystone, "	22	21	Linby, "	22	21
Elberon, "	22	21	Parson, "	22	21
Vining, "	22	21	Rutledge, "	22	21
Gladstone, "	22	21	Ottumwa, "	22	21
Tama, "	22	21	Bidwell, "	22	21
Potter, "	22	21	Willard, "	22	21
Dunbar, "	22	21	Blakesburg, "	22	21
Pickering, "	22	21	Brompton, "	22	21
Ferguson, "	22	21	Foster, "	22	21
Haverhill, "	22	21.5	Moravia, "	22	22
Capron, "	22	22	Trask, "	22	22
Melbourne, "	22	22	Darby, "	22	22
Rhodes, "	22	22	Rathbun, "	22	22
Collins, "	22	22.5	Mystic, "	22	22
Maxwell, "	22	22.5	Jerome, "	22	22.5
Elwell, "	22	22.5	Seymour, "	22	23.5
Cambridge, "	22	22.5	Sewal, "	22	23.5
Huxley, "	22	22.5	Powersville, Mo.	22	23.5
Slater, "	22	22.5	Lucerne, "	22	23.5
Madrid, "	22	23.5	Newton, "	22	23.5
Woodward, "	23	23.5	Harris, "	22	23.5

674d
No. 26.

STATEMENT OF RATES ON LIVE STOCK TO CHICAGO, ILL., FROM POINTS DIRECTLY INTERMEDIATE TO ST.PAUL, MINN., AND MISSOURI RIVER POINTS, WHICH INCLUDES THE C.& M. DIV., C.& C.B. DIV. IN ILLINOIS AND IOWA, LA CROSSE DIV., RIVER DIV., KANSAS CITY DIV., S.C.& D. DIV. MANILA TO SIOUX CITY, IOWA, INCLUSIVE.

(PRESENT RATES)

To Chicago, Ill. From		Rates in cts. per 100 lbs. Cattle	Hogs.	To Chicago, Ill. From		Rates in cts. per 100 lbs. Cattle	Hogs
Kansas City Div. (Continued)				Kansas City Div. (Continued)			
Osgood,	Mo.	22	23.5	Randolph,	Mo.	23.5	23.5
Gault,	"	22	23.5	Thornton,	"	23.5	23.5
Laredo,	"	22	23.5	S.C.& D. Div.			
Niantic,	"	22	23.5	Sioux City,	Iowa.	26	23.5
Chula,	"	23	23.5	Morning Side,	"	26	23.5
Sturges,	"	23	23.5	Glen Ellen,	"	26	23.5
Chillicothe,	"	23	23.5	Flanders,	"	26	23.5
Dawn,	"	23	23.5	Luton,	"	24	23.5
Ludlow,	"	23	23.5	Owego,	"	24	23.5
Braymer,	"	23	23.5	Hornick,	"	23.5	23.5
Cowgill,	"	23.5	23.5	Grant Centre,	"	23.5	23.5
Polo,	"	23.5	23.5	Rodney,	"	23.5	23.5
Elmira,	"	23.5	23.5	Mapleton,	"	23.5	23.5
Lawson,	"	23.5	23.5	Ute,	"	23.5	23.5
Excelsior Springs,	"	23.5	23.5	Charter Oak,	"	23.5	23.5
Moseby,	"	23.5	23.5	Kenwood,	"	23.5	23.5
Stockdale,	"	23.5	23.5	Bell,	"	23.5	23.5
Bement,	"	23.5	23.5	Arion,	"	23.5	23.5
Liberty,	"	23.5	23.5	Buck Grove,	"	23.5	23.5
Birmingham,	"	23.5	23.5				

[illegible] number of [illegible] of [illegible] [illegible]
For the [illegible]

[illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]: Refer to the [illegible] of [illegible] on the [illegible] [illegible] [illegible] for the [illegible] of [illegible]. For [illegible] of [illegible] [illegible] [illegible]

EXHIBIT 5, Page 2. 674f

STATEMENT SHOWING THE RECEIPTS OF LIVE STOCK AT THE MARKET POINTS SHOWN.

FOR THE YEARS 1898 TO 1904, INCLUSIVE.

S T J O S E P H, M O.

Year	Cattle	Hogs	Sheep	Total
1898	225,984	1,034,125	127,707	1,387,816
1899	286,287	1,401,794	258,393	1,946,474
1900	379,967	1,678,521	388,308	2,446,796
1901	425,022	2,105,209	525,933	3,056,164
1902	#517,394	1,697,721	560,653	2,775,768
1903	579,936	1,700,564	599,189	2,879,689
1904	550,549	1,656,847	794,379	3,001,775

INCLUDES CALVES.

S O U T H O M A H A, N E B.

Year	Cattle	Hogs	Sheep	Total
1898	812,244	2,101,387	1,085,136	3,998,767
1899	837,563	2,216,482	1,086,319	4,140,364
1900	828,204	2,200,926	1,276,776	4,305,905
1901	818,003	2,414,052	1,314,841	4,546,896
1902	1,010,815	2,247,428	1,742,539	5,000,782
1903	1,071,177	2,231,067	1,863,763	5,166,007
1904	944,192	2,299,627	1,754,365	4,998,184

Exhibit No. 5 Page 3. 67488

STATEMENT SHOWING THE RECEIPTS OF LIVE STOCK AT THE MARKET POINTS SHOWN, FOR THE YEARS 1898 TO 1904 INCLUSIVE.

S O U T H S T P A U L, M I N N.

Year	Cattle	Hogs	Sheep	Total
1898	173,316	338,405	430,194	941,915
1899	169,888	369,243	383,598	922,729
1900	176,172	500,415	489,574	1,166,161
1901	155,843	616,796	332,367	1,105,006
1902	265,721	667,526	602,340	1,535,587
1903	260,195	759,542	875,640	1,895,377
1904	351,974	881,635	772,766	2,006,375

*S I O U X C I T Y, I O W A

Years	Cattle	Hogs	Sheep	Total
1898	300,932	474,238	20,861	796,036
1899	348,109	568,306	36,081	952,496
1900	300,432	833,141	61,342	1,194,920
1901	307,529	959,964	66,930	1,334,423
1902	399,128	1,007,762	61,275	1,468,165
1903	372,506	1,007,900	41,774	1,422,180
1904	326,657	1,113,177	28,464	1,468,298

701 The COURT: I sustain the objection to that. That is a matter of agreement of which he may not have any knowledge now.

Mr. COWAN:

Q. You said yesterday that these markets, at Cedar Rapids, and other points that you mentioned, Ottumwa and so on, would be more or less affected if there was a change in the rates; that they have to have a lower rate than the live stock in order to exist, as I understood your answer. I will ask you if it is not a fact that in actual practice, the Fort Worth market which was established three years ago, has become a larger killing point than all of the interior Iowa stations put together, in spite of the fact that the dressed meat and packing house product rate is 20 per cent. higher than the live stock rate into and out of Fort Worth?

Mr. SEVERANCE: I object to that as immaterial and incompetent.
The COURT: Overruled, let's see what he knows about it.

A. I have no personal knowledge of the conditions surrounding the killing and shipping of live stock at Fort Worth or Texas points, but I should say from my observation that the conditions surrounding the Fort Worth plant and those which are
702 located down at interior points in Iowa, are very much different.

Mr. COWAN:

Q. I did not ask you that, I ask you whether you knew it was a fact?
A. No sir, I do not.

The COURT:

Q. You don't know anything about it?
A. I don't know anything about it.

Mr. COWAN:

Q. Have you had occasion to make out within the last six or eight months, or have you made out a statement showing the consist of your freight trains passing east bound through Savannah?
A. I believe I did prepare such a statement for the Interstate Commerce Commission.
Q. I will ask you if it is not a fact that that statement contains the consists of all trains passing east bound out of Savannah, from October 1st to the 15th, 1904, and February 1st to 15th, 1904, and I will ask you if that statement did not show that the average of the cars in the trains carrying live stock was 33.6 cars for the October shipment and 32.3 per train for the February shipment and that of trains not carrying live stock the average wa- 27.9 cars for the October shipment and 25 cars per train for the February shipment?

A. I believe they required information of that nature but
703 what the percentages of live stock and dead freight in each train was, has passed out of my memory. I don't remember it at all.

Q. Well, I will ask you if you don't recollect it to be a fact that it showed that the live stock trains contained the most loaded cars, as I contended in the trial of that case in which you made the statement?

A. I could not say, the reports will show.

Q. Have you got a copy of that statement anywhere?

A. It is possible that I have.

Q. That is made up from the train conductor's books, is it not?

A. It is made up from the actual consists of the trains between those points, yes sir.

Q. I wish you would examine and see if you can find a copy of that statement and if not I would like to have you verify these figures that I have read, and see if they are correct. They are taken from your report. I don't mean to testify to them but I want you to do the testifying but if you will look at the copy of my brief on page 62, you will find that statement?

A. Very well.

Q. Is it not a fact from your observation of the live stock traffic that a train carrying live stock cars across the Mississippi river and coming into Chicago from Iowa are heavier trains, that is,
704 have more loaded cars of live stock than the loaded cars of all freight in other trains not carrying live stock?

A. I don't exactly catch that question.

(The question was then read.)

A. Well, I would not want to answer that question off hand.

Q. Don't you recollect from the statement that you made?

A. No sir, I do not, I don't remember.

Q. Whatever that statement was it was a correct statement?

A. It certainly was, yes sir.

Q. Yesterday when you said the rates on live stock into Cedar Rapids, for example or Ottumwa and the dressed product out were more than live stock rates, from the point of shipment of the live stock to Chicago, you made that statement by adding the two rates per hundred pounds together, did you not?

A. Yes sir.

Q. How much packing house product did your road carry out of these towns which have the interior packing plants in Iowa, did you give that statement yesterday or have you it?

A. I did not give it, no sir.

Q. Have you the statement?

A. I have not prepared any specific figures, but I have a report of that character.

Q. About how much, do you recollect?

A. Well, I think we would average 150 cars of hogs into Cedar Rapids a month. And perhaps as many into Ottumwa.

Q. How many cars of dressed meat and packing house products did you carry out of those places?

705 A. Well, those houses intend to average, or give us the product from all the raw material that we take in. It might vary from month to month. I have known months when we would get 200 carloads of packing house product from T. M. St. Clair & Company in Cedar Rapids and then it would drop down.

Q. Well, you have the definite data in the office?

A. Yes sir.

Q. I wish you would prepare it and file it so as to become a part of your testimony, a correct statement showing the amount of receipts for the same year that you gave the others.

Mr. SEVERANCE: We, of course, will have an opportunity to examine Mr. Calkins about it if that is done.

The COURT: Oh, yes.

The WITNESS: What period would that be for?

Mr. COWAN: Of the number of cars of dressed meat and packing house products you handled out of interior Iowa packing town, Ottumwa and Cedar Rapids and such others as you have on your line.

A. For what period?

Q. For the same period that you gave the figures on the Missouri river. I think it was the year, the fiscal year of 1905, wasn't it? Whatever period it was.

A. 1904.

706 Q. Where is the packing house product consigned, where does it go to, that you ship out of Cedar Rapids and Ottumwa, principally?

A. It goes to various points, principally south and east.

Q. Passing through the Mississippi river gate-ways?

A. And Chicago, yes sir.

Q. On what rate does it move when it passes through the Mississippi River gate-way?

A. It depends on its destination.

Q. Well, it is on a proportional to the Mississippi river?

A. Yes sir.

Q. And then the rates from there to the point of destination?

A. Yes sir, the balance of the rates.

Q. It is a combination of the proportional to the Mississippi river and the rate from there to the destination?

A. Yes sir.

Q. When it comes to Chicago that comes on the local Chicago rate?

A. Yes sir.

Q. The combination of the proportional to the Mississippi river gives a less rate to other points than Chicago, does it not, except points taking the Chicago rate?

A. Well, I don't know just what you mean by that question.

Q. Well, for example in shipping to Indianapolis, that shipment would come to the Mississippi river on the proportional to the Mississippi river and then take the Mississippi River rate into Indianapolis, with the Indianapolis rate added?

707 A. You mean by our earnings would be less on the Indianapolis shipment than it would on the Chicago local?

Q. No, I am just speaking of what the shipper would have to pay?

A. The rate would be higher.

Q. There is no rate shipping from Cedar Rapids to Indianapolis that applies as one through rate, does it?

A. No sir, not as a through rate.

Q. In order to arrive at that rate you would add the proportional from Cedar Rapids to the Mississippi river and the rate from the Mississippi river to Indianapolis?

A. Yes sir.

Q. What is the proportion from Cedar Rapids to the Mississippi river?

A. I believe it is four cents.

Q. Now if it is destined east of Chicago to New York, for example, it is shipped the same way, on the proportional to the Mississippi river——

A. And then plus the percentage of the proportional beyond.

Q. Suppose that a carload was being shipped from Cedar Rapids to Buffalo or better still I will take it to New York city. The Mississippi river rate would be 116 per cent. of the New York City rate, would it not from Chicago?

A. I don't recollect. I think that is the basis of the rate. That is the Savannah rate, as we would call it, the Mississippi river point. That is west bound. I don't know whether that is the basis for east bound business or not.

708 Q. Well, assuming that it is, whatever per cent. it is. A Cedar Rapids man would have to add whatever the proportional is which you say you think is four cents from Cedar Rapids to the Mississippi river and then adding them together would make his rate to New York?

A. Yes sir.

Q. So that proportional to the Mississippi river, was that readjusted or changed in any way when the change was made in the rate from the Missouri river on packing house product in August, 1902?

A. It was changed, but whether it was changed at the same time or not, I cannot say.

Q. Have you got a tariff of those proportional rates, showing what they were previous to 1902 and what they were after?

A. I think we could produce that.

Q. I wish you would furnish me one of each, if you can, and if you cannot make a typewritten statement of it showing what the proportional rate was previous to the change?

A. Yes sir.

Q. How long—Showing how long it was in effect, if you can?

A. Yes sir.

Q. And when it was changed, and what change was made in the proportional. You made a statement yesterday in reference to the return transportation of men in charge of live stock giving the figures as to how much passenger fare it would amount to.

A. Yes sir.

709 Q. Was that statement of return transportation or actual return transportation?

A. Actual figures, procured from our Ticket Auditor's record.

Q. Have you any figures to show the amount of live stock delivered by you from Iowa into Chicago?

A. I haven't them with me, no sir.

Q. How is that?

A. I haven't them with me.

Q. The figures that you gave with respect to the return transportation were on what shipments, all of your shipments from the west?

A. No sir, shipments coming from stations that were directly intermediate between the Missouri river points and St. Paul, including those terminals.

Q. That included your lines, also in Minnesota?

A. Only such as would be directly intermediate between St. Paul and Chicago.

Q. And between Sioux City and Chicago?

A. Sioux City and Chicago, Omaha and Chicago and Kansas City and Chicago.

Q. Here is a map in your annual report. If you can without too much trouble I wish you would be kind enough to point out the territory in which that return transportation applied.

(Witness examines map referred to and places thereon pencil marks indicating as requested.)

710 Q. That is the Mississippi river that you are marking now?

A. That is right. We bring a great deal of live stock through Savannah to Chicago and that line must be included.

Q. Well, it took in all of these lines, didn't it to the Missouri river?

A. No sir, we didn't take in this territory at all. We took in the territory that would be affected by the reductions in this case.

Q. Didn't you take in this line?

A. No sir, that is not intermediate between these points. It begins here at Sioux City, Omaha, Kansas City and St. Paul.

Q. Now, would the rates on your line from Canton, Hudson, Rock Valley and east to your crossing of the Mississippi river *river* at Prairie du Chien, would those rates be affected by complying with the Commission's order in this case?

A. Yes sir they would.

Q. Why didn't you include that line in your return transportation?

A. Well, I have just the intermediate points between the terminals as specified.

Q. Are those points intermediate on that line?

A. No sir, they are not considered intermediate and every line in establishing these reductions from St. Paul to Chicago, every other line, would necessarily fix a rate for us at certain junc-

711 tion points. I will cite the line of the Great Western Railway. They would carry the reduction from St. Paul through

to Hampton, Iowa, which would necessitate our making a reduction from that point. Also the line of the M. & St. L., in carrying the St. Paul rate they would carry it through—I think it is Mason City or Albert Lee and that would necessitate our establishing or fixing the same rate through that territory.

Q. How are you able to keep up the Sioux City cattle rate?

A. The Sioux City cattle rate?

Q. Of 25 cents, if the rates up there would be affected because they are lower at some other place?

A. The rate is 23½ from Sioux City on cattle.

Q. What is it on hogs?

A. 25.

Q. How are you able to keep the hog rate up then?

A. Well, the most of the hogs that move out of Sioux City or cattle, move out of there on the balance of the through rate.

Q. Are you able to state what that is generally, from Sioux City?

A. I could not answer for all lines, no sir. We have ten or fifteen or twenty cars a day.

Q. What amount of damage claims per carload (if you estimate it per carload) do you pay on your total live stock business and what amount on your packing house product and dressed meat business?

712 A. Why, as I stated yesterday I have not prepared any specific figures, but I know that the live stock, the damage paid on live stock for delays and shrinkage and declines in the market and so forth very greatly exceed what we pay on provisions and fresh meat.

Q. You mean that it exceeds it per car. Have you estimated it per car?

A. No, I estimated it in amount, the different totals.

Q. What number of live stock cars—The number of live stock cars handled very greatly exceeds the amount of dressed meat and packing house products, does it not?

A. Yes, it would into the Chicago market.

Q. Very greatly.

Mr. SEVERANCE: The witness did not say very greatly.

713 Mr. COWAN: Well, you furnished the figures yesterday on how much packing house product and dressed meat you handled?

A. Yes sir.

Q. And the report of the Stock Yards Company shows how many cars of live stock you handled?

A. Yes sir.

Q. Will you please file a tariff of the rates charged by your road between stations on its lines, on live stock; also the packing house products and dressed meat and if you do so, I wish you would kindly furnish a tariff of the Western Trunk Line Committee that they issue, showing the joint tariff on the Chicago and Missouri River lines.

A. Do you want just the joint tariff or the local and the joint.

Q. I want to get your own issue of your local tariffs, your tariff

of your own issue and then the Western Trunk Line Committee tariff?

Mr. SEVERANCE: You want the tariffs showing the rates into all these points?

Mr. COWAN: Yes, these tariffs showing the rates between stations on his line, and then the Western Trunk Line Committee tariff showing the joint tariff.

The WITNESS: You want the rates to Chicago?

Q. Now, the joint rates to and from the various stations on these lines that will cover the territory, cover all these lines.

714 Mr. SEVERANCE: He wants the rates into the Missouri River points into Chicago and St. Paul.

Mr. COWAN: If I can go up to Mr. Mahoney's office and get one of those files, I can do it myself.

The WITNESS: Well, I will furnish it, yes sir.

Q. Is it not a fact that all the joint rates of the carriers are made by and through the channel or means of the Western Trunk Line Committee to which they all belong to and through which they publish all of the joint rates on everything?

A. No sir, I don't think it did.

Q. What is the length of the cars most usually used in this traffic?

A. Thirty-six foot, the live stock cars.

Q. The private car line companies furnish a large number of cars used in the traffic, do they not?

A. Yes sir.

Q. And their cars are practically all 36 feet?

A. I believe they are practically that.

Q. The cars built in recent years by all the lines have been about the 36 foot dimensions?

A. It is considered the standard car.

Q. The old short cars are not used except under stress of circumstances?

A. They are almost obsolete.

Q. Has your company a contract for cleaning cars?

A. No sir, not to my knowledge. It is usually done by

715 our own men I believe.

Q. I wish you would make a statement of the total amount of damage claims paid on the dressed meat and packing house products. You have stated it as to the live stock. Make it for the same period on dressed meat and packing house products. In estimating the live stock tonnage you always estimate the amount of the minimum stated in the tariff, do you not?

A. No, the actual weight. It would not be less than the minimum fixed, but the tonnage carried would be based on the actual weight.

Q. But the actual weight carried might be less than the minimum and often times is less?

A. In some instances, yes sir.

Q. Is it not a fact that these cattle in Western Iowa are generally the heaviest cattle that come to this market?

A. Yes sir.

Q. How many do they load in a car usually?

A. Well, of corn fed, what we call corn fed cattle, from 18 to 21.
Q. What do these cattle weigh*t?*
A. From 1200 to 1600 pounds.
Q. What are the cars usually bedded with?
A. Sand.
Q. From that locality?
A. Well, it is according to the preference of the shipper.
716 Some prefer sand and some prefer hay. We provide sand at all stations for the bedding of those cars. The majority of them prefer to use that article for bedding.
Q. Do you charge the shipper anything for the bedding?
A. No sir. We do if it is put in the car by us, but we furnish the sand free and he puts it into the car himself.
Q. You spoke of the price yesterday of the cattle, at these various markets. Where do the better prices prevail? At the Missouri River or Chicago?
A. I think I spoke more particularly of hogs, yesterday than cattle.
Q. Well, take it on the hogs.
A. It varies at different periods according to the animal that is to be offered for sale.
Q. Isn't it a fact that in actual practice that you ship in cattle from the Missouri River for the purpose of selling them, and you offer them for sale, the packers make a bid on them and you then ship them into Chicago and sell them, that the most you can expect is the difference in the amount of the freight.

Mr. SEVERANCE: I object to that as immaterial to this inquiry.
The COURT: I will let him answer.
A. Well, I could not answer that. I have had no experience in that line personally. It is a matter of market conditions
717 which is supposed to be open to competition.

Mr. COWAN:

Q. You said your earnings would be reduced if this rate adjustment was made. Do you mean that it would be reduced in the amount you estimated, if the shipments took the same direction that they take now, or did you mean that it would be reduced if the shipments were changed and some of the stock came to Chicago, more of the stock came to Chicago than went to the Missouri River?
A. I arrive at those figures by using the business we moved during the calendar year, 1904, to Chicago.
Q. In arriving at those figures did you get the amount of live stock shipped in from points on your line, in the intermediate territory?
A. Yes sir.
Q. Did you take that from stations up to the Mississippi River?
A. Wherever the rate would be affected by the reduction.
Q. Did you estimate that it would be clear on to the Mississippi River?
A. No sir.
Q. How far did you estimate the rate would be affected?

A. About 145 miles east of the Missouri River.
Q. And then you just——
A. Well, it would be a little further than that.
Q. Then you just estimated it in the 25½ cent belt?
A. It would carry further than the 25½ cent belt, it would
718 reduce the rates until the 20 cent basis was fixed and it would also fix the rates on live stock from Cedar Rapids and intermediate points of 13½ cents.
Q. Can you furnish a statement of the number of car loads you used in making your estimate?
A. Yes, I think I can.
Q. Make a note of that please, to furnish that. That is all.

Mr. SEVERANCE: Your Honor, I would like to call attention to something in the record. It is not very important but it reads a little wrong. On page 688 the witness had testified as to the disastrous results to these interior packers if those rates were equalized. Then I asked the question, "What would be the final result of such an inquitous position if it should be made at Mason City?" And I immediately added, "That is a joke." The reporter in writing that put in his answer before my remark, "that is a joke." His answer is, "I think it would." I don't mean to be understood as saying that Mr. Calkins' answer is a joke.

Mr. RAYMOND:

Q. Do you intend to say in reply to Mr. Calkins, in reply to one of his questions, that there was a bridge toll charged over the Union Pacific Bridge at Omaha?
A. I believe there is, yes sir, on Iowa business.
719 Q. Do you know anything about that?
A. Well, I have not got any specific information in regard to that.
Q. Don't you know that your road hauls the trucks of the Union Pacific Road from Council Bluffs to South Omaha, a distance of eleven miles?
A. I know very little about that Union Pacific contract.
Q. Don't you know that the Rock Island has the same kind of a lease?
A. I believe they have.
Q. Don't you know that the Great Western formed itself over to a similar lease?
A. I think there was something of that kind, yes sir.
Q. Why, it costs you something to go to South Omaha from Council Bluffs, don't it?
A. I should say it did, certainly. It is a very expensive piece of road.
Q. Instead of building your own track, you used somebody's else?
A. Yes, we used the Union Pacific track.
Q. You have no knowledge about what the arrangement is?
A. No, I have not.

Q. But you do know that it applies to all freight, don't you? All your freight trains go over that track, don't they?

A. Yes sir.

Mr. Lund: I don't know that I understood you about the effect of a compliance with the Commission's order in the way of reduction of these rates from intermediate points. Now, to comply with the Commission's order will compel a reduction of the 21½ cent rate from the Missouri River, in 20 cents. Now, how far cost would that reduction go? Wouldn't that extend proportionally through the State of Iowa to the Mississippi River?

A. It would reduce the rates on the Northwestern road from Council Bluffs to Boone. There is where the 21½ cent rate begins. Then it would reduce the rate until the 20 cent basis was reached. The 19½ cent rate that is now carried on provisions and packing house products would be the maximum from Des Moines and intermediate points east thereof until the 11½ cent rate was reached at Cedar Rapids. That would be the maximum rate at Cedar Rapids to intermediate points and Chicago.

Q. I had supposed, and that is the reason I was asking the question, that the basing rate now from all intermediate points in Iowa was the 21½ cent rate from the River, and that that basing rate extended from the Missouri River to the Mississippi River?

A. Oh, no sir.

Q. It would be simply then up to the point where you met the 20 cent rate?

A. Yes sir.

Q. Now, I want to ask another question——

The Court: Wait a minute. Where is that point where you meet the 20 cent rate?

A. We would meet the 20 cent rate about 200 miles east of Omaha. The 21 cent rate is carried about 100 miles east of Omaha. The rate from Eastern Iowa points, they are carried down all the way through Eastern Iowa, they are graded down.

Mr. Lund:

Q. Another question on that same line. Did you, in your estimate of the loss that would be sustained by your company, by a compliance with the Commission's order and the reduction of the rates on live stock, which would be made necessary therefor, include anything except the reduction in this intermediate territory? I mean by that, did you include in making the estimate, the reductions west of the Missouri River that would necessarily result?

A. No sir. Neither did I take into consideration the business that would originate on connecting lines that we meet and handle through to Chicago. Also there was no account made of the reductions that would occur north and west of Sioux City and St. Paul.

Q. That is what I understood.

A. All intermediate points on our own rails.

Mr. Sheppard: I would like to ask a question. How will the interests of the Chicago Live Stock Exchange, the complainant before

the Commission, be promoted by restoring the former rates on the products?

722 A. How would the interests of that Exchange be promoted?

Q. Yes, by restoring the former rates on the products, the former rates being the same as on the live stock or about the same?

A. Well, I don't see how it would affect them. It certainly would not affect them directly.

Q. Wouldn't it increase the number of live stock that they would sell on Commission?

A. If the interior markets were driven out of the business it would certainly force that live stock to the Chicago market.

Q. It is charged in this case -at the Chicago Live Stock Exchange is only interested in the way of its commissions on live stock which it handles and sells? Isn't the making of the rate on the product lower than on the live stock from the Missouri River to Chicago, is not the affect of that to divert the shipments of live stock to the Missouri River markets which would otherwise go to Chicago? Isn't that the tendency of that reduction in the live stock rates,—I mean in the product rate?

A. Well, I presume it would.

Q. If the reduction of the product rate were reduced the live stock rates will benefit the Chicago Live Stock Exchange by increasing the amount of live stock they will sell on commission, will this not also benefit the Chicago Stock Yards by increasing

723 the number of cattle that they will handle of live stock?

A. Their interests are mutual.

Q. Do not the lower rates on products and on live stock *incourage* the slaughtering of live stock nearer home, near to where it is raised?

A. I think it would, yes sir.

Q. That adjustment of rates then, benefits the nearby markets, the stock markets?

A. I think the present adjustment gives them a fair means of manufacturing the product that is tributary to their plants.

Q. The reduction of the product rate then from the Missouri River to Chicago, without reducing the live stock rates, is in the interest of the Missouri River markets rather than Chicago, is it not?

A. I presume it would.

Re-examination by Mr. SEVERANCE:

Q. Counsel has gone into this organization called The Chicago Live Stock Exchange, and their interests. Now, in making the rates, isn't it a fact that it is customary for the traffic men to consider the interests of the producers and the consumers and the people living in the territory along the line of their road rather than

724 the interests of a lot of Commission men living off at a terminus?

A. Absolutely so.

Q. You have already stated that these gentlemen who have made this complaint have no interest as I understand in the sub-

ject matter whatever except as they can get commissions for selling the live stock?

A. I said there might be one or two cases of that kind but as a general proposition I don't think they have.

Q. Now, they have a monopoly of the business of selling live stock out here at the Yards, haven't they?

A. Yes sir.

Q. No other man that don't belong to this little Association can sell any live stock there, can he?

A. Well, I believe the Stock Yards Company says that any one can sell stock there, but it is not profitable for the shipper to handle his business in any other manner except through a commission firm.

Q. That is made so by this Exchange itself, isn't it?

A. Yes sir.

Q. Because of their control of the situation?

A. Yes sir.

Q. A party that ships a carload of stock in here has to pay a tribute to these gentry in the shape of their commission?

A. Yes sir.

725 Q. You say they also advance money on consignments of live stock?

A. Yes sir.

Q. And they charge interest for that, don't they?

A. Yes sir.

Q. So they loan money and get commissions and that is the extent of their interest, so far as you know?

A. Yes sir.

Q. What is the commission that they get for selling live stock per car, or do they sell it by the hundred weight?

A. I think it is 50 cents per head on cattle and $6 a car on hogs. For double-deck cars, it is more than that.

Q. Fifty cents a head on cattle?

A. Yes sir.

Q. Suppose a steer weighs a thousand pounds, what do you get for hauling that steer from the Missouri River on the local rate of 23½ cents?

A. $2.33½.

Q. And if you hauled that *steer* on a proportional from the West, you will sometimes haul it as cheap as 13 or 14 or 15 cents?

A. $1.13.

Q. I mean per hundred weight?

A. Yes sir.

Q. And if a—for a thousand pound steer you would get ten times that much which would be $1.30 or $1.40 or $1.50?

A. Yes sir.

Q. So that for the service of selling this steer in this market, these gentlemen exact one third of all you get for bringing

726 that steer five hundred miles over your rails?

A. Yes sir.

Q. And sometimes more than one-third if your rates happen to be less than $1.50 on a thousand pound steer.

A. Yes sir.

Q. What services do they perform to earn this extraordinary sum of money?

A. Well, they are supposed to be placed in the different selling pens at the Yards, by the Stock Yards Company who also make a charge.

Q. These gentlemen are in the pens, are they, these sellers?

A. Those sellers, yes sir.

Q. Who are the purchasers?

A. The packers as a rule.

Q. Who fixes the price? That is fixed by the packers, isn't it?

A. Well, I am not prepared to say that. That is an open question.

The COURT: That is a matter for another case.

Mr. SEVERANCE:

Q. Well, this Chicago Live Stock Exchange, this monopoly of gentlemen who get 50 cents per head, they don't fix it, do they?

The COURT: What per cent. is that to the commission merchant?

A. He gets 50 cents a head for the steer.

Q. What percentage is that, suppose the steer weighs 1500
727 or 1600 pounds?

A. The percentage of the price that he brings, you refer to?

Q. Yes.

A. Well, I suppose it would be about 1 per cent.

The COURT: An auctioneer in this city charges 10 per cent. don't he?

A. I am sure I cannot say.

Mr. SEVERANCE: They say the railroad rate is too high and here we show that these men for merely getting into the pen and selling the animal gets, in many cases one third as much as they get for hauling the animal.

The COURT: It has been the practice of the District Court to furnish the business to one auctioneer, in the bankruptcy Court. He gets 10 per cent. The Receiver who sells it will get 1 or 2 per cent. When you come to fix the value of a commission merchant or of an auctioneer in the city of Chicago, you have got to get some other data than ordinary services.

Mr. SEVERANCE: May I call your Honor's attention to the charges made on the Stock Exchange? One-eighth of one per cent. is the charge made for selling stocks in this country, and I think the charge is 1/16 or something like that on wheat. I don't remember exactly, but I know as to stocks. It is ⅛ of 1 per cent. and it would be ⅛—assuming that 1 per cent. is what these gentlemen
get, and I think it is certainly a much fairer comparison
728 than it is to compare it with the auctioneer.

The COURT: I think the auctioneer gets too much.

Mr. SEVERANCE: Because they are practically of the same class, people of the same class; they are each brokers.

The COURT: Well, I guess it all depends, as explained by counsel, they all charge all they can get.

Mr. LYND: All the traffic will bear.

Mr. SEVERANCE: Of course, these gentlemen are in a position to

exact this, having a monopoly. It is not all they can get. They could undoubtedly get twice as much if their gall would go to that extent.

Mr. COWAN:

Q. Isn't it a fact that the live stock exchanges on the Missouri River operate precisely on the same conditions?

A. I believe their prices are uniform.

Q. Isn't it a fact that they have a National Organization to which all of them belong, and that they fix their regulations practically alike in all these principal live stock markets?

A. I know they have associations but I don't know whether it is of a National character or not.

Q. They fix their regulations and prices substantially the same at all markets?

A. I presume so.

Q. And the railroad company don't pay those commissions in any case?

A. No sir.

729 Q. And they don't fix their rates based on what the commissions are in any case?

A. No sir.

Q. And it does not have a thing in the world to do with it?

A. When you compare the interior markets in Iowa with the Chicago market, then it does have a very material effect.

Q. Do you mean to say that it has anything to do with the making of the freight rate?

A. No, I meant in regard to the net results to the shipper.

Q. I am talking about whether the commissions charged have anything to do with the making of the freight rate on cattle?

A. No sir.

Q. Neither does the freight rate have anything to do with the commission?

A. No sir.

Mr. RANSOM:

Q. You were speaking of this 23½ cent belt west towards the Missouri River. Isn't it a fact that since the reduction of the product rate, that the cattle are moved in the same manner out of this 23½ cent belt to Chicago and also to the Missouri River, just the same as they did before?

A. I have not noticed any marked change. I have made no comparison.

Q. You say that you think that the rates into the Missouri River Markets, the Missouri River points, the 23½ cent belt rates are reasonable?

A. I think so, yes sir.

730 Q. Now, do you know what the rate is 100 miles east of South Omaha into Iowa?

A. No, I could not tell you.

Q. It is about 12 cents, isn't it?

A. Somewhere in that neighborhood, on hogs.
Q. And the same on cattle isn't it?
A. No, the rate varies.
Q. Well, it is very little.
A. It is very close together.
Q. Do you consider a 12 cent rate for 100 mile haul throughout all that belt into South Omaha reasonable, compared with a 23½ cent rate for 400 miles to Chicago?
A. I think the rates are fairly adjusted.
Q. Take that case, that is a rate of 12 cents on hogs for 100 miles into South Omaha; now, do you consider that a proper adjustment where you haul 400 miles for 23½ cents more than half as much for 100 miles as you do for 400 or 500?
A. When you take all the conditions surrounding the Missouri River market and the advantages that they derive from the business that is naturally tributary to them——
Q. Well, they can't help being right there. They have got to be somewhere. I want you if you will, to say whether you think a rate for 100 miles at twice the amount that the 500 mile haul is, is a reasonable rate compared with a 12 cent rate, or half of it, for 100 mile haul?
A. I think the rates are very fairly adjusted on their pres-
731 ent scale.
Q. Generally?
A. Yes sir.
Q. As they are adjusted on then 23½ cent belt proposition, running to the Mississippi River both at Sioux City and St. Joe, and Omaha and Kansas City?
A. Yes, I do.
Q. Do you think they are reasonably adjusted as compared with the 23½ cent rate?
A. Yes, I do.

Mr. COWAN:

Q. Mr. Calkins, do you think they were fairly adjusted previous to the change in the relation of the rates and as they now have existed—that is the published rates—for some eight or ten years next previous to January, 1902?
A. There has not been any change in the live stock rates.
Q. I am talking about the packing house product and dressed meat rates and the relative rates. Were they fairly adjusted during that eight or ten years?

The COURT: He has been speaking about the live stock rates, or relative rates between Kansas City and Omaha. Between Kansas City and Omaha on the one part and Chicago on the other. He didn't say anything about a comparison between the rates.
Mr. COWAN: I want to ask him that question.
The COURT: That would not be cross examination. I think he has gone over that.
732 Mr. COWAN: That is a question that I forgot to ask.

The COURT:

Q. Well, what do you think about that, the relative rate as now existing, whether they are right or not?

A. As they stand to-day compared with two or three years ago, is that the idea?

Q. Which is right, the way it is now, or the way it was then?

A. I think the way it is now.

Mr. COWAN:

Q. Do you know whether your rate was changed because of the Great Western contract or because of the judgment that it ought to be so changed?

Mr. SEVERANCE: I don't think that is cross examination.

The COURT: You have gone over that. It is a wise rule never to ask questions of a witness on cross examination unless you think he is going to answer in your favor. If you had ap-lied that heretofore, it would have saved much time.

733 J. N. TITTEMORE, called as a witness in behalf of the defendants, Minneapolis & St. Louis and Iowa Central Railways, having been first duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

The COURT: What is your full name, please?

The WITNESS: J. N. Tittemore.

Mr. BAXTER:

Q. What is your occupation?

A. My occupation is that of a railroad man, Freight Traffic Manager, at the present time, of the Minneapolis & St. Louis and the Iowa Central Railways, representing about 1500 miles of intermediate line that does not reach Chicago.

Q. They are defendants in this case?

A. Yes.

Q. How long have you been connected with the Freight Traffic departments of railroads in the United States?

A. About 20 years.

The COURT: Freight man?

A. Freight Traffic Manager, yes, sir.

Mr. BAXTER:

Q. With what railroads have you been connected and in what capacity?

A. Well, in the freight departments of the Minneapolis and St. Paul and *Sioux* St. Marie; with the Sioux City & North-
734 ern and Pacific Short Lines, now part of the Great Northern; with the Des Moines Northern & Western; now part of the Milwaukee, and with the Iowa Central, Minneapolis & St. Louis.

Q. In what capacities?

A. Well, freight chief clerk of the traffic departments, the general freight agency, and for a time I was Assistant to the President. I have been general freight agent, acting General Manager of the Iowa Central for a time, Traffic Manager of the Iowa Central, and now Freight Traffic Manager on both lines.

Q. For what length of time have your duties had relation to the making of freight rates, if at all?

A. About 20 years.

A. I wish you would file as Exhibit number 1 to your testimony a statement showing correctly the rates, in cents per hundred pounds, now charged on cattle, hogs, packing house products, fresh meats, especially in car loads, to Chicago, Illinois, from the Missouri river points and St. Paul and South St. Paul, Ottumwa, Iowa, Des Moines, Iowa, Marshalltown and Cedar Rapids, Iowa. I wish you would explain as to which of those rates your companies participate in?

A. Neither of our companies reach the Missouri river and neither of them reach Chicago. We do not make rates from Ottumwa or Cedar Rapids to Chicago. We do make rates from Des Moines and Marshalltown to Chicago, in connection with other lines, and from St. Paul and Minneapolis.

734*a* EXHIBIT No. 1, J. N. TITTMORE.

Carload Rates to Chicago.

From	Cattle.	Hogs.	P. H. P.	Fresh meat.
Kansas City, Mo.				
St. Joseph, Mo.				
Atchison, Kas.	No rates	via Ia. C	ent. or M.	& St. L.
Leavenworth, Kas.				
Council Bluffs, Ia.				
Omaha, Neb.				
So. Omaha, Neb.				
Nebraska City, Neb.				
Sioux City, Ia.				
St. Paul, Minn.	25c	27c	15.7c	17c
So. St. Paul, Minn.	(*b*) 20c	(*b*) 17.5c	(*a*) 14.6c	(*a*) 15.7c
Ottumwa, Ia.	No rates	via Ia. C	ent. or M.	& St. L.
Des Moines, Iowa	22c	23.5c	18.5c	18.5c
Marshalltown, Ia.	22c	21c	16c	16c
Cedar Rapids, Ia.	No rates	via Ia. C	ent. or M.	& St. L.

(*a*) Applies only on shipments destined to points east of the Ill.-Indiana State line.

(*b*) Applies only on shipments originating beyond the point of shipment.

Tittemore Exhibit No. 1, vol. 6, p. 734.

735 Mr. SEVERANCE: And south of St. Paul?

The WITNESS: And south of St. Paul we participate in such rates.

Mr. BAXTER:

Q. Do your companies, or either of them, make or join in making rates from Missouri river points to Chicago?

A. Do we make rates?

Q. Make or join in making them from Missouri river points to Chicago?

A. We participate with other companies in packing house rates—no, not to Chicago, but via Peoria to the East from the Missouri river, but we do not make such rates.

Q. Well, do you participate?

A. Yes, we do participate.

Q. In relation from the Missouri river to Chicago?

A. No.

Mr. SEVERANCE: Peoria and the East?

Mr. BAXTER: Yes, I understood that, but I wanted to get it clear.

The WITNESS: No, not to Chicago.

Q. I wish you would state, Mr. Tittemore, whether the rates from Missouri river points and the other points mentioned in your Exhibit number 1, on live stock to Chicago, are just and reasonable or not, and state your reasons for any opinion you may express?

A. In my judgment the rates on live stock from the Missouri river, and particularly from the Missouri river zone, are more than just to the shipper and are less than the carrier should re-

736 ceive for the service we render. The Minneapolis & St. L. and Iowa Central Companies do what we call a pick-up business, and I believe that nine-tenths of the traffic is composed of that class of business; nearly all of it is composed of that class of business. If you were to refer alone to terminal rates and handle the business in train-loads, which is not the case, the rates might be considered—the present rates might be considered reasonable. In the first place, take it with our roads; we have to provide stockyards at a considerable expense, to such an extent that at a majority of our country stations it costs us more to provide for the reception and shipment of live stock than it does for the reception and shipment of passengers, if you will; and almost every other kind of freight. One of what I call our six-ten yards, such as is located at Grinell, Iowa, or at Brighton, Iowa, costs us a little more than $1,200.00. We provide scales and scale houses; we provide feed troughs and racks; we pave the yards with vitrified paving brick; in many cases we provide windmills, in some cases use city water. We not only have to shed the yards to withstand summer suns, but also winter snows and winds, and on the whole the yards cost us between $1200 and $1300, nearer $1200 than $1300. The Iowa Central and M. L. & St. L., during the past two years, have done considerable work on their stock yards, and the Iowa Central expended during the last two years approximately $20,000.

737 Mr. SEVERANCE: What is the mileage of the Iowa Central?

The WITNESS: About 550 miles, or $116 and some cents per car per yard.

Mr. BAXTER:

Q. You mean per stockyard?

A. Per stockyard. The M. & St. L. expended approximately $10,000 or approximately $70.00 per yard per annum—per stock yard per annum. In addition to that the transportation facilities that we furnish for live stock on our road are extraordinary. We schedule some livestock trains. We cannot always, on all sections even of our main line, handle full trains of live stock. We oftentimes handle very much less than a train-load, say six or seven cars, but we oftentimes have, say, for illustration, between Hampton and Marshalltown two or three carloads of live stock turn up, and this is not an isolated but almost a regular case, two or three times a week, whether two or three carloads of live stock, and of necessity we must fill up that train with something else, and invariably the two or three carloads of live stock will dictate the handling of that train from the point where the stock originates to destination or to the point at which we turn the business over to another line, making the expense of handling dead freight in that train very much more than it otherwise would be.

738 Q. If you have only two or three cars of live stock in a train does that entitle that train to preference over all other freight trains?

A. Yes, it is my experience that stock trains lose more time at stations, are compelled to make greater speed between stations and handle less revenue tonnage per train mile than any other class of trains on our railroads. Then, again, we have a general expense that attaches to our live stock business in that we have so many branches. I have in mind certain shippers on the Storey City branch of our Iowa Central Line who will turn up two or three times a week with, say, two carloads of live stock. We have to take an extra engine from Marshalltown, run the empties out there, as a usual thing, and bring the cars back to Marshalltown; and that would be true oftentimes on our Newton branch and on our Algona Line into Hampton. There is one other question in consideration in the making of these live stock rates which, it seems to me, cuts a great figure, at least with us. Diversified industry probably makes a country prosperous, and I was figuring out, based on last year's business, that the rates on our live stock had contributed about $1,300,000 to the prosperity of the North-west in this way: That had we had no live stock to ship we would have had 63,000

739 carloads more of grain to ship, and that has always been taken into consideration by me when we were making freight rates. I believe that the freight rates on live stock are too low——

The COURT: Is that on the theory that you want to build up the country?

The WITNESS: Yes.

The COURT: If it were higher they would not ship so much live stock out?

The WITNESS: Well, if you didn't have any live stock, your Honor—each carload of dressed live stock consumes about three to five cars of grain. If we didn't have the live stock we would have the grain at the much higher net revenue. I believe this: That the rates——

The COURT: Do you think that would be better for the country?

The WITNESS: No; and for that reason it has dictated to a great extent the rates made on live stock, in my judgment.

The COURT: To encourage the live stock business?

The WITNESS: Yes, to encourage the live stock business, and make diversified industry. The making of a steer in Iowa is an industry; it is manufacturing business just as cutting a steer into product.

The COURT: It is better for the farm to have steers on it
740 instead of raising all wheat?

The WITNESS: Yes, better for the country.

Mr. BAXTER: I wish you would file, as Exhibit number 2 to your testimony, a statement for the year ending June 30th 1905, showing the total freight earnings of your company, the earnings of your company from cattle; the earnings of your company from hogs; the earnings of your company from packing house products and the earnings of your company from fresh meat.

(The witness produced a statement, which was marked "Tittemore Exhibit 2," which is in words and figures following:)

740*a* EXHIBIT No. "2."

	Ia. Cent.	M. & St. L.
(*a*) Total Earnings year ending June 30th, 1905.....	$2,013,549.32	$2,021,993.49
(*b*) Earnings on Cattle year ending June 30th, 1905.....	59,645.00	39,924.00
(*c*) Earnings on Hogs year ending June 30th, 1905.....	89,162.00	40,542.00
(*e*) Earnings on Dressed Meat year ending June 30th, 1905....	1,432.00	19,172.00
(*d*) Earnings on P. H. P. year ending June 30th, 1905.....	45,321.00	4,099.00

741 Mr. BAXTER:

Q. How does the amount paid by your company for loss and damage to cattle and hogs compare with the amount paid by your company for similar claims in regard to ordinary dead freight?

A. Well, I have no figures prepared on that. Our accounts are kept in such a way it would be very difficult to get the items—to get the exact items, but our claims for damage to packing house and live stock products are comparitively nothing. I think we had but

two small claims last year. We consider that our claims on live stock are very much more—our claims for damage on live stock are very much more than for all other classes of freight on our road.

Q. Are the rates on cattles and hogs mentioned in your Exhibit number 1 affected by competition; if so, to what extent?

A. Yes, in that one road cannot secure business at a higher rate from competing points than any other road, and I believe if it were not for that competition, that rates on live stock would be somewhat higher, more justly based than at present.

Q. Are the through rates on cattle and hogs from the points of shipment mentioned in your Exhibit number 1 to points of final destination greater or less than the sums of the local between those points?

A. The through rates are less than the sums of the locals.

742 Q. What is the established, minimum carload weight for cattle and hogs respectively, on your road, and how does the actual loading on your road compare with that minimum?

A. I will have to refer to data for that, because I don't carry it in my head. The exhibits here so far files I think will show that the length of car, 31 feet and under, 19,000 pounds of cattle——

Q. You need not go into dimensions. State the general result, whether up to or below?

A. Take 13 carloads of cattle—these are actual results on our road—13 car loads of cattle in cars of the 31 foot class; the charges were assessed at the minimum weight of 19,000 pounds each, indicating that the actual weight was minimum or less than the minimum. We take four cars of cattle loaded in cars 33 feet 9 inches; they were assessed at the minimum weight of 20,500 each, indicating actual weight to have been minimum or less. Out of 30 cars in the popular or 36 feet 6 inch class, 14, or 36.8 per cent. were charged at the minimum weights, 22,000 pounds, indicating the actual weight to have been the minimum or less, and the remaining 24 cars, or 63.2 per cent averaged 24,000 pounds or 2,000 pounds for the minimum; the average weight used in assessing freight charges being a little over the minimum of 23,000 pounds. Hogs, out of 26 cars of the 31 foot class, 13, or 50 per cent. were charged at

15,000 pounds minimum or less, indicating below, to the

743 minimum or less; and the remaining 13 averaged 15,500 or 500 pounds over the minimum, the averaged weight used being 15,250 pounds, or 250 pounds above the minimum. Out of 17 cars in the 33 foot class, 10, or 58.8 per cent. were assessed 16,000 pounds minimum, indicating actual weight to have been the minimum or less, and the remaining 7 cars averaged in weight 16,514 pounds, or 514 pounds above the minimum; the average weight used upon which charges were assessed being 16,212 pounds, or a very slight trifle over the minimum. Out of 21 cars in the popular or 36 foot 6 inch class, 12, or 57 per cent. were assessed 17,000, showing the actual weight to have been minimum or less, and the remaining 9 cars, or 42.9 per cent., averaged 18,444 pounds, or 1,444 pounds above the minimum, the average weight used being 17,620 pounds, upon which charges were assessed.

Q. On the paper which you have in your hand do you show the minimum weights for the different assessed cars and the different products?

A. Yes.

Q. I wish you would file that as Exhibit 2½ to your testimony.

(The witness the- produced a statement, which was marked "Tittemore Exhibit 2½," which is as follows:)

743*a* TITTEMORE EXHIBIT 2½.

Established minimum weights governing on live stock from Iowa Cen. and M. & St. L. Stations to Chicago are as follows:

Minimum Weights on Live Stock.

Length of car.	Cattle.	Hogs.
31 feet and under	19000 lbs.	15000 lbs.
33 ft. 9 in. and over 31 ft.	20500	16000
36 ft. 6 in. and over 33' 9"	22000	17000
40 ft. and over 36' 6"	24000	19000
Over 40 ft.	26000	21000

As we do not have access to scale records at Union Stock Yards, we have no way of determining actual net weight of our live stock shipments, but the following information concerning 119 cars shipped from various stations to Chicago in the same month via the same route in cars of the three classes mostly used will give an idea as to how the weights run.

Cattle.

Thirteen carloads of cattle in cars of the 31 ft. class were assessed at minimum weight of 19,000 lbs. each, indicating actual weight to have been minimum or less.

Four cars of the 33ft. 9 in. class were assessed at minimum weight of 20,500 each, indicating actual weight to have been minimum or less.

Out of thirty eight cars of the 36 ft. 6 in. class, fourteen—36.8%—were charged at minimum weights 22,000 lbs.—(indicating actual weight to have been minimum or less) and the remaining twenty four cars—63.2%—averaged 24,000 lbs. weight each, or 2,000 lbs. over minimum. Average weight used in assessment of freight charges on entire thirty eight cars was 23,263 lbs.

Hogs.

Out of twenty six cars of the 31 ft. class, thirteen—50%—were charged at 15000 lbs. minimum each (indicating actual weight to have been minimum or less) and the remaining thirteen averaged 15,000 lbs. each or 500 lbs. over minimum. Average weight
743*b* used in assessment of freight charges on entire twenty six cars was 15,250 lbs.

Out of seventeen cars in the 33 ft. 9 in. class ten,—58.8%—were assessed at 16,000 lbs. minimum (indicating actual weight to have been minimum or less) and the remaining seven cars averaged in weight 16,514 lbs. or 514 above the minimum. Average weight used in assessment of freight charges on entire seventeen cars was 16,212 lbs.

Out of twenty one cars of the 36 ft. 6 in. class, twelve—57.1%—were assessed at 17,000 minimum weight, (indicating actual weight to have been minimum or less) and the remaining nine cars—42.9%—averaged 18,444 lbs. above minimum. Average weight used in assessment of freight charges on entire twenty one cars was 17,620 lbs.

744 Q. Have you a statement showing comparison between the rates per ton per mile charged by your company on cattle and hogs in carloads, and the rate per ton per mile charged by your road on wheat, tropical fruit, vegetables and classified freight, selecting for comparison some representative portion of your road over which said kinds of traffic actually move? Have you prepared such a statement?

A. Yes, sir, I have that.

Q. Can you state briefly what it shows?

A. Well, we have taken Gillman, Iowa; a distance say of 300 miles from Chicago: Cattle $4.40 a ton, or 1.46 per ton mile; Hogs, $4.20 a ton or 1.4 per ton mile; wheat $2.80 a ton or .93 per ton mile. Take the third class, which would include fresh fruit on the one hand and, say, carriages or vehicles on the other, $8.00 a ton 2.66 per ton mile, and take the fourth class, dried fruit on the one hand, and saay woodenware on the other, $5.20 a ton, 1.73 per ton mile; fifth class, sugar and canned goods, $4.20 a ton or 1.4 per ton mile; agricultural implements, Class A, $5.20 a ton or 1.73 per ton mile. Class B, say, sash, doors and blinds, $4.20, or 1.4 per ton mile.

744*a* EXHIBIT NO. THREE.

Statement of Current Rates Per Ton and Per Ton Mile on Various Classes of Freight Between Gilman, Ia., and Chicago, Distance 300 Miles.

Cattle	$4.40 ton	1.467c	ton mile.
Hogs	4.20 "	1.4	" "
Wheat	2.80 "	.933	" "

Classified Freight.

Third class:

Fresh Fruit Carriages	$8.00 ton	2.667c	ton mile.

Fourth class:

Dried Fruit Woodenware	$5.20 ton	1.733	ton mile.

Fifth class:

Sugar Canned Goods	$4.20 ton.....	1.4c	ton mile.

Class A:

Agricultural Impl.	$5.20 ton.....	1.733	ton mile.

Class B:

Sash, Doors, etc.	$4.20 ton.....	1.4c	ton mile.

Q. Under the rates of freight on cattle and on hogs that prevail on your road, has the cattle and hog business been prosperous or otherwise?

A. The live stock business has been prosperous on our
745 railroad; in fact it is the most prosperous business that a farmer in Iowa can engage in.

Q. In your opinion is the service rendered by railroads in the transportation of cattle and hogs more or less expensive than the service rendered in the transportation of packing house products and fresh meats?

A. I did not quite get the question.

Q. In your opinion is the service rendered by railroad companies in the transportation of live cattle and hogs more or less expensive than the service which they render in the transportation of packing house products and fresh meats?

A. I consider that the service rendered is more expensive for live stock than for packing house products and fresh meats.

Q. Is the service rendered by railroads, in your opinion, more or less expensive in the transportation of live cattle and hogs than it is in the transportation of ordinary dead freight?

A. I think that the expense is greater in the handling of live stock than it is on any other class of dead freight, or live either for that matter.

Q. How is the net revenue received by railroads from the transportation of cattle and hogs as compared with the net revenue received by them for the transportation of packing house products and fresh meats?

A. I believe—it is my best judgment that the net revenue received from the transportation of live stock is less than from almost any other—I might say any other class of freight.

746 Q. Beside the cleaning of the car, the bedding of the car, the furnishing of the water, the hauling of the gravel, the sand, the furnishing of the conders or the slag coal for the bedding of the hogs, the maintenance of the yard and all that sort of thing, there is another expense attached to the handling of live stock on our road, for instance, that is serious. We receive our packing house products from one station within a zone, and the rate from that one points is the essential rate. I will take Marshalltown, Iowa. We receive packing house product shipments at Marshalltown for transportation. Now that is the most northerly point on the Iowa

Central road at which we would receive that shipment, but when you come to live stock your zone reaches from about Marshalltown away up into the Northwest, so that in the case of the packer who furnishes his own car, we have no empties to trouble ourselves with, and no expense practically relating to empties, we have to haul the empty car for live stock into the North-west. For instance, I have in mind that the rate from Sheffield, Iowa, 70 miles north of Marshalltown, is one cent higher than the rate on live stock from Marshalltown. We invariably haul that empty car from Marshall-
747 town to Sheffield, a distance of 70 miles, and then we must haul the load back at least that far for $2.20, or for an extra cent per hundred pounds. Then take, for instance, Des Moines, the most northerly point on that branch or of the M. & St. L. that would handle packing house business, Bluffton is 150 miles further Northwest of that, the rate is but a cent or a cent and a half—a cent and a half I think is correct—higher than the rate from Des Moines, and in that case we would haul the empty 150 miles to get a load of live stock and the load back 150 miles further, about 330 miles, and that is true of the entire Northwest, at least so far as our road is concerned.

Q. Your packing houses being situated somewhat on the northern margin of the 23 cent zone?

A. They are largest at the East, Judge Baxter, but the most northerly point, that is Marshalltown and Des Moines would be the most northerly point on our system at which we would receive packing house product shipments.

Q. There being no packing houses on the north of your road?

A. Not in my judgment, that would not be material, but we have the larger proportion of the territory north and west of those packing house centers.

Q. You have spoken about the relative expense of the service of transportating live cattle and hogs as compared with the dressed product. Now, in proportion to the service performed is the net revenue received by railroads for the transportation of live
748 cattle and hogs greater or less than the net revenue received by them for the transportation of ordinary dead freight?

A. It is in my judgment; the net revenue is less, received on the shipments of live stock than on other dead freight.

Q. Have the number of cattle and hogs produced in the territory tributary to your lines increased or diminished in the last five years?

A. Increased, I think.

Q. How does the revenue derived by your company from a car loaded with lumber or other low-grade traffic compare with the revenue derived by your company from the transportation of cattle or hogs between the same points or for similar distances? Have you compiled a statement upon that subject?

A. I believe I have one here. What do you want me to do with it?

Mr. BAXTER: I wish you would file that as Exhibit 4.

(The said statement produced by the witness was thereupon marked "Tittemore Exhibit 4" and is in words and figures following:)

748*a* TITTEMORE EXHIBIT NO. 4.

The following figures are computed on basis live stock minimum weights for 33 ft. 9 in. car (cattle 20,500 lbs. and hogs 16,000 lbs.) and customary loading of the other commodities in cars of that size:

			Distances.
Cattle, St. Paul to Chicago	25c.	51.25	501 Miles
Hogs	27	43.40	
Corn	10	66.00	
H. Coal, Chicago to St. Paul	10	66.00	
Soft Coal	7	46.20	
Brick	10	66.00	
Cement	8	52.80	
Cattle New Ulm, Minn. to Chicago	25c.	51.25	529 Miles
Hogs	27	43.40	
Corn	17.5	115.50	
H. Coal, Chicago to New Ulm, Minn.	11.25	74.25	
Soft Coal	9.5	62.70	
Brick	15	99.00	
Cement	13	85.80	
Cattle Spencer, Ia. to Chicago	23.5	48.18	454 Miles
Hogs	23.5	37.60	
Corn	17	112.20	
H. Coal, Chgo. to Spencer, Ia.	12.5	82.50	
Soft Coal	11.25	74.25	
Brick	12.5	82.50	
Cement	13	85.80	
Cattle, Des Moines, Ia. to Chgo.	22	44.10	361 Miles
Hogs	23.5	37.60	
Corn	13	85.80	
H. Coal, Chgo. to Des Moines, Ia.	12.5	82.50	
Soft Coal	8	52.80	
Brick	9	59.40	
Cement	12	79.20	
Cattle, Eldora, Ia. to Chgo.	22	45.10	316 Miles
Hogs	22	35.20	
Corn	12	85.80	
H. Coal, Chgo. to Eldora, Ia.	11.25	74.25	
Soft Coal	7	46.20	
Brick	9	59.40	
Cement	11.5	75.90	
Cattle, Marshalltown, Ia. to Chgo.	22	45.10	290 Miles
Hogs	21	33.60	
Corn	13	85.80	
H. Coal Chgo. to Marshalltown, Ia.	11.25	74.25	
Soft Coal	7	46.20	
Brick	9	59.40	
Cement	11	75.90	

Cattle Winfield, Ia. to Chgo.	19	... 38.95	232 Miles
Hogs	19	... 30.40	
Corn	11	... 72.60	
H. Coal Chgo. to Winfield, Ia.	7.5	... 49.50	
Soft Coal	7	... 46.20	
Brick	9	... 59.40	
Cement	10	... 66.00	

749 Mr. BAXTER:

Q. I wish you would give very briefly one comparison so the court can see what it relates to. You need not take time to read them all.

A. Well, first, take cattle from St. Paul to Chicago, $51.25 for 501 miles.

The COURT: Per car?

The WITNESS: Per car. We take hogs $43.40, say 501 miles. Take a car of corn, $66.00, 501 miles. We take a car of hard coal from Chicago to St. Paul, $66.00; soft coal $46.20; brick, $66.00; cement $52.80. Then I have gone further into Minnesota, taking a car of cattle——

Mr. BAXTER: That is sufficient.

The COURT: A refrigerator car from St. Paul to Chicago?

The WITNESS: You mean packing house product?

The COURT: Yes?

The WITNESS: I haven't that here, your Honor.

Mr. BAXTER:

Q. Can you state what it would be per carload for packing house product?

A. It would be—we don't do much of that traffic; we do very little of that traffic, but I should figure that we would get out of a car of packing house product—I would have to be refreshed—if I was refreshed as to the rate——

Q. Do you know the rate from one of your packing houses
750 to Chicago?

A. The proportional rate, I believe.

Mr. SEVERANCE: 15.7?

The WITNESS: Yes, 15.7 as I remember.

Mr. SEVERANCE: The proportional rate, 15.6?

The WITNESS: $41.82.

The COURT: Just as much as you get out of the cattle?

The WITNESS: Yes, $43.40; but I will tell you that figure, your Honor, is a paper figure and I don't think should have been in there. We don't haul any hogs on the——

Mr. SEVERANCE: On the proportional?

A. (continued). We don't haul any hogs on the 27 cent rate from St. Paul to Chicago, on the proportional rate, and I ask my statistics clerk to get up statistics representing rates, as well as shipments, but he has put that statistic table here, and I dare say we have not hauled on that rate for years. We haul on a lower rate.

Mr. SEVERANCE: Having taken the 14.6 he is comparing the proportional rate on one with the local rate on the other?

The WITNESS: We do use the proportional rate your Honor, where we do not use the local rate.

The COURT: Go ahead.

Mr. BAXTER:

Q. That makes your rates on both cattle and hogs higher than you actually get?

A. Yes.

751 Q. File as Exhibit number 5 to your testimony a statement showing the rates charged by your company on cattle and hogs respectively to Chicago, Illinois, from each intermediate point on your line between St. Paul and the Missouri river, on the one hand, and Chicago on the other?

A. I will.

(Statement produced by the witness was thereupon marked "Tittemore Exhibit 5," in words and figures as follows:)

* * * * * * *

752 Q. What is your opinion as to the reasonableness of those rates?

A. I believe that the rates on live stock are reasonable.

Q. These are your intermediate rates from points this side of the Missouri river to Chicago?

A. I believe that the rates are less than we should receive for the service we render.

Q. Have you heard any complaint in regard to them from anybody who ships over your line except this complaint here?

A. I have never had a complaint that I can call to mind. If we had a complaint it would be adjusted, or has been adjusted. I can't remember of a complaint.

Q. What is the distance from your nearest competing lines or competing stations generally?

A. We run north and south and through Iowa, Illinois and Minnesota, and some years ago I had a map prepared by our engineering department. I had noticed whenever I was out on the road, and particularly when I was in a vehicle or conveyance out in the country, that I could usually, at any point, hear the whistle of a locomotive on a competing line, and our Board of Directors were constantly after me to get more freight and I defended myself by having the engineer get out the map, and I think at that time

753 it showed that we had a little less than a mile and a half of territory to contribute to our Iowa Central road on either side of the track; that is you got out one and a half miles, half way to some one else, some other road.

Q. Is that true with reference to the whole length of that line?

A. That is the average on the Iowa Central road. When you get into the Northwest that would not be true. That is peculiarly true of Dakota and the Northwest Minnesota lines.

The COURT: Do you think you get a high enough rate on dressed meat and packing house products?

The WITNESS: Well, no, your Honor, I do not. I have contended constantly for a higher rate on live stock that now exists, and I do not believe that the present rate of packing house product is reasonable as a compensation to the carrier.

Q. I wish you would file, as Exhibit number 6 to your testimony, a statement showing for the last three years ending June 30th, 1905, the following: cattle and hog business at Chicago, Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Omaha, South Omaha, Nebraska City, Sioux City, St. Paul, South St. Paul, Ottumwa, Des Moines, Marshalltown and Cedar Rapids, and explain how that was made up?

A. Well, we consulted the different reports from different points.

Q. Reports of what?

754 A. The statistical reports at the yards, such reports as were issued, or our own records in case we did not have the yard reports, the published reports, and I don't think we got them at all points; at Marshalltown I don't think we got them. I notice I have them at Chicago. I have 1898 compared with 1904 right along. Chicago, Kansas City, St. Joseph, South Omaha, South St. Paul, Sioux City, and the summary.

(Statement produced by the witness was thereupon marked "Tittemore Exhibit 6" and is in words and figures following:)

754a EXHIBIT No. 6.

Receipts of Cattle and Hogs at Markets Named Below.

Chicago.

Cattle.		Hogs.	
1898.....	2,471,000 head	1898.....	8,817,000 head
1904.....	3,259,000 "	1904.....	7,239,000 "
	77,800 "		1,578,000 "
Increase	31.35%	Decrease	17.9%

Cattle and Hogs.

1898.....	11,298,000 head
1904.....	10,498,000 "
Decrease.....	800,000 " or 7.08%

Kansas City.

Cattle.		Hogs.	
1898.....	1,758,000 head	1898.....	3,673,000 head
1904.....	1,997,000 "	1904.....	2,127,000 "
Increase.....	239,000 "	Decr.....	1,546,000
	13.6%		42.12%

Cattle and Hogs.

1898.. .... 5,431,000 head
1904..... 4,124,000 "

Decrease..... 1,307,000

St. Joseph.

Cattle.		Hogs.	
1898.....	226,000 head	1898.....	1,034,000 head
1904..... ...	551,000 "	1904.....	1,657,000 "
	325,000 "		623,000 "
Increase	143.8%	Increase	60.25%

Cattle and Hogs.

1898..... 1,260,000 head
1904..... .. 2,208,000 "

948,000 "

Increase
78.08%

754*b* South Omaha.

Cattle.		Hogs.	
1898.....	812,000 head	1898.....	2,101,000 head
1904.....	944,000 "		2,300,000 "
Increase.....	132,000 "	Increase	199,000 "
	16.3%		9.47%

Cattle and Hogs.

1898..... 2,913,000 head
1904..... ..... 3,244,000 "

331,000 "

Increase
11.36%

754*c* South St. Paul.

Cattle.		Hogs.	
1898.....	173000 head	1898.....	338000 head
1904.....	352000 "	1904.....	882000 "
Inc..	179000 "	Inc.....	544000 "
Or.....	103.47%	Or	160.9%

Cattle and Hogs.

1898	511000 head
1904	1234000 "
Inc	723000 " or 141.5%

Sioux City.

Cattle.		Hogs.	
1898	301000 head	1898	474000 head
1904	327000 "	1904	1113000 "
Inc	26000 "	Inc	639000 "
Or	8.6%	Or	134.8%

Cattle and Hogs.

1898	775000 head
1904	1440000 "
Inc	665000 head or 87.1%

Summary—All Six Markets.

Cattle.		Hogs.	
1898	5,751,000 head	1898	16,437,000 head
1904	7,430,000 "	1904	15,318,000 "
Inc	1,679,000 "	Dec	1,119,000 "
Or	29.2%	Or	6.9%

Cattle and Hogs.

1898	22,188,000 head
1904	22,748,000 "
Inc	560,000 "
Or	2.52% Inc.

755 Q. You live in the extreme West. What is your opinion as to whether the existence of the packing houses that are located on the Missouri river, St. Paul and so forther, and that points inyermediate between the Missouri river and Chicago, are a benefit or injury to the country?

A. The intermediate packing houses?

Q. And those on the Missouri river.

Mr. SEVERANCE: And South St. Paul?

Mr. BAXTER: And South St. Paul?

A. Well, I believe that the diversity of industry in this country is its prosperity and I believe the more you diversify it th- more prosperity you get. I believe that the industry located at Marshalltown for instance, on our road, is of great advantage to that community. I know it is.

Q. Will you explain how? Why wouldn't it be better for all of those hogs and cattle to come to Chicago, where they would get the best market and where they could be slaughtered at the lowest price? Why isn't it better for everybody that the whole business should be centered here?

A. I don't think that it would. I think it would be better to build up the plant at Marshalltown. We want a city at Marshalltown for our road and not at Chicago. In the first place——

The COURT: You are a stand-patter?

The WITNESS: Yes, I am a stand-patter. For instance,
756 take the Marshalltown packing house plant: it employs a great number of men, it employs also, to some extent the dependent members of those families, and it gives employment to all. It sustained a good, healthy community. It is a great deal better to diversify industry and keep it in the west; in fact if I had my way and had the roads and could make the rates I would have packing houses more numerous, anyway in the Northwest than they are at present.

Mr. LYNDE: How about the shippers, the producer, in the immediate vicinity of those plants?

The WITNESS: I believe it gives him extended markets, markets for competition, gives him the option between markets and makes him money, and I believe they are uniformly of that opinion themselves.

The COURT: If the rates on meats and live stock products are too low, where do you make your money out there?

The WITNESS: I believe, your Honor, that it could be physically proven that we lose money on our live stock business, but I will qualify that by saying that w*d* are a little differently constituted than other roads, more dependent upon other roads for certain service than perhaps trunk lines. We do not make any money out of our live stock business. Our live stock business is probably eight per cent. of all. Two years ago I endeavored, by interesting one or two influential vice-presidents, to see if we couldn't get rates
757 on live stock advanced. I considered that we were losing money, at least not making money, and that is losing money—and they felt that because of the feeling in the land and the Granger legislation and all that sort of thing, that we better let well enough alone, and we left them alone. But I have been of the opinion, and I am still of the opinion, that our rates on live stock are too low for our road and that we are not making any money; so far as packing house product is concerned, take the plant at Marshalltown, 300 cars, last year, I find by telegram, were received there, and Des Moines probably not more than that, so that we are not so interested in it.

The COURT: What rates are right?

The WITNESS: The Iowa Central road, for instance, is an agricultural road exclusively, almost, and still, paradoxical as it may seem, we had 50 per cent. of our tonnage soft coal, which is mined on our road—some of the mines owned by us. We make money on

our coal, in the way we can concentrate it in cars and in trains; that is we can get the maximum load and the maximum train, because we can govern all equasion to a certainly. With grain it is the same way. A carload of corn for instance, in northwestern Iowa, on our Algona line, where the rate is 15 cents and where the equipment will handle 30 tons, we have a large percentage of our equipment 40 ton cars; we have orders out that those cars
758 must load 10 per cent. more, or 88,000 cars, and we have an inspector who goes to each billing agent after I look over the abstracts each month, and we are very careful to see that the man does not commit the error of under-loading twice on those cars. Take an 88,000 car at 15 cents a hundred—or if you will, get down to Marshalltown, where the rate is 12; you can see what we can get out of the grain business, and the grain business is about 20 per cent. of all our business. We are not what you call a high-class freight carrying road. The M. & St. L. is somewhat differently located, but its business is less live stock and more wheat, that pays an excessive or large recompense.

Q. State what effect, if any, the reduction of rates on cattle and hogs at intermediate points east of the Missouri river would have upon rates of cattle and hogs west of that river?

A. Mr. Counsel, that is a difficult question to answer but I must answer it in this way: if we reduce rates on live stock from the 23½ cent zone to Chicago, I believe that the present relation of the live stock rates to all other markets is about as fair as human judgment and wisdom and experience could fix; I believe that that rate, if reduced, that it will reduce the rates, to a certain extent—I am not prepared to say proportionately, but to a certain extent every
759 other live stock market, recognized market, and I believe to that it will reduce the rates, the state rates. I don't believe that we can make that reduction without bringing on an agitation, and a reduction in our live stock rates in all of the states that we traverse, unless possibly Illinois. I don't know about that. I believe that on the business originating on our line—I have figured for our executive department that we would lose somewhere in the neighborhood of $90,000; that is gross; that would take the car to its destination, wherever it was. That would include other roads' proportion of earnings. Now, we handled approximately 30,000 cars of live stock on the two roads last year, and that is only figuring $3.00 per car, whereas in our 23½ zone, where we get most of our business, it would be $7.00 per car. I have simply averaged that up, in my judgment, and I have given that as my opinion to our executive officers.

Q. What switching charges are paid by your company on packing house products and fresh meats at the Missouri river points?

A. We don't handle any business out of Missouri river points. It seems to me, out of South St. Paul, the rate is $2.75, or $3.25. I think I can refresh my memory. On shipments of cattle and hogs arriving at St. Paul by the M. & St. L. road for de-
760 livery to South St. Paul stock yards, a switching charge of $2.75 is assessed; on shipments of packing house products

and fresh meats handled from St. Paul by the M. & St. L., say to Chicago, we would pay a charge of $3.25.

Q. Are the same terminal and switching charges paid by your company on cattle and hogs coming from the West of the Missouri river to St. Paul or any other Missouri points?

A. Well, we don't handle any of that traffic, but I suppose if we brought in a car there, we would pay that terminal the same as on any other live stock.

Q. You don't participate in carrying live stock to points west of the river?

A. No, not to any extent.

Recess until 2 o'clock P. M.

761 SEPTEMBER 22, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon J. N. TITTEMOR, resumed the stand for cross-examination by Mr. Cowan:

Q. Not having a geographical knowledge of the location of your railroad, I will ask you to state in a general way the principal termini and division points of your road, first stating what is your north and south termini of your main line?

A. Minneapolis and St. Louis. The road begins at St. Paul, Minneapolis and runs south to Albert Lee Minnesota. There it connects with the Iowa Central it is the northern terminus of the Iowa Central and then to Peoria, Illinois.

Q. Via what principal towns in Iowa?

A. Well, via *the way of* Hampton, Eldora, Marshalltown, Grinnell, Oscaloosa, then through Monmouth, Illinois to Peoria.

Q. Where does it cross the Mississippi?

A. At Kethsburg, Illinois. That is the main line, however.

Q. What amount of branch lines have you?

762 A. Well, the Iowa Central has a branch line from New Sharon to Newton of thirty miles. *mFro* Marshalltown to Story City, about 25 miles, Hampton to Algona, 37 miles. Newburg to State Center, 12 miles, Grinnell Branch, about 12 miles, then the M. & St. L. has a line running to Watertown, Minnesota, and a line running from Albert Lee to Angus and a lone running from Spencer, Iowa to Des Moines, and a line running from Winthrop to Storm Lake.

Q. Your furthest point south in Iowa is at your Mississippi river crossing?

A. Yes s-r, West Keithsburg.

Q. What main line of east and west railroads o-erating between the Missouri river and the Mississipi river crossing, does your road cross north and south?

A. Well, we will take the Iowa Central lines; we cross the Chicago, Milwaukee & St. Paul at Mason City and at Pickering. We cross the Northwestern at about Mason City, at Clifford and at Mar-

shalltown. The Rock Island at Abbott and Grinnell and Brighton. The Burlington at Maxin and Monmouth, Illinois. We are interlaced with the Burlington road for a great many miles and also with the Milwaukee road. We cross the Milwaukee at Richmond. We cross east and west lines at about an average of every seven or eight miles.

Q. And the Great Western, of course, you cross that also?

A. The Great Western, we cross that two or three times.

Q. All of the live stock which originates on your line
763 and goes to Chicago moves from one of these junctions over the lines of those other roads?

A. Yes, Chicago business of course, yes sir.

Q. And all of the live stock which you receive between these main lines of road are tributary to the stations at your junction point on the main line of these other roads?

A. Not far away, yes sir.

Q. Previous to the time you constructed, those roads were there?

A. I did not understand you.

Q. Previous to the building of your road, those others were there?

A. Well, our road in some sections is older than any of them.

Q. How long has your's been built?

A. Oh, the Iowa Central road, some parts of it, is thirty odd years old, pretty near as old as the Northwestern road through Central Iowa.

Q. Have you built any additional part of your main lines that you have described within the last ten years?

A. Not on the Iowa Central. We would consider the line from Winthrop to Storm Lake on the M. & St. L. as a new main line between those points.

Q. Does that cross those main lines?

A. No, it does cross the lines, but it does not lie within the compass of this traffic.

Q. That is not important to this purpose?

A. No sir.

764 Q. So far as the purposes of this case are concerned, your line,—None of it has been built within the last ten or twelve years?

A. No.

Q. Is it not a fact that from the situation which exists you must accept the traffic at the rates which the other roads are pleased to publish to Chicago?

A. Competition fixes the rates; we must accept or build into Chicago.

Q. And the latter you don't prefer to do?

A. I won't say that I would not prefer to do it, but we have not been able to get our stockholders to put up the money to do it.

Q. And if you built into Chicago it would be the same situation you still would have to accept the rates that others were making?

A. Yes sir.

Q. You don't reach the Missouri river and Chicago, and that

being the case, I will ask you if it is not a fact that it has not been by virtue of the will of your railroad that the particular relation of the rates between dressed meat and packing house products on the one part and the live stock on the other part has been established?

A. You are right, we have had no voice and could not have any voice in the fixing of the rates as they stand at the present time.

Q. The rates which are published therefore, may not be taken as a reflection of the judgment of your road with respect to
765 what the relation ought to be?

A. You are quite right.

Q. Have you an opinion now from your experience as to what that relation ought to be or not?

A. Well, I have an opinion, of course. I must have an opinion. I believe that the packing house product rate is too low. I believe the live stock rate is too low on our railroads. I believe that the packing house product ought to be, if it could be, advanced.

The COURT:

Q. What about the relative rates?

A. The relations of rates there, your Honor, is fixed so arbitrarily that I don't know just what to say. I am of the opinion, based upon my experience, based upon the conditions surrounding these rates in the locality from which we solicit business, that the rates on live stock are just as low as we can possibly make them and make any money and that the rates on the packing house product should be higher in order to make the same. It is difficult for me to tell the relation of the rates.

Mr. COWAN:

Q. You have nothing to do with establishing them one way or the other. You accept what the others make?

A. Oh, sometimes we are consulted about it, but we don't make the rates. We don't make those rates, and we don't make any rates. We could not change the rates, for instance, Mr. Counsel, if we wanted to.

766 Q. Now, in determining what the profit is in the transaction of transporting rate, you cannot resort to the rate alone, can you?

A. Not always.

Q. You must have regard to the circumstances under which the service is performed?

A. A great many conditions and the service and competition.

Q. Is it not a fact that all of the live stock which originates on your road pays you a greater proportion of revenue out of the through rate to Chicago than you would receive were it divided on the mileage basis?

A. I would like to answer that question by asking counsel whether or not that is not a question of internal domestic relations between us and our neighbors?

Q. I am not going to ask you for the purpose of this case just what your divisions are.

A. Ordinarily the short line gets somewhat more than it would receive if it were a participant in the entire haul. For instance our line for a 100 mile haul to a junction from which the other road would carry the stuff to Chicago, 350 miles, ordinarily we should have more according to our system of figuring rates than the main mine, for instance would have.

Q. That is practically the universal rule, that the originating road takes a larger division than the mileage basis unless it belongs to the same system.

A. Ordinarily that is the system.

767 Q. Is that not because it is considered that in originating any traffic there is an unusual expense that is incident to originating the traffic, that the road does not have which takes it at the junction point?

A. That is true. There is the unusual expense and the item of solicitation. In other words we pick up the traffic and concentrate it and give it to the other fellow in wholesale lots. We are the retail dealers, we handle it in a retail way.

Q. If you care to state, you can do so, but I will not ask you to unless you care to,—what the amount of your divisions are?

A. I would prefer not because there is a great deal of competition, a great many competitors for the business, and it would be giving publicity to a fact that I would rather not state.

Q. Is it not a fact that you run a train on each one of these branches alone every day and must do so whether you have the traffic or not?

A. That is true, Mr. Counsel but I have never in all my life, and I have been on small roads and branch lines, they have kept me shelved there for twenty years, I have never known those trains to be so scheduled that we could handle any live stock on them or handle the empties out. The theory of your local train on a branch is ordi-

768 narily to bring from your western end into your terminal your freight very early in the morning and go out in the afternoon.

Now live stock wants to get in just the opposite way so that on our branch lines we have not been able to handle our stock on our regular trains and we have, as I say to use a switch engine or a special engine to go out after the stock and bring it back and where we could we have tried to prevail on the shipper to use certain days, say Tuesday and Wednesday, two days in the week so as to concentrate it in that way and in that case we have invariably handled very much less than train loads of freight.

Q. You don't certainly mean that you cannot distribute empty cars?

A. Yes, we can, but let me tell you that as long as we are using an engine out we might as well not labor up the local train. The local train on the branch is scheduled as much for the accommodation of passengers as anything else. We usually put on our road, on our local trains a caboose or an old coach to accommodate the passengers and traveling men who want to make as much time as possible during the day and we try to put our live stock on special trains and handle the empties with the engine that brings the stock back.

Q. Is it not a fact that on your line of road the trains which carry the live stock have more loaded cars per train into and out of any division point than a train in which live stock is not carried?

769 A. It would be exactly the reverse on our road and that is a fact.

Q. What are some of the principal division points on your road through which your road passes?

A. Marshalltown, for instance.

Q. Where are the live stock brought from to Marshalltown?

A. Well, you take the line from Mason City to Marshalltown, including the branches that might come out to the main line either by way of Marshalltown or Pickering, just below the junction point. From south of there the freight would come up from Pickering and go out by the Milwaukee, perhaps or on the Marshalltown Branch and out. Then from the territory south of Marshalltown where the business works by Pickering, it also works clear by Monmouth, a much longer haul. We are sandwiched in there so that it is pretty hard to tell how the business does work even to the man in charge but those are the three principal points. Then on the M. & St. L. you have Livermore and Fort Dodge.

Q. How many trains of live stock do you handle which come to Chicago, do you know?

A. I cannot tell exactly. I should say that 65 per cent. of our business would come to Chicago and I think our business last year was about 28,000 or 29,000 cars on the two roads.

Q. That would be from 18,000 to 20,000 cars of live stock which you originate, comes to Chicago?

770 A. That seems large, Mr. Counsel, but I just pass my judgment on it. I could not tell exactly. I don't know but I better say that I don't know.

Q. At how many different junction points do you deliver this live stock to your connections which reach Chicago?

A. May I give the number without the names?

Q. Yes.

A. I should say about a dozen.

Q. What?

A. About 12 on the two roads.

Q. Is it pretty equally divided?

A. No.

Q. Through what principal junction point does your traffic move to Chicago?

A. I should think that the traffic moves via Marshalltown and Pickering, more traffic than at other junctions and at Monmouth, those three.

Q. Will you make a statement from your train conductor's books showing the consists of trains coming into those points for the first fifteen days, say in April and October and furnish it to us?

A. That is fifteen days of April?

Q. Yes, and October, the consists of all the trains, noting in which there are live stock and those in which there are not.

A. Well, it is the consists of all freight trains.

Q. Yes. I don't mean that you should give the consists of every car, but I want the live stock noted and the other loads of dead freight and the empties.

771 A. Yes, I see.

Mr. SEVERANCE: You don't mean over the whole system?

Mr. COWAN: Only those three points that you have named. When you mention the revenue per ton per mile in answer to Judge Baxter, or his question was the rate per ton per mile, did you mean that you had a rate based upon the earnings per ton per mile?

A. The rate per ton per mile in my judgment—I don't know that I said much about it. It is rather a relic of barbaric ages. It don't represent anything.

Q. It is the result obtained by dividing the total revenue by the total ton miles.

A. I think that is it.

Q. And not by dividing the rate by the ton mile?

A. I think that is the way they get at it.

Q. Have you an estimate—If you should estimate the rate on live stock at 23½ cents from some of your stations to Chicago, you divide that by the tonnage to ascertain—the mileage—to ascertain what that would produce as a revenue per ton per mile,—it would not represent what you would receive nor what the other road actually receives of it, would it?

A. I don't know that I understand that question.

Q. You take a station, A where the rate is 23½ cents to Chicago and that station being on your line.

A. Yes sir.

772 Q. The junction point B with the Illinois Central, and say that it is 300 miles from B. to Chicago?

A. Yes sir.

Q. The amount that a carload would have to pay on the 23½ cent rate divided by the tons in the car and the mileage would give what we call the per ton mile basis?

A. Yes sir.

Q. And that would not represent the amount you received per mile nor the amount the Illinois Central would receive per mile in actual revenue?

A. No, I think I see your idea.

Q. It does not do that because you get a greater division, being the originating line?

A. Yes sir.

Q. And so it runs through all the traffic largely?

A. Very largely, where a line is picking up the traffic and giving it to some other line. The train tonnage is the unit to figure from.

Q. Take the total tonnage of your road and the total revenue and divide it by the total miles and tons, what does it show on your system? In other words, what is your average revenue per ton per mile?

A. Last year, I think, sixty four hundredths of a cent per ton per mile. I don't think that is representative of anything. I don't think it should be in any annual report.

773 Q. What was your average earnings per car mile?
A. Do you mean by that per train mile?
Q. No, per car mile.
A. I don't know. I don't think we keep any such statistics. We keep the per ton mile and the per train mile.
Q. What was it per train mile?
A. I think only $1.25.
Q. How many loaded cars per train mile?
A. I don't remember.
Q. Your annual report shows those statistics, does it not?
A. I think so, yes sir.
Q. Have you the printed report?
A. Not with me.
Q. Can you furnish me one?
A. I would be very glad to.
Q. That will save a good many questions if you would.
A. I would be very glad to.
Q. What was the total amount you paid in damage claims to live stock?
A. I stated, I think on the direct question being asked of me, that I did not have those statistics compiled because I could not get them. We have our vouchers, as they are made, they are for loss and damage an- so state, and they are filed away under our system. I did state that it is my belief that the damage claims on our road to
774 live stock on the two roads is more than on all other freight together. That seems extraordinary, but I believe that that is a fact on our road.
Q. Well, do you know the amount—Do you mean the amount that is paid or the amount that is claimed?
A. The amount paid out for delays to trains and damage of all classes, damages incident to the traffic.
Q. Well, you must have some approximate idea of what it is in dollar and cents?
A. Well, I want to tell you that I have not, I have not. I won't try to say. I would rather verify my figures and prove what I have stated. I think that the actual accounts will show that if I can get at them.
Q. You made the statement with reference to the minimum weights on hogs. I understood from your reading that you count the minimum of a 36-foot car at 16,000 pounds?
A. No, I think you misunderstood me.
Q. You have the minimum the same as the other roads use?
A. Yes sir, 17,000 I think.
Q. You probably were giving the minimums on some smaller car?
A. Yes sir, I think so.
Q. 36-foot cars are practically the only cars in use?
A. I called them in my examination, "the popular car." That is the car that is used the most.
Q. You gave several rates in the classes, one for example you gave

as Class A, or Class 1, or first class. Were the rates which you gave in your exhibits carload or less than carload?

775 A. Well, there was two or three classes that were less than carload but as a general proposition they were carload rates. I submitted two exhibits with rates, one entirely with carload rates and the other with carload and less than carload. I think there were a few that would be in the fourth class in the first exhibit, it would be less than carload. The balance were carload rates.

Q. The rates which you are made to apply to various articles of commerce are not made with a view that the one shall pay the same profit as another, are they?

A. I think not, so far as my experience goes, they are not.

Q. It would be impossible to do so, would it not?

A. I should think so. A store-keeper could scarcely—or any other class of business—could scarcely make a chop-off rate for the same profit on each article.

Q. Commercial conditions will not permit that to be done, will they?

A. I don't think so, they never have.

Q. The desire of a particular railroad to build up a particular traffic would prevent that being done by any competitor wouldn't it?

A. Yes sir. They would have the pivot and the one that the competitor can make is the rate that must be charged. They are a public carrier, they cannot go out of business and say they will charge five cents per hundred pounds more than a competitor.

776 Q. The lower rate stimulates traffic, does it not?

A. Not always.

Q. Well, that is the tendency?

A. That is the inclination of the rates are properly adjusted to the traffic that is to be moved. Sometimes a low rate might not have that effect.

Q. Competition tends to lower the rates, does it not?

A. Competition tends to lower rates.

Q. Is there a standard of reasonableness?

A. Why a reasonable rate is as intangible a property in the question of making rates, to a traffic man as the coloring is to a flower, for instance. I cannot tell. I have been twenty years at it and I cannot tell. The competition fixes the rate for me and has for years. I simply say to the boys when they come to me and say "Can we do this or that," I say "What is the rate from that point to Chicago via their line?" "Well," it is so and so. Well, we cannot get more and the result being that we have to take the traffic there at the figure the other fellow fixes for us.

Q. Is there a standard of relative reasonableness as between the different commodities?

A. What is that?

Q. Is there a standard of relative reasonableness as between the different commodities?

A. There is no standard that I know of except common
777 sense and the question of reasonable compensation for the services performed and those conditions that go to make up a rate.

Q. You look out for your rate with a view to do the best for your business under all the circumstances?

A. I look to make the best for my stockholders that I can. At the same time I must have regard to the upbuilding of the country.

Q. Why?

A. Well, because I want to produce freight. I want to produce passengers in and out as well as freight in and out.

Q. And that is the same motive then, it is either present or future gain which regulates the matter of what the rates shall be?

A. Well, my primary object has been to get the rates, get money for my stockholders and I haven't very well succeeded. The other fellow has fixed my rates.

Q. Doing precisely the same thing?

A. I don't know.

Q. Trying to get money for his stockholders?

A. I imagine so.

Q. Now in the custom that has thus grown up, from making rates for revenue, has that developed a standard of reasonableness actual or relative?

A. Oh that is a might- hard question. It would be by reasoning and common sense and the knowledge of the situation and
778 the conditions, the building up of the country and all that goes in. The cubic contents of the car, what the car holds. Mr. Cowan, sometimes a man in making rates will take into consideration the question of the r-sistance of the train. For instance it is demonstratable, I think that across the State of Iowa on certain days that the resistance to a stock train is more than the resistance to the same number of box cars. You take a windy day and it will cost you more. Well, those elements go in, all of them, but they are not final. They all go in and you have to reason it out. But after you have taled it out and reasoned it out the measure of the rates is what the other fellow has fixed.

Q. Is it possible to fix rates with a view to arriving at a certain profit?

A. By experience and by that only a man may be able to pretty nearly govern all his rates if he owns certain territory, in making the rates he might make a certain amount of profit, but as they are fixed at the present time, that is not true.

Q. Can you tell what the relation of the cost of the service is in carrying a carload of third class goods or freight,—that is sometimes shipped by carload, are they not?

A. No, that is never shipped in carloads, fifth class is.

Q. Fifth class, shipped by carloads and class B and C, you could not tell what was the difference in cost of handling it?

779 A. No, because that — not be hardly a fair example. For instance Class B. We would not fill up a train four trains a year on our road and never would be—well, the fifth class we

might have a train but the vital point is that you must consider what you can make of the prevailing or predominant traffic on your road.

Q. Isn't it always the rule with railroads that the lower rate should be given to the predominant traffic than to the traffic that moves seldom?

A. Well, if you are getting a million tons of one class and 100,000 of another, I have no doubt that the lower rate would be given to that freight because it would be more profitable. You can concentrate a great number of tons in your cars and trains.

780 Mr. LYND:

Q. The lower rate would be given to the millions tons?

A. Yes sir, that is what I say. You can move it with greater facility in the first place, and you can manipulate it better.

The COURT:

Q. Which do you call the predominant traffic on your road?

A. Soft coal and corn.

Q. What about live stock?

A. Live stock is about 8 per cent. of all, or ten per cent. If we were to have as much live stock as we have soft coal to handle, and had to handle it in the same way, we are obliged to handle it, we would be bankrupt.

Q. Isn't the live stock the predominent traffic on the roads that make the rate on it?

A. I should say no. I should say it is not 10 per cent. I do not think it is 10 per cent. It is the fashionable traffic, if you will, it is a fad.

Mr. COWAN:

Q. What other traffic except the corn and coal furnishes as large a volume as the live stock on your road?

A. Well, the lumber products. The live stock will be about third or fourth, I think. That will be shown in our annual report that you will receive. That is all fixed there.

781 Q. Do you move live stock long distances on your road?

A. Well, we move live stock distances of 160 miles and 200 miles.

Q. Through what division points?

A. That would be via Monmouth.

Q. That will be reflected in the statement that you will make, that I have requested?

A. Yes sir.

Q. At what rate do you haul hogs from Southern Minnesota points to Chicago, and from what points?

A. That would be ha-d to answer because I do not carry the specific rates in my head, but we handle business from New Ulm, Wasetka, Lafayette and Winthrop, but I cannot tell you the rates. They begin at about the Minnesota State line—first, the rates get to the Missouri River zone and then they gradually grade up until you get into Minnesota, and then you get into the 24 and 25 cent rate.

Q. In connection with the annual report that you submit and hand to us, will you hand us one of the individual issues, of the tariff between points on your line and such joint tariffs that reach points like Minneapolis and Chicago. You probably have them printed, have you not?

A. Printed tariffs?

Q. Yes.

A. Yes sir.

Q. And also give us a map of your line.

A. There is a map in the report. What are the tariffs you want?

782 Q. Your live stock tariff, individual and joint.

A. To Chicago?

Q. Well, you have it all printed——

A. Our tariffs are in exhibits here. Our Iowa rates are right together with the Minnesota rates.

Q. Is it not a fact that the Iowa Commission in its distance tariffs fixes a higher rate on packing house products or dressed meat than on live stock?

A. I am not certain about that. We have very little experience with those rates in Iowa.

Q. Was your road consulted in regard to the matter of reducing the packing products, or the dressed beef rates?

A. No, we simply followed suit.

Mr. COWAN: That is all.

Redirect examination by Mr. BAXTER:

Q. You were asked on cross examination something in reference to the average rates, or average receipts per ton per mile. I understood you to say that that calculation was of no value.

A. Well, in connection with certain computations that the counsel was bringing out there, I thought it was of no value. I think the train earnings, I thought they were of more value. It is of

783 more value to a certain extent, I must admit.

Q. What I want to get from you is, how do you ascertain the average receipts per ton per mile?

A. The mileage and the tonnage. You take a ton so many miles and divide it and it will give you the rate per ton per mile. It gives you the average, but what I had in mind, was this; that the train, the revenue per train mile to our road is the primary unit from which we figure, and I can get twice as much money or three times as much money out of the corn or coal per train mile than I can on live stock.

Q. For the purpose of the record, in ascertaining the average receipts per ton mile, do you keep account of the number of miles?

A. Yes sir.

Q. That each ton is carried over your road?

A. Yes sir. The figure I gave as our computation, was about 64/100. as an average.

Q. Having ascertained the number of miles that each ton is car-

ried over your road, the aggregate of that makes your gross tons per mile, doesn't it?

A. Yes sir.

Q. Then you divide that into your total freight revenue and that shows you the average amount received per ton per mile, is that correct?

A. Yes sir, that is correct.

784 Q. Now, coming to the average receipts per train mile. Do you keep account of every mile that is made on your road by every train?

A. Yes sir.

Q. And the total of that makes your aggregate train miles?

A. Yes sir.

Q. Divide that into your aggregate freight revenue, and that gives you your average receipts per train mile, is that so?

A. Yes sir.

Q. In making up that account, do you call an engine and a caboose a train, if it runs out without any cars attached to it?

A. I think not, but I am not certain, I would not say.

Recross-examination by Mr. COWAN:

Q. You said that you take the train mile and consider that a unit in your estimate of revenue?

A. That is what I use myself.

Q. Why?

A. Well, because of the density of traffic and from that comes the profit in the trains.

Q. Does it matter very much as to the expense of running a train whether it is a heavy train or a light one?

A. Whether it is what?

Q. Whether it is a heavy one or a light one?

A. I think it does, but not in proportion. For instance,

785 take a train of twenty cars loaded with corn and run it from Marshalltown to Monmouth, and then take a train with twenty carloads of stock, and you will see how you are going to get out.

Q. The question of handling——

A. Well, the relative expense—the net is what we are after. The net in the case of corn is fully three times as much as it would be on the live stock.

Q. Isn't it a fact that your heavy equipment and heavy loading of the cars in the case of the corn necessitates a much greater wear on your equipment and track and a greater amount of fuel than if your cars are loaded light and your train loaded light?

A. Some four or five years aggo when I happened to be General Manager of the road, I sent the Road Master out to hide in the bushes and catch the boys that were running fast, and I guarantee you that the way they fanned the live stock trains through the country would justify me in saying that it cost more to handle 40 per cent. of the tonnage than it does 60 per cent. of the other class of traffic where you run them slower. The question of fuel is a thing that you have got to consider.

Q. Answer me then why it does not cost the Lake Shore and the Pennsylvanie, and the B. & O. and these other roads that run
786 the fast trains, why it does not cost them more to haul the traffic than it does these Western roads that run the slow trains?

A. If you had the double track, and one fourth of one per cent. grades, and everything fixed for it, the proper type of locomotives and all other conditions favorable and through and full trains, that is a different proposition altogether. We don't have that out West and I can only cconjecture as to the conditions on the Pennsylvania or the New York Central.

Mr. CLARK: By consent of counsel, I desire to examine one witness on behalf of T. M. St. Clair Company, Limited. Perhaps it would be proper to ask that special order be entered permitting me to appear for that intervenor. I am not a member of the Bar of this Court, and in all other cases here several times heretofore such orders have been entered in each particular case.

The COURT: Well, let the order go.

Testimony Introduced on Behalf of T. M. St. Clair Company.

E. T. KOCH, called and sworn as a witness on behalf of T. M. St. Clair & Company, testified as follows:

Direct examination by Mr. CLARK:

Q. How old are you?

A. I was born in 1848.

787 Q. What is your business?

A. I am Traffic Manager for T. M. St. Clair & Company, Limited, of Cedar Rapids, Iowa.

Q. How long have you filled that position?

A. With the present corporation?

Q. With the Pres-nt Corporation?

A. About five years.

Q. What is the name of the corporation?

A. T. M. St. Clair & Company, Limited.

Q. In what business is that corporation engaged?

A. Packing of hogs and cattle and beef products and hog product.

Q. Which principally?

A. Hogs.

Q. Do you know how long it has been since that corporation was organized?

A. T. M. St. Clair & Company, Limited?

Q. Yes.

A. 1899.

Q. Do you know whether they were the successors of a former corporation engaged in the same business?

A. They are.

Q. What was the name of the former corporation?

A. T. M. St. Clair & Company.

Q. How long to your knowledge was that corporation engaged in business, in the same business?

A. I don't know when the corporation of T. M. St. Clair & Company was formed, but I went into the service of the company
788 in 1890. The corporation was formed some years after that.

Q. That is the present corporation?

A. Yes sir. The previous corporation was formed some years before 1890.

Q. Was your service for the former corporation of the same character as your present service for the inte-venor?

A. Yes sir, and it has been continuous since 1890.

Q. Do you know about what the average killing of hogs per day is by T. M. St. Clair & Company, Limited?

A. It varies somewhat with the supply of hogs. It will average in the neighborhood of 600,000 hogs per annum.

Q. When is the highest average of slaughtering per day?

A. During the winter months.

Q. And when is the smallest number?

A. During the summer months.

Q. You say the aggregate is about 400,000 per annum?

A. About that.

Q. How long has that been so?

A. The business has gradually increased since the old firm went out.

Mr. COWAN: I cannot hear you.

A. (continued). The old firm went along at a killing proportion of somewaht less than that. This new firm have not averaged 600,000 hogs since their advent in 1899. They are killing about that now. For the last past year, it will average about that.

789 Mr. CLARK:

Q. Do you know how expensive the plant is, what the investment is in the plant?

A. There has been expended in the last past five years about $500,000 in the way of improvements and betterments. The plant represents in the neighborhood of a million of money.

Q. That is in the plant itself?

A. Yes sir.

Q. Outside of the capital used in the carrying on of the business, tied up in the business?

A. Yes. It has nothing to do with the operation of the firm at all.

Q. Do you know where that corporation purchases hogs for slaughter?

A. Largely in the State of Iowa.

Q. Does it purchase any from points other than in the State of Iowa?

A. It does.

Q. Whereabouts except in the State of Iowa?

A. During the period extending over the last five years it has been quite varied, depending on the supply of hogs in the State

of Iowa. They have been at times compelled to go into the State of Minnesota, Dakota and sometimes Kansas City and Sioux City, St. Joe and Omaha.

Q. Sioux City is within the State of Iowa, is it not?

A. Yes sir.

Q. How extensively have the purchases been made at Kansas City and St. Joseph?

A. That varies in this way, that it depends largely upon the demand for any special character of meat, that and the demand
790 for the particular kind of hogs used. At the time when hogs are varying so, there are seasons of the year when they vary very much in the country, and at such times as that a certain character of hog, weighing, we will say, from 175 to 200 pounds, or 225 pounds, must be uniform, and then they frequently go to the markets at Kansas City or Sioux City and they have bought hogs in Chicago.

Q. And some in St. Joseph?

A. Yes sir.

Q. St. Joseph, Missouri?

A. Yes sir, but not many.

Q. Any at Chillicothe or in that vicinity?

A. Yes sir, from Chillicothe, and south from Kansas City but not many.

Q. Well, now, Mr. Koch, where does the corporation purchase its principal supply of hogs for slaughtering?

A. In the State of Iowa.

Q. I will ask*m* you whether the purchases outside of Iowa are exceptional or the average?

A. Exceptional.

Q. During the past year have purchases been made in Minnesota or the Dakotas, either of them?

A. Not of any consequence.

Q. Do you have charge of the freight and tonnage of the live animals which are brought into the plant for slaughtering?

A. The shipper.

Q. How?

A. The shipper of the live stock designates the route it is coming.

791 Q. Take the State of Iowa, do you know the rates of freight from the various points in that State where purchases are made to the packing house at Cedar Rapids?

A. They are controlled by the Iowa Distance Tariff. Those rates are promulgated by the Iowa Commission.

Q. Do you know what those rates are?

A. No, not in detail, each and every one.

Q. At about how many points are purchases made in Iowa?

A. I have known purchases to have been made by wire from our office, covering anywhere from 80 to 85 points in one day. That is during the heavy killing season in the winter months.

Q. Well, take the year altogether, at how much different points does the corporation purchase hogs in Iowa for slaughtering?

A. Daily?
Q. Throughout the entire year?
A. It would be impossible for me to make an estimate on that.
Q. It is a matter you are familiar with is it not?
A. They buy along the line of the Chicago, Rock-Island & Pacific, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul and the Illinois Central lines; from the extreme western limit of the State up to and including our own county and to the extent of one county east.
Q. That is east from Cedar Rapids?
A. Cedar Rapids, yes.
Q. How far is Cedar Rapids west of the Mississippi River?
792 A. About 80 miles.
Q. Eighty miles from Clinton?
A. Yes sir.
Q. By the Northwestern?
A. Yes sir.
Q. Have you made a careful study and examination and computation of the freight rates in the Iowa Distance Tariff from the points in Iowa where the corporation purchases its hogs into Cedar Rapids and into the slaughtering house?
A. Yes sir, for many years.
Q. Do you know from that examination and study what the average freight rate on the live animal is from the point of purchase until the delivery at the slaughtering house in Cedar Rapids?
A. Of Iowa shipments?
Q. Of Iowa shipments purely?
A. Eleven cents.
Q. What is the present rate on the finished product of the packing house to Chicago, local?
A. 13½ cents.
Q. Now, can you tell Mr. Koch, what the rate is on the live animals purchased at St. Joe, Missouri to the packing houses?
A. At Cedar Rapids?
Q. Yes.
A. 18½ cents.
Q. How much is it from Kansas City?
A. 15 cents.
Q. How much from Chillicothe, or that vicinity when you purchase there?
A. 15 cents.
Q. In all cases then it is greater than the average rate
793 on hogs purchased in Iowa?
A. Yes sir.
Q. How long ago did you begin the study and examination to determine what the average rates were on hogs purchased in Iowa?
A. Fifteen years ago.
Q. Have you become familiar with that matter?
A. As nearly so as I was able.
Q. I take it that you have made written computations perhaps?
A. We have records yes sir, that show.

Q. Did you bring any of those with you?

A. I have not, no.

Q. When did you last make a careful computation of that character.

A. About eight months ago, it covered a period of five years, the year 1900, 1901, 1902, 1903 and 1904, and I find the average of eleven cents on Iowa hog shipments to Cedar Rapids, during that period.

Q. How far east of Cedar Rapids does that corporation purchase hogs in Iowa?

A. Not beyond the first tier of counties.

Q. Not beyond the first tier?

A. Yes sir.

Q. East of Cedar Rapids?

A. Yes sir.

Q. Do you know what the rate is on the live hog from the first tier of counties in Iowa along the Mississippi River into Chicago?

A. Fifteen cents.

Q. Can you tell what it is in the second tier of counties?

A. The rate from Lynn County to Cedar Rapids is 18½ and the rate is scaled up from 15½ proportional to Cedar Rapids,
794 on the basis of 18½.

Q. As you go West?

A. Yes sir.

Q. That is to Chicago?

A. Yes sir.

Q. Now Mr. Koch, what is the rate on the live hog from the tier of counties along the Mississippi River to Cedar Rapids?

A. About 10½ cents if my recollection serves me correctly. 10.48.

Q. What is it from interior points between Clinton and Cedar Rapids?

A. Well, it varies. I am unable to give you the Iowa Distance Tariff in detail per mile.

Q. From Clinton to Cedar Rapids?

A. To Cedar Rapids, a distance of 81 miles, it figures, 10.48, if I remember correctly, something over ten cents. The distance is a little over 80 miles.

Q. In view of the rates that you have tabulated, are you able to make purchases for the St. Clair Packing House at Cedar Rapids in the counties more than one tier east of Cedar Rapids? Are you able to make purchases and ship the hogs west and then ship back and deliver the finished product at living prices?

A. We receive no hogs from east of the first tier of counties. The rates are prohibitory.

The COURT:

Q. The rates are prohibitive, is that it?

A. Yes sir. The local rate back to Cedar Rapids plus the finished product rate to Chicago, would give the Chicago packers the
795 advantage of us in the neighborhood of—well, from Clinton, if you please, it would be 10½ or 10.48 and Cedar Rapids

plus the Chicago rate as against the other 15 cent rate, 15 cents from Clinton to Chicago.

The COURT:

Q. On the live stock?

A. Yes sir, and the total round trip rate via Cedar Rapids would be 24 cents.

Mr. CLARK:

Q. Now do you know what effect those conditions have upon the shipment of live animals from the two eastern tiers of counties in Iowa?

A. There is only one outlet that I know of for those hogs.

Q. Where is that?

A. Chicago.

Q. Have you made a study of the total annual hog crop of Iowa?

A. The best information obtainable that I have access to, leads me to believe that it is approximately ten million per annum under favorable conditions.

Q. Do you know about how many—about what proportion the entire annual crop, of the entire annual crop is slaughtered in the State of Iowa?

A. My opinion is that it is approximately a million and a half.

The COURT:

Q. Hogs or dollars worth?

A. A million and a half hogs.

796 Mr. CLARK:

Q. Does that include the plant at Sioux City, I believe it does?

A. No sir, I did not intend to convey that idea. We consider Sioux City as a Missouri River proposition.

Q. Now, take the tier of counties along the Missouri River which way are the hogs in those counties shipped for slaughter?

A. Largely to the Missouri River Packing points, St. Joseph, South Omaha, and Sioux City.

Q. When you get west of that tier, which way do the hogs go?

A. You mean east?

Q. East?

A. They go to the interior packer in Iowa and to Chicago. My estimate would be that from the western tier of counties, that the Missouri River packers at South Omaha, Sioux City and St. Joe would attract from Western Iowa probably in the neighborhood of one million hogs per annum.

Q. Well, from your experience and observation do you know how the annual output of hogs is distributed through Iowa, that is is it distributed pretty equally or are there portions where the hog population is more dense than other portions.

A. There are some sections of Iowa where they have what is termed the two-litter, in the southern portion of the State. 75 per

cent. of the northern portion of Iowa, I would think that the
797 percentage of hogs was materially less than prevails in the remaining southern 25 per cent.

Q. Have you made a study, taking these conditions into consideration to determine what the average freight on the live hogs shipped to Chicago is from the point of shipment to the City of Chicago, that is the Iowa animal?

A. Yes, I have for a great many years.

Q. How much is that in your judgment?

A. I am better qualified I believe to state that covering the territory embracing the northern 75 per cent. of the State than the southern remaining 25 per cent., but I would say that the average was liberal at 21 cents. I actually believe that if it was figured out to a nicety, an exact figure, that it would prove to be nearer 20 than 21 for various reasons.

Q. It is a fact that the two eastern—does the fact that the two eastern tiers of counties in the State ship almost exclusively to Chicago, tend to increase or cheapen the average rate?

A. Cheapen it, naturally.

Q. From that portion it is less?

A. The rate there is less.

Q. How is the proportion of hogs in those two tiers of counties?

A. About the same. I think there is very little variation between the Mississippi and the Missouri River.

Q. Do you remember how many counties there are in Iowa
798 altogether?

A. Something less than a hundred. Not many. 96 or 98 I think.

Q. How do the counties run north and south, how many are there in the tier north and south?

A. They will vary from 3 to 10, I think.

Q. Taking the 9 on the eastern edge of the state, do you think that those counties produce their full ratio of the entire hog crop of Iowa annually?

A. The second tier of counties might, but not the first.

Q. What number of hogs does those two tiers of counties produce altogether in your judgment?

A. It might be difficult to estimate how many would remain left over in Iowa over and above those going to the interior packers and the Missouri River packers.

Q. I speak of the two eastern tiers, where the interior packe-s gets none?

A. I would suppose that a fair estimate would be in the neighborhood of a million and three-quarters.

Q. Are there any packing houses along the Mississippi River in Iowa, do you know?

A. Not in operation, that I know of.

Q. Are there any packing houses east of Cedar Rapids, in Iowa, in operation?

A. Not that I can recollect.

Q. What packing plant is there in interior Iowa to your knowledge besides that of T. M. St. Clair & Company, Limited?

799 A. Morrell & Company of Ottumwa is the principal one, the largest in the State, interior packers.

Q. Well, are there others?

A. Why, Agers at Des Moines, a packing establishment at Marshalltown, Waterloo and Mason City. I am unable to recall any others.

Q. Are these plants extensive, or what you would call small?

A. I would call the packing plant at Marshalltown and at Mason City and at Waterloo somewhat less in their capacity than the others. The others rank, the first would be Morrell & Company in magnitude, and then T. M. St. Clair & Company and then the Agers of Des Moines.

Q. Now combining the average freight rate which you have already given on the live animal until it arrives in the packing house, with the rate from Cedar Rapids, the rate on the finished product from Cedar Rapids to Chicago, what is the total average freight rate that T. M. St. Clair & Company Limited pays from the point of origin where the live animal is bought to deliver into Chicago, on Chicago rates locally?

A. Twenty four and a half cents.

Q. I think your estimate of the average rate on the live animal from points in Iowa to Chicago, was how much?

A. Twenty-one cents.

Q. No, the live animal?

A. From points in Iowa to Cedar Rapids?

800 Q. From points in Iowa to Chicago?

A. The average is twenty one cents.

Q. Is the result then as to this most favorable to the interior packer in Iowa or to the Chicago packer?

A. To the Chicago Packer, of over 3½ cents on the present basis which has been in effect about six months.

Q. How do you arrive at that?

A. Which the average of 21?

The COURT:

Q. That it is favorable to Chicago, how do you arrive at that conclusion?

A. From the fact that the average rate from Iowa point to the City of Chicago, we anticipate as being not over 21 cents and we think it is less.

Q. It makes a difference of 10 or 11 cents?

A. Oh, no sir. The average rate into Cedar Rapids from Iowa points plus the local rate, add the local to Chicago, is 24½. The average rate from the State of Iowa, from these same points to the City of Chicago is——

Q. Is 21 you say?

A. Is 21.

Mr. SEVERANCE:

Q. That is the live animal into Cedar Rapids and the product added together?

A. Yes sir.

Mr. CLARK:

Q. That is the live animal from Iowa points to Chicago?

A. Yes sir.

800½ Q. Now if the rate on the live animals, the average rate on the live hogs from points in Iowa to Chicago, should now be reduced three or four cents per hundred, and the rate on the dressed procuct from the packing house of T. M. St. Clair & Company at Cedar Rapids, to Chicago, should remain the same, what effect would that reduction have as to the interests of St. Clair & Company and every interior Iowa packing house?

A. It would add, to the extent of the reduction just that amount to the disadvantage that they are laboring under at the present time.

Q. It would be just that amount in favor of the Chicago packers?

A. Yes sir, and if it did not put some of the packing houses out of commission, it would reduce them to prescribed lines, confine them to prescribed lines.

Q. Are you able to state about what percentage of the entire product of T. M. St. Clair & Company, limited, their packing house, is sold in Chicago or on the ba-is of the Chicago rates locally, Chicago local rates?

A. I would suppose that it was about 35 per cent. but that varies.

Q. Well, what in your judgment is a fair avera-e?

A. I would think 35 per cent.

Q. Where does the balance of the product of that packing house go?

801 A. For export.

Q. Altogether for export?

A. Yes sir.

Q. Except what is sold in Chicago or on the basis of the Chicago rates?

A. Yes sir. Don't understand that it would move on the Chicago local, but we are obliged to sell it through a broker or a Chicago packer based on the Chicago rate. They might order it in any direction and we would be obliged to give them the credit of the local Chicago rate.

Q. On the basis of the Chicago freight rate?

A. Yes sir, which results in our being obliged to pay the Chicago rate.

Mr. CLARK: I think that is all.

Cross-examination by Mr. COWAN:

Q. Is it not a fact that the percentage of the capacity of increase at Cedar Rapids in your business has been greater than it has at Chicago in the packing houses here?

A. I think not.

Q. Have you the statistics that show the number of tons or number of pounds of freight, accurate statistics that show what has been the ratio of your increase in business since 1902, down to the present time?

A. No sir.

Q. Do you know where those statistics are kept?

802 A. No sir, I do not.

Q. Isn't it a fact that the Cincinnati Price Current keeps those statistics that are considered substantially accurate?

A. They do of the hogs killed.

Q. Do they not also of the products?

A. I have never seen the tonnage. I notice nothing but the reports made from time to time. Some of those are supposed to be accurate and some are known to be inaccurate.

Q. They keep it correctly of the hogs killed?

A. As nearly so as they can. All they can judge from is the reports that are made. It is supposed that they are correct. T. M. St. Clair & Company have increased their tonnage, not on account of any increased facilities, but their anxiety to extend their business.

Q. Other lines of business have also been increased at various places?

A. Yes sir, material improvements having been made on the Missouri river by those that are interested in Chicago.

Q. To what place do you ship your product, from your place for sale?

A. Well, it is principally sold at Cedar Rapids and shipped to all points on the globe, or many of them. We ship to South Africa.

Q. Do you sell it at Cedar Rapids?

A. Yes sir, and at Liverpool, W. P. St. Clair represent

803 T. M. St. Clair & Company at Liverpool and make sales for the continent, England, Ireland and Scotland.

Q. Do you make sales at Cedar Rapids to persons engaged in the business in various of the states, Ohio Indiana, Pennsylvania and New York?

A. Yes, to a limited degree, most of the sales being made through brokers.

Q. 65 per cent., you say of your product is exported?

A. About that.

Q. Via New York?

A. What say?

Q. Via New York?

A. And Boston, and via Baltimore and some via New Orleans.

Q. Have you the export rate from Cedar Rapids?

A. No sir.

Q. How is the rate made up from Cedar Rapids to New York on your export stuff?

A. It is made on the interior rate, taking the export rate to New York and——

Q. What are those rates?

A. 39 cents from Cedar Rapids to New York for export.

Q. What is the export rate from Chicago to New York?

A. 30 cents.

Q. When you ship to places like Indianapolis and Cincinnati, do you not ship on the basis of the proportional rate to the Mississippi river?

A. Yes sir.

Q. And then the rate on to Cincinnati?

A. Yes sir.

804 Q. The export rates are made by adding the Mississippi River rate to New York and your proportional rate to the Mississippi river together?

A. I did not catch that.

Q. In order to get the export rate to New York you add the proportional from your place to the Mississippi river?

A. Yes, there is no question with relation to the condition of rates from Cedar Rapids to any point except the city of Chicago locally. We are on a perfectly satisfactory basis to any other p-int on the globe. The only discrimination is in favor of the city of Chicago locally.

Q. What is your proportional rate to the Mississippi river?

A. Four cents at the present time.

Q. When was the present rate put into effect?

A. Shortly after the reduction was made from the Missouri river to Chicago on packing house products for export.

Q. When was your present local rate to Chicago of 13½ cents put into effect?

A. I could not recall just exactly, but it occurs to me about six months ago. Previous to that, it was 18½. You can see from that the discrimination in favor of Chicago for a great many years.

Q. Assuming that a man shipping hogs from some point where your 11 cent rate is, to Chicago, from west of Cedar Rapids, he would have to pay 23½ in that territory wouldn't he?

A. Yes sir.

805 Q. And 11 cents to your place plus your four cents, plus five cents additional to the Mississippi river, additional to the Mississippi river rate over Chicago, and 30 cents to New York would give you 39 cents to New York on the product which, if you add 11 cents which you pay on the hogs, would be 50 cents whereas the Chicago man with 23½ cents plus his 30 cents could lay his product down in New York for 53½?

A. That is an illustration that might fit the object which you have in view, but it is not a fair one.

Q. I am asking whether that is a fact.

A. 23½ cents would not apply from all of our 11 cent rates.

Q. It does apply through from points west of you to Chicago?

A. Yes, but not until you reach Boone on the Northwestern.

Q. Well, take it at Boone, 23½ cents plus 30 cents is 53½ and 11 cents to your place plus 39 is 50?

A. Yes sir.

Q. Now according to that theory, according to your theory, the one that could pay his product down the cheapest has the advantage over the other?

A. Yes sir.

Q. Then isn't that 23½ cent rate isn't that an undue advantage or rather the comparison of rates an undue preference or ad-
806 vantage to you or disadvantage in that instance.

Mr. LYNDE: That question is objected to and the objection is that it calls for the opinion of the witness and not as to a question of fact, as to whether such a preference if there is one is an undue one.

Mr. SEVERANCE: There is another objection. The witness has not testified to that kind of a comparison. He says the average rate into Chicago from northwest Iowa is 20 or 21 and the average rate into Cedar Rapids is 11 cents.

The COURT: Objection sustained.

Mr. CLARK: We don't object.

The WITNESS: If the counsel will permit it, you might make a demonstration from Dennison or Missouri Valley. We get hogs from Missouri river where the rate is from 16 to 17 cents to Cedar Rapids and 23½ cents to Chicago. You make the demonstration and see what the difference is.

Q. Well, the difference is——

A. In favor of Chicago.

Q. That would be half a cent in your favor?

A. I think not if you will carry the demonstration out. 16½ cents from Missouri Valley to Cedar Rapids plus 39½.

Q. The difference between 16½ and 11 cents would be the difference. That can be figured out. In that event the Chicago
807 man would lay it down cheaper than you did if you both bought it at the same place?

A. Yes sir.

Mr. SEVERANCE: Two cents cheaper.

Mr. CLARK: That is in New York.

Mr. COWAN: Yes, and that is where he says 75 per cent. of his stuff goes for export.

Q. Now suppose you take it from Cedar Rapids on the local at Cedar Rapids.

A. Yes sir.

Q. Where you have a five cent rate?

A. Five cent rate into Cedar Rapids.

Q. The difference would be proportionally greater there just as you change the local rate?

A. Yes sir.

Q. Then suppose you take it within 100 miles from Chicago where the Illinois distance tariff is 10 cents.

A. You have not carried that proposition out.

Q. I did not carry it out in figures, but I am carrying it in my mind and I suppose you are. If the Chicago packer can buy cheaper than you can here in the State of Illinois, do you count that that gives you a right to a rate of freight from the state of Iowa that would put you on the same basis as the Chicago packers?

A. I don't quite understand that.

Q. If t-e Chicago packer can buy we will say 100 miles from

Chicago in the state of Illinois, and ship in at the cost of 11
808 cents, do you think that would entitle you—such a rate that would enable him to lay that product down cheaper than you could possibly do it, if you did not pay the freight——

A. Yes.

Q. Do you think that that would give you a right to have a rate of freight made from the state of Illinois to your place that would enable you to compete with him?

Mr. SEVERANCE: That is objected to.

The COURT: Let him answer.

A. I think not, sir. I think that the people who reside in the state of Iowa have some rights that others are bound to respect.

809 Q. Assume that that is true.

The COURT:

Q. That is, he ought *ot* have a chance for the business there in that State?

A. Yes sir.

Mr. COWAN:

Q. How would you be able to adjust the rates of freight so as to enable the packing plant that might be established in any particular locality to lay its product down as cheap as one in any other locality, without you made an absolute blanket rate from every place to the same packing house, on the live stock?

A. I don't, believe that it is possible for any human being to adjust a basis of rates that would place every packer or every jobber, or any particular class of business men on practically the same basis, in the United States. It is an impossibility.

Q. Geographical location——

A. Geographical location don't enter into it, I don't think.

Q. Geographical location and the condition of the supply of the article manufactured, the location of the market and the demand for it are such that that cannot be done.

A. The conditions are constantly changing, and where there would be a change in one particular locality it might affect—the disadvantage might be that it would spread and would affect various other localities.

The COURT:

Q. What do you think is a proper basis in making a rate?
810 If you were making these rates now, how would you do it, where would you start at to get your figures?

A. Well, competition, your Honor, has much to do with that, and the expense of operating a railroad. That expense is being reduced through the efforts of railroad men. They are obliged to do that. I would take into consideration the increase- cost on account being obliged to maintain the railway properties in a condition that would make it safe for them to transact the business in the way that the public deman-s. In doing that, you must have your rates based—a rate basis that would create a revenue that would enable you to do

that and to pay your fixed charges and the only way that I would see my way clear to do that would be to figure the matter from start to finish.

The COURT:

Q. The cost?

A. Yes sir, the cost.

Q. And apply that to the packing house product and dressed meat as well as the live stock.

A. I think that the conditions your Honor, are quite in contrast with relation to the raw material and the finished product in live stock, in the situation so far as the live stock is concerned and those conditions in relation to iron and lumber.

The COURT: Well, how is that?

A. The character of the service demanded by the live stock
811 shipper——

Q. Requires more care?

A. Yes sir.

Q. Well, that is true of the product, the finished product?

A. Not to that same degree. I have no knowledge of ever having made a claim for delayed shipments for goods for export. They move along with regularity, but they are side tracked on single track roads to let the lice stock pass.

Q. You have to keep it cool, to keep it in proper condition, don't you?

A. No sir, the packer keeps his own product cool. We have no icing charge between Cedar Rapids and New York on our export shipments.

Q. That is considered in the pay for the use of the car, the icing and all of that is considered somewhere. It comes out of the railroad company in the end?

A. If we were exporting from Cedar Rapids a character of meat that would require re-icing between Cedar Rapids and Liverpool, we would be at the expense ourselves, absolutely. The railroad would not be at any expense further than the switching of the car to the ice house.

Q. Do you own refrigerator cars to ship your own meat?

A. To a limited extent, we had 150 that we use for our foreign shipment.

Mr. COWAN:

Q. Previous to 1902, what was your rate to Chicago then,
812 on packing house products, 18½ cents?

A. 18½ cents.

Q. What was your proportional to the Mississippi River?

A. Five cents at that time.

Q. What did it then cost you to New York?

A. Forty cents.

Q. What does it cost you now?

A. Thirty-nine. The Mississippi River is based on 116 per cent. of Chicago.

Q. Do you claim that that rate of freight ought to be the same

on the live Stock into Cedar Rapids or out of Cedar Rapids of the packing house product, to make that equal to the same rate from the original point of shipment of the live hogs to Chicago? In other words do you claim that the two articles ought to be as low as a through shipment?

A. No sir.

Q. Do you claim it ought to be lower?

A. No sir.

Q. What ought the difference to be?

A. I would make the rate sufficient to pay the terminal charge of switching at Cedar Rapids. It would possibly cost half a cent a hundred. In some instances it might cost a cent, but it would not in all cases. The difference now against us is 3½ cents, but we have no serious objections to that. We have other advantages that we take into consideration. We cannot have any one fixed definite particular policy to carry out in relation to one particlar thing. We take the whole matter in a general way.

813 Q. Do you know what the proportional is to the Missouri River to the Mississippi?

A. On Export?

Q. Yes?

A. I think it is 18.

Q. That would be the same as Chicago?

A. I think the local rate from the Missouri River to Chicago is 20 cents.

Q. If the proportional to Chicago—the proportional of 18½ from the Missouri River plus 30 would be 48½?

A. Yes sir.

Q. The Missouri River packer could lay down the packing house product from Missouri to New York for 48½. Now, the shipper of hogs to Chicago, if he wanted to ship to Chicago from the 23½ cent territory would have the 23½ cents to Chicago and the packer would have to pay 30 cents, which would make it cost him 53½.

A. Woul-'t you include the int-rior packer in Iowa in that? I Would like to have you do that. You are not taking into consideration the percentage of hogs that go from the Missouri River to Chicago on the proportion of the through rate.

Q. Isn't that what it figures, out 53½ cents that the product would cost the Chicago packer?

A. Moving on local tariffs, yes. The Missouri River packer would have the advantage of the Chicago packer to that extent, that

814 the cost—the hogs would move on local tariffs on your supposition which I don't understand that they are doing.

The COURT:

Q. Not from the Missouri River?

A. No sir, they come from Kansas City to Chicago on the proportion of the through rate.

Mr. COWAN:

Q. You are assuming that the packer pays the freight?

A. What say?

Q. You are assuming that the packer pays the freight?

A. The interior packer is obliged to base his prices on that.

Q. Suppose the live stock shipper is the man that is paying the freight, suppose it comes out of his pocket. Do you contend that it is fair that the Missouri River packer should ship the product at 18½ cents while the producer of the hog in that territory should have to pay 23½?

A. The shipper derives his benefit from the increased price of the hog at Chicago. I know of no shippers in the State of Iowa that are complaining of the persent rate on hogs from any point in Iowa to Chicago.

Q. You mean to say that the price of the hogs in Chicago is 5 cents a hundred pounds more than at the Missouri River?

A. That depends on the condition. It depends on the de-
815 mand at the Missouri River as compared with the demand at Chicago. It is not unusual that there should be 15 cents difference in the price.

Q. Is it ever higher on the River than it is here?

A. The Missouri River?

Q. Yes.

A. Not that I know of. I think there has been an exception to that where the Missouri River packer has paid even more than the Chicago packer. That was on account of the surplus.

Q. Who is it that fixes the price, if anybody, that you get for the products that you export, does the big packer fix it?

A. What is that?

Q. Who fixes the price of the product that you export, do you fix it, or does the big packer fix it?

A. That is a very large question.

Q. What is your opinion?

A. I think it is largely a question of supply and demand.

Q. And the big packer is the principal supply?

A. Of beef, yes. I don't think that he has that same control of the pork product.

Q. Are there any live cattle killed to any considerable extent in the State of Iowa?

A. No sir, not that I am aware of. The packer at Des Moines kills more liberally than any other packer in the State, I think. Understand, that I do not include Sioux City in any of this evidence in relation to interior packers.

816 Q. Do you know of any other place in the country where the rate on the dressed beef product is less than the live stock, except as produced in this adjustment between Chicago and the Missouri River or the Mississippi River?

A. Any other place in the West?

Q. Anywhere?

A. It has prevailed for a number of years at St. Paul, a long time previous to the reduction of the rate from Kansas City.

Q. Out of St. Paul which way?

A. To Chicago.

Q. A lower rate on the packing house product and dressed meat?

A. Yes sir.

Q. I intended to include St. Paul in my question because it is involved in this case.

A. That has not been considered as a discrimination and no complaints have been made that I have ever heard.

Q. It has not been a discrimination, or so considered by whom?

A. It has not been considered a discrimination at any time.

Q. Who has not considered it as a discrimination?

A. I say, I don't know of any one except the Interstate Commerce Commission who considers it a discrimination.

Q. As a general proposition does not the finished product takes a higher rate than the raw material?

A. On iron and wood that would prevail but the same conditions do not prevail.

Q. On what articles is it to the contrary?

817 The COURT:

Q. Flour and wheat, how is that, and corn meal?

A. I would say that the finished product should take a higher rate on almost any commodity that I can call to mind. I would think that rule a good one.

Q. Except meats?

A. Except meats. The conditions that surround the movement of the live animal are so—the live animal as a raw material—are so in contrast to the conditions surrounding the movement of lumber and *los* and iron ore, that they cannot be compared. The increased cost in the movement of live stock is so in excess of the cost of the movement of ore and lumber, or logs that they cannot be considered in the same category in my opinion.

Mr. COWAN:

Q. That has been considered the case in all of this trunk line territory and the Atlantic seaboard, has it not? You can ship live stock cheaper per hundred pounds to New York than you can the dressed meat and packing house product. That is true, isn't it?

A. Well, I believe that that has been, the basis of rates of *rates of* that character have been in effect east of Chicago, but the Eastern lines do not use and do not handle the live stock except in rare instances in that expensive manner that is demanded of the

818 Western lines, in proportion the expense incurred in handling the fresh meat. There was one time when specials were run over the eastern lines but they were discontinued as they were discovered to be very expensive. The large pro-ortion of tonnage on this high class that you speak of is——

Q. Well, isn't it a fact that live stock can be carried now to New York for export or for killing purposes from Chicago, carried in live stock trains?

A. Carried in train loads?

Q. Yes?

A. I don't know what the rate is, yes sir.

Q. If the rate on the finished product in all cases today were

made less than the rates on live stock, is it not a fact that the large packing centers could absolutely dominate the killing of practically all of the meat at these places. Could they ship the live stock to New York and Boston and Pittsburg and Buffalo and a great many other places that it is shipped to now, if the packing house product and dressed meat rate were lower than the live stock.

A. They seem to be able to do it out of Iowa to Chicago notwithstanding the efforts of Morrell & Company and T. M. St. Clair & Company.

Q. Chicago is where the principal large packers are located?

A. Yes, there is a lower provision rate from these points to Chicago than the live stock, yet with that, the interior packer seems to have the worst of it to the extent of 3½ cents a hundred at
819 least.

Q. Well, during the ordinary run of business, the doing of the business on a very large scale necessarily involves the doing of it somewhat cheaper?

A. Not necessarily so. There is no packing house on the American continent that can prepare pork products any cheaper than St. Clair & Company can. That may seem extravagant statement to you, but that is true.

Q. You don't need a preferential rate then in order to put you on an equality?

A. We have never asked for anything of that kind.

Q. Did you not ask for the old basis of rates to be changed?

A. Yes sir.

Q. Didn't you do that because it would give you an advantage?

A. No sir.

Q. Give you an advantage over what you previously enjoyed.

A. Oh yes. It was practically prohibitory, to the city of Chicago. We were prohibited practically from doing business with Chicago and all tonnage that we were obliged to sell on the basis of the Chicago rate which had to be deducted before the shipment was made in any direction.

Q. You spoke of the average rate of freight from the state of Iowa to Chicago. What you mean there is the average that is paid if you take the rates from various places and the proportion shipped?

820 A. That we believe to be paid, yes sir.

Q. There is not anything shipped on any such rate except where that rate happens to prevail from some particular station, say 20 or 21. There is no average blanket rate is there, except that 23½?

A. If you would allow me to make the explanation of how I arrive at that conclusion that the average rate is less than 21 cents, I will do so.

The COURT: Go ahead if it don't take too long.

A. The basis of rates from the western tier of counties to the city of Chicago locally is 23½. The western tier of counties to the extent of, I would think 75 per cent. is eliminated, as that goes to the Missouri river packer. That 23½ cent rate extends up to within a point of some 15 miles west of a line drawn throug- the center of

the state north and south, so that the rates begin to scale down below 23½ previous to its passing that line drawn north and south through the state and there is as large a percentage of hogs produced in the east half of the state of Iowa as there is in the west half. A very large percentage in the three eastern tier of counties go to Chicago at the reduced rate extending from 15½ cents and scale up to 18½. Now the rate then is scaled up from 18½ to Boone, Iowa or Madrid on the St. Paul road which is in the
821 neighborhood, I should think of from 10 to 15 miles beyond this line drawn north and south and then it enters the zone of 23½ cents. So a very large proportion of the hogs that come from Iowa to Chicago come on this lower basis, as the rates are practically prohibitory locally in the state of Iowa back to the interior packers plus the local rate east to the city of Chicago locally.

The Missouri river packer rarely extends with his purchases east of the western tier of the state of Iowa and sometimes extends up however to Carroll in the second tier of counties, so that I estimate there is in the neighborhood of three quarters of a million of hogs from the western tier of counties in Iowa that seek an outlet on the Missouri river.

There is approximately a million and a half killed by local packers and my estimate is that there is approximately seven million or seven and a half millions coming to Chicago. With four millions of those originating in the territory and taking the rate of not exceeding 20 cents and from that scaling down to 15 cents. I think my estimate of the average very liberal. What may prevail in the southern tier of coun-ies through the territory and the conditions along the lines of the C. B. & Q., I am not familiar with them, and it is only fair I think to assume that the conditions there would not be in contrast to those elsewhere in the State.

822 That is how I have based my calculations and how I have arrived at the conclusion that the rate is somewhere between twenty and twenty one cents out of the state of Iowa on an average to the city of Chicago on the hogs that they actually receive from the state of Iowa. The interior packer is provided largely, I would say to the extent of 80 per cent. of all of his purchases from the territory that pays 23½ cents to Chicago.

Mr. COWAN:

Q. How many hogs in your estimation are there raised within a radius of 75 miles from Cedar Rapids?

A. I have no idea, I cannot confine myself to any prescribed lines. We buy at any point along the line of the Chicago Rock Island & Pacific, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul and the Illinois Central.

Q. You seem to have splendid ideas about the location of the great bulk of the hogs in the state of Iowa?

A. Yes sir.

Q. I want to know what your estimate is in respect to the territory 75 miles out each way from Cedar Rapids?

A. I would not know how to make that estimate on the basis of a circle. I would say that the tiers, you might be able to make

that more clear to your mind yourself than I could, but my
823 estimate is (and I think I am justified in it), that it would run on the average, in the neighborhood of a million of hogs for every tier of counties north and sou-h in the state of Iowa.

The COURT:

Q. Are there ten tiers?

A. I think there is. I have forgotten whether there is nine or ten. If my recollection serves me correctly there are 98 counties in the state.

Mr. COWAN:

Q. How would you average it by counties?

The COURT: He says by tiers.

Mr. COWAN: It would run something like 100,000 head to the county.

The WITNESS: Yes. Well, some of these counties will raise twice the amount that others will.

Q. How is it in the vicinity of Cedar Rapids, are those hog raising counties?

A. Not very extensively. In the immediate vicinity of Cedar Rapids, the territory is largely occupied by small farms or feeders and horse raisers and dairy interests. It is occasionally the case that one county will be entirely wiped out by cholera. I can only speak in a general way, by averages.

Q. Have you any statistics relative to the assessed number for taxation in each county?

A. Not at all, sir.

824 Q. That is published, I presume?

A. No sir, not that I know of. It may be.

Q. How much of the product which you make is that which goes through the Mississippi river gate-ways, the products which you ship?

A. The basis of the Mississippi river rate?

Q. Now how much of it actually moves through the Mississippi river gate-way?

A. I cannot understand that in any other way than that you wish a reply with relation to the percentage that moves on the basis of the Mississippi river rate.

Q. No. That is not what I mean.

The COURT:

Q. How much do you ship south?

Mr. COWAN:

Q. How much of it moves across the Mississippi river?

Mr. SEVERANCE:

Q. How much of it goes east?

A. I am not prepared to give a statement on the proportion of the tonnage that goes across the Ohio river. That varies.

Q. How much do you sell locally west of your place in the state of Iowa and what proportion do you ship out that goes east?

A. Our western shipments are in less than carload lots
825 distributed through the state of Iowa, Occasionally to Denver and some to the Pacific coast points and a small percentage to San Francisco.

Q. You have some idea as to what proportion moves eastward either for sale or export and when I say "eastward," I mean east of the Mississippi river including New Orleans?

A. I would not call New Orleans east of Chicago.

Q. That moves east of the river, that crosses the river?

A. Well, that practically embraces all of our product except the local shipments to the Pacific coast points. We ship in the neighborhood of 100,000,000 a year of finished products. We did last year and the previous year, with a very small percentage of it to the Pacific coast points.

Q. Well, I thought you had an idea of whether it was 1, 2, 3, 4, or 5 per cent.

The COURT: How is that material, anyway?

The WITNESS: Not at all.

Mr. COWAN: I desire to have some idea about whether the great bulk of the traffic in the product came east.

A. Naturally it does, yes sir, the same as the city of Chicago or the Missouri river packers; we occupy the same position relatively that they do.

Q. And the Missouri river packers ship the great bulk of their product east?

A. I think they do. They have the advantage of us on
826 the southeast and southwestern points. They supply all the southwestern points, interior Kansas, Texas and Arkansas. We have no access to that territory.

Q. Previous to the time that you got these rates reduced or they were reduced, as you have mentioned, did you pay the published rate or did you get the same advantage that the Missouri river packers get in shipping at less than the published rates?

A. We have never asked for a rate that would give us the advantage of any shipper.

Q. But that is not my question. Now my question was whether you paid the published rate previous to January, 1902?

A. We have always paid the published rate.

Mr. COWAN: That is all.

827 Mr. SEVERANCE:

Q. From whom do you make your purchases of hogs? You stated the points from which they came, but from whom do you buy them, people who pick them up in the country?

A. From a hog dealer. We usually arrange with one hog dealer at a station. We rarely buy from — to exceed one at one point.

Q. Are you blessed with anything in the nature of a live stock exchange in Cedar Rapids?

A. No sir.

Q. There is no tribute of 50 cents a head or 25 cents a head levied on you then?

A. None whatever. There is no expense attached to the shipment of a carload of hogs to Cedar Rapids.

Mr. LYNDE:

Q. You buy largely in that immediate territory?

A. Yes, when the hogs are desirable. We labor under the disadvantage of being located in the very heart of a heavy corn district which gives us a heavy hog when they are fed out so it necessitates us, in the supplying of the character of meat that our customers demand, it compels us to seek territory where we can find the hog that is desirable for the making of that character of meat.

Q. You buy chiefly in the hog producing localities?

A. Yes sir.

Mr. SEVERANCE:

828 Q. How many people are employed at your plant?

A. The average the year around, I would say is seven hundred. There are times when it is down to five hundred and sometimes there are a thousand. There were a thousand last winter.

Q. What is the population of Cedar Rapids?

A. About thirty thousand people.

Q. This is a very large industry for that town, then?

A. Yes, we are practically responsible for a town of 2500 people. There are a great many of our employés that are heads of families.

Redirect examination by Mr. CLARK:

Q. I omitted to ask you what railways center in Cedar Rapids?

A. The Chicago, Milwaukee & St. Paul, the Chicago, Rock-Island & Pacific, the Chicago & Northwestern and the Illinois Central.

Q. Any others?

A. Not steam railroads, there is an inter-urban railway from Cedar Rapids to Iowa City.

Q. Do you buy and ship over all of those lines?

A. Yes sir. We take into account the rec-ipts of hogs and keep a regular account of every pound that comes in on the various lines and give them credit for that tonnage. Each road then is
829 entitled to a certain percentage of the product out, and we see that they have it. If a road brings in 40 per cent. of the raw material, we think it incumbent upon ourselves to see that they secure 40 per cent. of the output, but not only that, but we use our influence in securing for them 40 per cent. of the incoming miscellaneous tonnage which for the last five years has been about equal to the raw material.

Q. That is about a hundred millions of pounds?

A. Yes sir.

Q. And that don't include the live hogs at all.

A. No sir. The last five years will average a hundred millions pounds of miscellaneous freight into Cedar Rapids, on account of St. Clair & Company.

Q. Do you buy of the producer, the grower of the live hog in any of the purchases that you make, do you make any of your purchases direct from the farmer?

A. In very rare instances. We buy generally from the dealer who accumulates the hogs.

Q. The local dealers that you employ at these stations?

A. Yes sir. Those that care to eliminate the excitement of a speculation however, prefer to come to us for the reason that they are acquainted with the grading of the hogs that come to us and we name the price and they compare that with what they are
830 likely to secure by coming to Chicago and without having the hogs in their possession, they can go out with perfect safety and without taking any chances on the lines and buy a carload of hogs and ship them to Cedar Rapids on a profit.

Q. That is the local dealer?

A. Yes. This price is made up for to-day's delivery or to-morrow's deliver-, or in extreme cases, a week's delivery.

Q. You have spoken in a general way of the inhanced or increased cost of shipping a live animal from Iowa points and points west of Chicago as compared with shipping the finished product. I wish you would detail the items of that enhanced cost as far as you can, in shipping the live animal, what does it consist of?

The COURT: Can he do that? These railroad men are giving, and will give all of the figures that can be given on that subject.

Mr. CLARK: I think your Honor, he has had a great deal of experience in that.

The COURT: I think I understand that pretty well. If you think you can give it, give the figures on the dr-ssed meat product and on the live stock.

A. I have been in quite close touch with the situation and have been in the railroad business for eighteen years myself.

In the movement of live stock the expense is materially
831 greater than that of dead freight, the question of expense. One item alone. My experience in railroad matters leads me to believe that in claims for loss and damages at least, claims of that character they would exceed 75 per cent. of the total expenditures of the Claim Department of any railroad that handles a good liberal percentage of live stock movements. I think any railroad of any magnitude would bear me out in that opinion.

Q. Is there in your judgment any increased cost in putting stock through to Chicago rapidly, the live animal?

A. Very materially. The faster you run a train, the greater amount of money it costs to maintain your track.

Q. Is it not true—take the shipping points in Iowa, that the shipper practically requires that his animals shall be put through on a 22 hour or 24 hour time so as to avoid unloading and feeding?

A. Yes sir, that is true.

Q. Is that the reason for the increased speed?

A. Yes, if he does not arrive in time for the market, he makes a claim. That has been in evidence before here.

Mr. CLARK: Well, that is all.

Mr. SEVERANCE: One question. You say that you buy from the dealers at these country points. It is the dealers, isn't it? At these country points that ship the live animals to Chicago?

832 A. Yes sir.

Q. So you buy from the people that sell in Chicago?

A. Yes sir.

Q. And in making your purchases you eliminate this middleman, the live stock exchange in Chicago?

A. Yes sir. It is rarely the case that we buy from any one in the country that does not divide his other shipments between Chicago market and ourselves. If it is desirable, we get the hog and if it is undesirable, it goes to Chicago.

Q. Another advantage for the Chicago packer is their constant advance, which frequently happens. Then it is almost impossible to buy hogs in the country. When the market in Chicago is steadily advancing, the longer the hog is on the road, the higher the rate will be when he gets here. When the opposite condition prevails, we labor under the disadvantage of the fact that the hog shipper is apt to consign his hogs into the very first place he comes to.

Recross-examination by Mr. COWAN:

Q. Are the prices of hogs which this dealer sells to you, on which the sales are made to you on the basis of the Chicago prices?

833 A. Yes sir. It is a question of the freight rate and the cost of the terminal and the risk that the man runs in losing the hogs en route.

Q. The Chicago market being so much greater than all others in the country, it practically regulates the price?

A. Yes sir.

Q. Now, what is the difference that you make in your purchases between the price you pay and the price at Chicago?

A. The freight rate plus the terminal charges in the City of Chicago. After that is taken into consideration, it is the character of the hog. From some districts we do not purchase any at that price. It varies with the character of the hog that is presented. If we desire it, we pay a price that is satisfactory to the shipper.

Q. You have no basis that you pay so much less or so much more, except the things you have mentioned.

A. Yes, but the first thing to be eliminated is the freight charge and the terminal charge at Chicago. That enters into it, and in making that purchase on the basis of the present rates for Chicago business locally, we are at the disadvantage of over 3½ cents. For all other points, we are on a basis that is practically satisfactory. We do not believe that we are discriminated against, neither do we see that we have the advantage and don't believe that we have. If we have, the railroad companies would put a stop to it very quickly.

Whereupon the further hearing of said cause, was adjourned until the following Monday, September 25, 1905, at 10 o'clock a. m.

834 MONDAY, *September* 25, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon A. B. STICKNEY, was called and sworn as a witness on behalf of the defendant Chicago Great Western Railway Company and testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live, Mr. Stickney?
A. St. Paul, Minnesota.
Q. What is your business?
A. I am president of the Chicago Great Western Railway.
Q. How long have you occupied that position?
A. Well, I have occupied that position for about twenty one years.
Q. You were engaged in railroading before that time, too, were you not?
A. Yes sir.
Q. How many years altogether have you been railroading?
A. Since 1872.
Q. During that period have you had more or less to do with the making of railroad tariffs?
A. Yes sir, more or less.
835 Q. During most of that time?
A. During most of that time I have been familiar with railroad tariffs.
Q. Now, Mr. Stickney, you are familiar with the question that we are discussing here, which is the question of the relative rates on packing house product and dressed meats on the one hand and live stock on the other, between Missouri river points and Chicago and between St. Paul and Chicago. Now, Mr. Stickney, will you state to the court the difference between local and proportional rates on these various commodities and the reasons, if you know of any, why there should be a difference in the charges for the transportation of live stock on the one hand and packing house products and dressed meats on the other. Do it in your own way?
A. I have been examining a great mass of figures and facts for the last week or ten days, and in order to present them intelligently, I have written them down and if I am permitted to read what I have here, why it will consume less time and be more satisfactory.
The COURT: Yes, it would be very satisfactory if it is responsive to the question.
Mr. SEVERANCE: I made the question general in its terms so that it would make the answer responsive.
A. There is a distinct difference both in respect to the principle involved and the cost of the transportation between through
836 shipments of live stock from market to market, and local shipments picked up at local stations and transported to market.
The basic principal of the local live stock rate is the cost of the facilities required and cars used, the terminal work plus the cost of

hauling. The cost of the facilities, cars used and terminal work is nearly the same in both the short and the long haul, hence the approximate cost of facilities, cars and terminal work, should be reflected in the tariff of charges for the shortest haul will always and should always be relative to the distance hauls, much larger than for long hauls. Therefore, long haul tariffs of rates should be the short haul rates plus a practically constant quantity for each unit of additional distance hauled. This is the principle, when undisturbed by competition of the local tariff and when built upon this principle, every station receives the advantage to which it is entitled by reason of its locality, in respect of distance from market and in no other way can such advantage of station location be respected and maintained. For example, from Gretna, a station on the Chicago Great Western road, 26 miles west of Chicago, the nearest station from which any live stock was shipped in the year 1905, the rate on cattle is 6½ cents to Chicago. This rate is gradually built up until it reaches 23½ cents at Council Bluffs on the Missouri river,
837 500 miles west of Chicago. Then from this 20 cent rate—
Then this 23½ cent rate is gradually built up on the Union Pacific Road, to say Elkhorn, Nebraska, 28 miles west of the river, where the rate to Chicago is 27½ cents.

As the Union Pacific has no road east of the river, it presents the problem of how the Union Pacific can ship live stock from Elkhorn to Chicago at the rate of 27½ cents. If the Union Pacific hauls it to the Missouri river and pays the railway east of the river its local, 23½ cent rate, it only leaves 4 cents for the use of the Union Pacific facilities at Elkhorn, the use of its cars, and terminal work, plus the cost of the haul, 28 miles long, which is inadequate.

On the other hand, if the Union Pacific makes a rate between Elkhorn and Chicago, say of 6½ cents above the 23½ cent rate from Council Bluffs to Chicago the tax imposed upon the producer of the cattle at Elkhorn and upon the producers of cattle in all the territory west of the Missouri river, for transporting their products to Chicago is altogether too much compared with the tax imposed upon the producer at Council Bluffs and the territory east of the Missouri and would not give the producers at Elkhorn and the territory west the advantage of location to which they are entitled in respect to
838 the distance to market. The point presents the necessity of making through rates from Missouri river markets to Chicago lower than the local rate, to prevent *between* discrimination between producers and localities. In fact, the through rate from the Missouri river, to Chicago cannot, in a proper sense be regarded as a r . It is simply a division of the actual or local rate as between the railway companies east and west of the river. All companies east of the river admit the principle that the companies west of the river are entitled to a larger rate in proportion to the distance hauled and therefore accept a proportion of the rate which is less than their local rates from the Missouri river to Chicago. The rate on the product of live animals from the packing houses on the Missouri river to Chicago is essentially the same. A division as between the railway companies of the rate in effect allowing to the lines west of the river practically

their local rates for bringing to the packing houses the live animals and accepting the balance of the rate, for hauling the product to Chicago.

From these items it seems evident that if we desire to compare the rates on live stock with the rates on the products of live stock, to determine their relativeness, we should compare the division of the rates which the lines east of the river accept for transporting the live stock with the divisions of the rates which the lines east of the river
839 accept for transporting the products of animals.

Such a comparison will show that the rates as they now exist are in line with the holdings of the Interstate Commerce Commission in this case, namely, that the rate per hundred weight on live stock should probably be less and in no event should they be more than the rates on the products of live stock as the following schedule of rates, which had existed for several years on cattle, hogs, packing house products and fresh meat, from the market towns of Kansas City, St. Joseph, and Omaha, to the market town of Chicago that is from market to market, shows conclusively.

Schedule of Rates.

From Kansas City, St. Joseph and Omaha to Chicago on cattle, ranges from 14 cents to 22 cents. On hogs from 16½ cents to 22 cents.

Packing house products 20 cents, fresh meats 20 cents. The rate on both cattle and hogs is the actual difference between the rates from the point of origin to Chicago and the short rates from points of origin to the Missouri river, which gives varying rates from the Missouri river to the market on live stock. The rates on the products of the animal is a fixed rate and based upon the average of the varying rates, in effect the same principle. If the shipments are des-
840 tined to points east of Chicago, a rate is made on the so-called Mississippi river basis, which reduces the additional rate from the Missouri river points on all commodities the cattle and hogs as well as on the packing house products and fresh meats, about 1½ cents per hundred weight making the following schedule from Missouri river points. Cattle 12½ cents to 20½ cents. Hogs 15 cents to 20½ cents. Packing house products 18½, fresh meats 18½.

It is now proposed to show by analysis that such divisional rates are not equivalent rates based on the most of mileage, but that the live stock rates are too low and that, as a matter of fact, the live stock rates based on the cost of mileage, instead of paying less per hundred weight should be more per hundred weight than the rates on the product of live stock. For convenience I will use the average of the varying rates on live stock disclosed in the first schedule, which would be from Kansas City, and St. Joseph to Chicago, 18 cents per hundred weight on cattle, 19¼ per hundred weight on hogs. As the railway company cannot haul live stock or the product without hauling the car, and as it costs as much to haul a ton of cars as a ton of its load, and as live stock is hauled in cars whose average weight on the Chi-

cago Great Western line is 27,500 pounds and the product is
841 hauled in refrigerator cars having a weight, including ice of 41,000 pounds and as the average load of cattle is 21,513 pounds, of hogs only 16,635 pounds,of packing house product 31,632 pounds, and fresh meats only 22,414 pounds, these varying weights of car and load must be taken into consideration. Then there are certain burdens which pertain to the transportation of live stock which do not pertain in the same degree to the transportation of the product which must also be taken into the account before the true comparison of cost can be made.

I will speak of these unequal burdens first. The packing house products and the fresh meats are not hauled in cars owned by the railroad, but in refrigerator cars owned by the packers and the expense which is most talked about is the mileage paid for the use of the refrigerator cars. In order to understand this mileage arrangement it must be borne in mind that the mileage paid covers the entire cost of the removals, the cost of repairs to such refrigerator cars, necessitated by ordinary wear and tear in fair service.

In addition to the mileage, the railway company pays for damages done to any of the car- by unfair usage, derailment and accident. On the Chicago Great Western line in 1905, an average of one tenth of a cent per mile. The mileage paid was one cent per mile. The total payment for the use of the car, renewals and repairs, one
842 and one tenth cent per mile.

The packers owned these cars, they load them and unload them and, if not required for use between Chicago and Missouri river points, they can use them in distributing their product over other lines, so that they are loaded and unloaded promptly and kept almost constantly in motion which enables them to make a much larger daily mileage than it is possible for the railroad company to make with their own cars.

It is probable that the average mileage of these refrigerator cars is approximately 100 miles per day, while the average mileage of railroad cars of all descriptions is known to be about 22 miles per day and the average miles of stock cars is less than 22 miles per day.

On account of such superior administration the packers make a profit although not as large as is generally supposed, from the ownership of such cars by leasing them on the terms mentioned but as I will show later no railroad could make a profit on such terms.

No railroad could maintain such superior administration because not owning their output or controlling its route, one day it would be called upon to furnish a large number of cars, the next day few or none, with no way to tell in advance on what day the demand would be large and in order to supply the first day's demand a great many cars would stand idle on small or no demand.

843 This proposition seems to be corroborated by the movement of stock cars, the actual loading and unloading of which consumes no more time than the actual loading and unloading of packing house products, and therefore it would appear that stock cars could be kept as constantly in motion between markets in the through stock transportation as the packers refrigerator cars. But

this is not the fact for the reason among other things that the amount of stock to be moved between such points is not like the packing house product, approximately a constant quantity day by day. Some days and some months there is a larger demand for cars. Other days and in other months, practically no demand whatever. Evidently, the railroad must own cars enough to supply the largest demand, and, as railway companies have no control over the routing of such live stock, they cannot tell in advance whether the live stock which is to be moved will be routed over their lines or over the lines of their competitors, so they can never tell in advance what the demand for cars will be from day to day. Therefore, a large number of stock cars are standing empty frequently for days and even weeks in succession waiting for loads.

To illustrate how irregular this movement is, the following data is taken from the records of the Chicago Great Western Rail-
844 way Company showing the actual movement of last year for live stock from South St. Paul stock yards to Chicago stock yards.

July	62 cars.
August	264 cars.
September	240 cars.
October	222 cars.
November	195 cars.
December	45 cars.
January	57 cars.
February	26 cars.
March	17 cars.
April	208 cars.
May	47 cars.
June	17 cars.
Total	1400 cars.

It will be noticed that more than half, 726 cars, moved in the three months of August, September and October, most of which was live stock direct from the ranges. The total amount of such stock which was shipped from St. Paul to Chicago during those three months was 7,374 cars. This stock came into South Omaha from the west, some days 500 cars and some days none and after its arrival, commenced the scramble between the different railway companies for its further shipment to Chicago. In the scramble the Chicago Great
845 Western got about 10 per cent. The shipments were just as irregular in respect to days of shipments as in respect to months. The first day of August the Great Western got 13 cars. In the next six days six cars, or an average of one car per day. The next day it got 17 cars; the next day 23 cars, and the next 13 cars, and in the following three days none, and so on during the month. The numerous disadvantages due to such irregular and uncertain movements may be seen from the following astounding statement of facts. The Chicago Great Western Railway Company moved during

the last fiscal year, an aggregate of 15,134 cars of live stock, an average distance of 197 miles, being an average of less than 42 cars per day. It owns 686 stock cars which would seem to be enough to move 42 cars per day an average distance of 197 miles, but as a matter of fact it had to rent from private car lines cars to move 54 per cent. of said live stock. That is to say 686 cars under existing conditions will move only an average of 19.74 cars of live stock per day, an average distance of only 197 miles, equal to only 5 miles and eight tenths of a mile per day per car.

These stock cars were rented under the same conditions, in respect to repairs, maintenance and mileage, as the refrigerator cars, except that the mileage paid for stock cars was six tenths cents per
846 mile instead of one cent per mile.

The cost of a stock car is about $600.00, while the cost of a refrigerator car is about $1200.00. Knowing that we were able to rent these cars at six tenths of a cent per mile, and supposing that the private car lines found it profitable, in my testimony before the Interstate Commerce Commission based upon this fact, and without much investigation, I estimated that it cost the railway company in interest, depreciation and renewal, about six tenths of a cent per mile for the use of their own cars. But, upon examination of actual accounts, I find that the actual cost is much larger. I am unable to separate the cost of repairs of stock cars from the cost of repairs of other freight cars, but I find that the average cost of labor and material only on repairing the total freight equipment of the Chicago Great Western Railway Company is about four tenths of a cent per freight car mile. I am able to find data in only one report of other railroad companies which I have been able to examine upon which to make the same calculation, but that gives practically the same results. If it costs the private car lines as much to make their repairs, it is evident their profits are not excessive. There are conditions however pertaining to the private stock car mileage which
847 tend to increase their average daily mileage, and therefore reduced the average cost per mile for repairs.

For illustration, stock cars which were rented by the Chicago Great Western Railway were largely the cars which had been sent out loaded at the western ranges, making long hauls, partly over the Great Western Lines and partly over the Pacific Lines, during the season of the range stock movement, and hence their average mileage would be larger than the average daily mileage of the railway stock cars and then between Chicago and the east, they get long runs which make the larger daily average mileage than the railway stock cars and to this extent the cost of their repairs should be less than the cost of repairs of the stock cars owned by the Railway Companies per mile.

In discussing the private car lines and especially in the discussion of the packing house product rates between the Missouri River and Chicago, much has been made of the mileage of one cent per mile paid for the use of refrigerator cars which is regarded as excessive.

While it is apparently assumed that live stock hauled in Railway Company cars bears no such burdens. This is a mistake. When

the Railway Company transports freight in its own cars, instead of paying a fixed amount per mile for the use, renewal and repairs of the cars, it pays the interest on the cost of the cars, and it pays the expenses, whatever they may be, of renewals and repairs.

848 Now, I will state the account of the Chicago Great Western of these burdens in respect to all its freight, it being impossible to distinguish between live stock and other freight, because its stock cars are used to some extent in other than livestock shipments.

The freight car shipment has cost $5,583,425.75 of actual cash. The interest on this amount for one year at 5 per cent. is $279,-161.25.

It is evident that no amount of money spent in repairs will prevent all of this equipment in the course of years, becoming superannuated and sent to the scrap heap, as there are now no cars in use on any of the railways in the United States which were in use 25 years ago, and it is fair to estimate the life time of a car at, say, 25 years, which would make the annual depreciation, 4 per cent. Four per cent. on the cost is equal to $223,327. The amount actually expended for labor and material only in repairs of freight cars during the fiscal year was $307,211.90. In order to make these repairs and the repairs on its locomotives, and so forth, the Railway company must have expensive shops and tools, and some proportion of the interest on the cost and the depreciation and repairs of the shops and tools is a burden properly chargeable to this account. The actual

849 cash cost of the principal shop and tools has been $603,-043.88. Five per cent. interest on this amount, and 5 per cent. for depreciation and repairs upon the shops and tools which is probably less than the actual cost, would be, $60,304.38. Now, say 20 per cent. of this $60,000 is chargeable to freight cars, that would make $12,060.86 chargeable to freight cars. In order to make these repairs and the repairs on the locomotives and so forth, the Railway Company must carry a large stock of material. Some proportion of the interest on the stock thus carried is chargeable to the cost of repairing freight cars. The average stock of material carried for such repairs is $486,386.18, and it is estimated that 60 per cent. of this stock is for freight car repairs, or say, $291,831.60. The interest at 5 per cent is $14,591.44. In order to make repairs to freight cars every company must have side tracks at all of its divisional points and many of its principal stations, especially devoted for standing freight cars, for the purpose of doing the repairs and used for no other purpose.

The entire interest and cost of maintaining all these special side tracks constitutes a burden chargeable to freight cars. Many of these side tracks, and, indeed, most of them, occupy land which has cost at the rate of $5,000 per acre, and some of it as much as $20,000 per acre.

850 In addition to the land occupied by the sidetracks, there must be vacant equally high-priced land, adjacent for piling the repair material and storage houses. The Chicago Great Western Company has plants at ten such stations and minor plants at other stations. I have not had time to get the exact mileage and

quantity of land consumed by these special side-tracks, but I have an estimate of ten miles of tracks and 60 acres of land in the aggregate which I think would not be too high an estimate. Reckoning the cost of the side track at $5,000 a mile, and the land at $5,000 per acre, the actual cost would be $350,000. The interest at 5 per cent., to say nothing of the cost of repairs, amounts to $17,500 per annum.

There are minor items such as lighting and heating of the shops, fire insurance on both shops and cars, which, in the aggregate amounts to large sums, but which are distributed through the accounts in such a way that it is not easy to marshal them and therefore in this calculation, we make no account of them.

The entire annual burden of these major items, amount to $853,-862.56. The Chicago Great Western Company collected from other companies during the year for the use of its freight cars while on their lines, in excess of the amount which it paid to other companies for the use of their freight cars on its lines the sum of $163,-
851 141.14, which being deducted leaves the aggregate burden upon the freight business of the Chicago Great Western, for the use of its own freight cars during the fiscal year ending June, 1905, $690,721.42.

The mileage of loaded and empty freight cars of all classes owned by the company and other railways, after deducting the miles run by private car lines, amounted to 56,705,351 car miles. Dividing this quantity into the total burden, $690,721.42, makes the actual cost per freight car mile one and 23/100 cents for the use, depreciation and repairs of its own cars against the one cent and one and 1/10 cents paid to the packers for the use, depreciation and repairs of refrigerator cars.

This extraordinary result is rendered more extraordinary by the fact that the average cost of a railway car is $563.86. (I am speaking of the Great Western cars, the average cost of our equipment) is $563.86, while the average cost of refrigerator cars is about $1200. The high per mile cost of the use of railway cars is the result of the small mileage which such cars make under existing conditions, averaging about 22 miles per day of 24 hours. There are other burdens upon the transportation of live stock which do not pertain to transportation of packing
852 house products. Live stock is loaded to be delivered at the market before the close of the market hours. If, for any reason which can by any means be construed as the fault of the company, the stock is not delivered before the closing of market hours, and the market declines the next day, a claim for damages is made against the Railway Company. The damages paid on this account during the fiscal year of 1905 by the Chicago Great Western Company amounted to $24,366.45, equal to an average of $1.61 per car. The Railway Company on this through live stock business pays for loading the cars at the stock yards on the Missouri River, which constitutes, a burden on the live stock business of from 50 cents to $1.00 per car without any corresponding burden on the

packing house business as the refrigerator cars are loaded and unloaded without expense to the Railway Company.

The Railway Company is also compelled to clean live stock cars at an expense of from 50 cents to a dollar per car without any corresponding burden upon the packing house product business, as the refrigerator cars are cleaned by their owners.

During the hot weather the product has to be reiced once in transit, but the expense is paid by the shipper. During the hot weather the live stock is sprayed with cold water several times in transit, the whole expense of which is paid by the carrier.

853 It is difficult to state the exact cost, but 25 cents per car is probably a close approximation.

In addition, in the shipment of live stock, the shipper is entitled to free transportation for one passenger for each two car loads shipped, from the point of shipment to Chicago on the train which carries the stock, and free return tickets on first-class passenger trains, and estimating the value at one-half regular rates, it would amount to $6.50 per car.

The principal burdens per car upon the through shipments from market town to market town, which are not alike on live stock and their products, can now be marshalled on the basis of a 500 mile haul from the Missouri River to Chicago, as follows:

Use of car, Cattle $6.15, Hogs $6.15, Packing House products, $5.50, Fresh Meat $5.50. Damage on account of delay, Cattle $1.61, Hogs $1.61. Packing House product nothing, Fresh meats nothing. Loading, average, cattle, 75 cents, hogs 75 cents, packing house product nothing, fresh meat nothing.

Cleaning cars, average; cattle 75 cents, hogs 75 cents. Packing house product nothing, fresh meats nothing.

Icing and spraying: cattle 25 cents, hogs 25 cents. Packing house products nothing, fresh meat nothing.

854

Passenger service: cattle $6.50, hogs, $6.50. Packing House product nothing, fresh meat nothing.

Total, cattle $16.01, hogs $16.01. Packing House products $5.50, fresh meat $5.50.

As most of the above class of cars must be returned empty, it is perhaps fair to add the return use of the car and mileage. Cattle, $6.15, hogs $6.15, packing house products $5.50, fresh meat $5.50, making a grand total of $22.16 for cattle, $22.16 for hogs, $11.00 for packing house products and $11.00 for fresh meats.

It has already been stated that the average rate per hundred weight on cattle is 18 cents, on hogs 19½, and on their product is 20 cents, and the aggregate of the unequal burden is $22.16 per car on live stock and $11.00 per car on their product.

I now testify that the average pay load on the Chicago Great Western Railway, of cattle, is 21,513 pounds, of hogs, 16,636, and the average weight of the Chicago Great Western stock cars is 27,500 pounds. The average pay load of packing house products is 31,632 pounds of fresh meats, 22,414, and the average weight of refrigerator cars in which they are hauled, including non-paying ice,

is 41,000 pounds. Based on these figures, the weight hauled
855 and revenue per car received, the net rate per hundred weight received for hauling the load and the car, is found to be as follows:

Pay load, weight of cattle, 21,513 pounds, revenue $38.72. Hogs, pay load, $16,636 pounds, revenue, $32.02. Packing house product, pay load, 31,632 pounds, revenue $63.26. Fresh meat, pay load, 22,414 pounds, revenue, $44.82.

Weight of car, cattle, 27,500, revenue nothing. Hogs 27,500, revenue nothing. Packing house product, 41,000, revenue nothing. Fresh meat, 41,000 pounds, revenue nothing. Total weight of cattle, 49,013. That is the total weight, the whole thing, including the pay load and the car. Total revenue received is, $38.72. On hogs, the total weight hauled is 44,136 pounds, and the total revenue received $32.02. Packing house product, the total weight hauled is, 72,632 pounds; the revenue is $63.26. Fresh meats, the total weight hauled is 63,414 pounds, and the total revenue is $44.82.

Now, deducting from these various revenues the unequal burdens as above, $22.16 on cattle, $22.16 on hogs, and $11.00 on packing house products, and $11.00 on fresh meat, leaves the total weight hauled and net revenue per car received for the actual haul-
856 ing: Cattle, 49,013, revenue, $16.56; hogs, 44,136 pounds, revenue, $9.86. Packing house products 72,632 pounds, net revenue, $52.26. Fresh meats, 63,414 pounds, net revenue $33.82. Now, then, divide that net revenue by the number of pounds hauled and that will give the net rate per hundred weight received upon the total pounds hauled. Now, the net revenue received per hundred weight on cattle is three and thirty-nine hundredths cents. On hogs it is two and twenty-four hundredths cents. On packing house products seven and 19/100ths cents; on fresh meats five three-tenths cents.

It is admitted that the analysis shows that, based on the cost of mileage, the tariff rate on fresh meat should be higher than the tariff on packing house products to be strictly and mathematically correct, but in making the contract which has controlled the tariff rates on packing house products and fresh meats for some years, and will control them for some years to come (until the contract expires) in the haphazard by-guess way in which rates are usually made, a uniform rate of 20 cents was made on both products. As the tariff rates per hundred weight on the live stock are less than the tariff rates per hundred weight on the product, and as the analysis shows that the rates received for the one service, for the one service which is a line in both, the simple hauling of the live stock from
857 market to market, is materially less than the rates received for hauling the product and as this is the only principle which this action was brought to establish and enforce, these facts should entitle the case to be dismissed.

Up to this point I have considered only the relation which actually exists, based on the cost of the mileage between the division of the rate on live stock and the division of the rate on packing house products which are made between the railways which haul the ani-

mals into the markets on the Missouri River and the railways which transport the live stock and their product from the markets on the Missouri River to Chicago.

As has been pointed out, these are not rates but divisions of rates made by the railways as between themselves. In order to make symmetrical tariff rates possible on commodities transported over two or more lines and in their nature the part of the rate which the railway east of the river accepts, should be less than the full or local rates for the same distance.

858 The local rate, meaning by local rate the rate charged on animals that are picked up at local stations and hauled to Chicago, from the Missouri River to Chicago, 500 miles, is alike on both cattle and hogs, 23½ cents per hundred weight. There are no similar local rates.

The COURT:

Q. What do you say the rate actually used was, 20 cents or less than 20 cents?

A. I did not catch that.

Q. In your figures there, you say the rate had been less than that?

A. The proportional rates.

Q. Then are the proportionate rates actually used?

A. The proportional rates—the proportion of the rate from points west of the river. This is the local rate.

The COURT: I understand.

Mr. SEVERANCE:

Q. That obtains at the Missouri River and for a zone of about 150 miles this side, doesn't it, Mr. Stickney?

A. There are no similar local rates on the products of animals, because products are not picked up from station to station. Hence, it is impossible to compare local rates on animals with local rates on products of animals. For reasons which have been stated the optional rate should be lower than the local rate. Hence, the bare local rate on live stock with a divisional rate on the product,

859 would seem evidently unfair. But in this case it is easy to show that the local rate on live stock, wherever higher per hundred rate than the division of the rate on packing house products, is, as a matter of fact, based on the cost of hauling lower than the packing house rate. And I will state that all of the special burdens which have been enumerated as applying to live stock shipments from market to market apply to local shipments, except to cars at the stock yards at the Missouri River, which was given at 75 cents. Deducting this 75 cents from the total burden, leaves as the burdens which have been accumulated on live stock, $21.41 per car.

In addition the Railway Company is obliged to furnish stock pens at each station where stock is loaded, for no other purpose than the shipment of live stock. These stock pens represent in the aggregate a very large investment, and the interest on their cost, and the cost of repairs is an additional burden peculiar to the local shipment of live stock. It is not easy to fish out from the voluminous

construction accounts the actual cost of these stock pens, but I happen to have data which gives a practical basis for such an estimate.

In 1903 I built a line from Ft. Dodge, Iowa, to Council Bluffs, a distance of 133 miles, on which 22 stock pens were built, and
860 the actual cost was separated in the construction account. The actual cost of these 22 pens was $31,284.88, an average of $1,422.04 each. This does not include the cost of paving the floors, which will have to be done later at an average cost of probably a thousand dollars each, an expenditure which the Company has already made on many of its older pens.

The Chicago Great Western system has 240 stations where there are stock pens. At an average cost of $1422.04 each, without considering the cost of paving such floors as have already been paved, the aggregate investment would be $341,389.60. Five per cent. interest on this amount and 5 per cent. for renewals and repairs would amount to $34,128.96 per annum, or upon shipments during the year 1905 of 15,134 cars, would amount to $2.25 per car. In addition these stock pens have to be periodically cleaned by the Railroad Company, and stock cars have to be set practically one at a time to the pens to be loaded, which delays trains and adds materially to the cost of transportation. It is impossible to state how much, but a low estimate would be 25 cents total special burdens——

Q. Twenty-five cents per car?

A. Per car, total special burdens on live stock shipments—on local shipments of live stock, $23.91 per car.

Now, an analysis of the divisional rate shows that the
861 twenty cent rate on the products of animals after deducting the burdens leaves a rate of 7.19 cents per hundred rate for simply hauling the load, plus the weight of the car. Evidently a rate on cattle which, after deducting the burdens, would give the same rate 7.19 cents per hundred weight for simply hauling the load of cattle plus the car, would be the mathematical equivalent of the 20 cent product rate. The average weight of a car of cattle being 21,513 pounds, the weight of the car being 27,500, the two together would weigh 49,013 pounds, which at 7.19 per hundred weight would amount to $35.24. Add to this the special burdens, $23.19, would make the revenue required per car of $59.15, which must be collected on the 21,513 pounds of cattle constituting the load, equal to 27.5 cents per hundred weight, which is 4 cents more than the local weight on cattle. Applying the same mathematical process to the hog rate, it would be equivalent to the 20 cent product rate, and would be 33.5 per hundred weight, which is 10 cents more than the local rate on hogs.

If the comparison is made with the lower rate of fresh meat, which an analysis shows the 20 cent product rate gives on shipments of fresh beef, 5.3 cents, instead of 7.19, the mathematical equivalent of the lower rate is 23.19 cents on cattle, and 28.43 on hogs.

The Interstate Commerce Commission in the decision of
862 this and other cases seems to think that from supernatural reasons which they are unable to understand or explain in

all cases the manufactured products of all material should bear a higher rate per hundred weight than the raw material from which it is manufactured. As a matter of fact, the manufacturing of many materials produces a product more bulky which makes a car load less in proportion to the weight of the car than a carload of the raw material. When such is the result based on the cost of acreage, the manufactured article should bear a higher rate per hundred weight than the raw material. Such is usually the case when say iron is manufactured into machinery. But when pig iron is manufactured into bar iron or rails, the bulk is not increased, and such a supposed rule should not obtain. So, when live stock is changed into its products, the bulk is not increased, but, in fact, is decreased, and consequently the product should bear a lower rate per hundred weight based on the cost of carriage, than the live stock.

The relative rates between the raw material and the manufactured product, based on the cost of carriage, is a problem of facts and pure mathematics, and there is nothing occult or supernatural pertaining to the problem.

I have written in here a little something which is not exactly pertinent——

Mr. SEVERANCE: I guess the Court won't mind if you read it.

The COURT: Go ahead.

863 The WITNESS: It is unfortunate that the men who make a tariff of rates are not mathematicians instead of fairly good guessers. They guess that if one rate is so much, another rate, in order to be relative, should be about so much. If the engineers who build railways should guess at the elevations of the grades at different stations the same as freight agents guess at the elevation of rates of such stations, it would be as impossible to run trains over the road as it is now to run a freight business on tariff rates.

I desire to go on record as saying that in my opinion it is entirely possible to construct a tariff mathematically on the basis of adding to terminal expenses, the special burden to the class of shipments, practically constant quantities for the cost of hauling, which would be symmetrical and equitable and satisfactory, both to the railways and to the people; and that such schedules of rates could be printed in a form which would be so easily understood that any man of ordinary ability by an inspection of the schedules could tell for himself the local rate upon any shipment which he might desire to make.

The present Interstate law requires such schedules to be made by the railways, and if the railways fail to make such schedules the law requires the Interstate Commerce Commission to pre-
864 scribe the form and compels the railways to adopt the form thus prescribed. But in this respect both the railways and the commission have failed to comply with the law.

The rate of speed at which freight must be moved is an important element affecting the cost of transportation. But as the Chicago Great Western road's live stock and products are generally carried in the same train, generally speaking, practically the same rate of

speed is required in the transportation of live stock and its products, and it is not a factor in this analysis.

The next question is, do the rates on live stock and its products, as now adjusted, discriminate in favor of the Western markets as against the Chicago markets? The following facts in respect to the movement of live stock on the Chicago Great Western Railway constitute evidence that they do not discriminate against Chicago.

The movement of local and through live stock during the fiscal year ending June, 1905, was 15,134 cars. From stations within 150 miles of St. Paul and more than 300 miles from Chicago, 1023 cars were hauled to St. Paul, and 1425 to Chicago.

Mr. DAWES: Not 1400 but 14,000.

The WITNESS: 1400.

The COURT: Read that over again.

Mr. SEVERANCE: The whole business is 15,000.

865 The WITNESS: The total live stock amounted to 15,000. Now, then, the amount that originated at stations within 150 miles of St. Paul, and more than 300 miles from Chicago, 1023 cars went to St. Paul and 1425 went to Chicago, from that territory, making a total of 2448 cars that originated in that territory.

From stations within 150 miles of Omaha, and more than 350 miles of Chicago, 1035 went to Omaha, and 768 went to Chicago, making a total of 1803 that originated within that territory.

From stations within 150 miles of St. Joseph and more than 372 miles from Chicago, 2735 cars went to St. Joseph, and 415 cars went to Chicago, making a total of 3150 cars originating in that territory.

From stations within 150 miles of Kansas City and more than 440 miles from Chicago, 105 cars went to Kansas City, and 164 went to Chicago, making 269 cars originating there.

From all other stations, 25 cars went to St. Paul, 3 went to Omaha, 149 went to St. Joseph, 217 to Kansas City, and 7,070 to Chicago, making total shipments to St. Paul 1048 cars; to Omaha, 1038 cars; to St. Joseph 1084 cars; to Kansas City, 322 cars; to Chicago, 9,842 cars, making a grand total of 15,134 cars.

866 Of the percentage of the whole, 69 per cent. went to St. Paul, 6.9 went to Omaha, 19 per cent. went to St. Joseph, 2.1 went to Kansas City and 65.1 went to Chicago.

The COURT:

Q. That is, of those within 150 miles of the Missouri River?

Mr. SEVERANCE: That is the whole system.

The WITNESS: We have one branch goes up to St. Paul, another goes out to Omaha, and another goes down to Kansas City and St. Joe, and the total shipments on the whole road were 15,000 cars, of which 6.9 per cent. originating within 150 miles of St. Paul went to St. Paul, and 6.9 per cent. originating within 150 miles of Omaha, went to Omaha.

The COURT: That also includes 65 per cent. that came to Chicago. Is that within the area of 150 miles from those other points?

The WITNESS: 1425 cars originated within 150 miles of St. Paul, and 798 cars originated within 150 miles of Omaha.

Mr. SEVERANCE: 768.

The WITNESS: 415 cars originated within 150 miles of St. Joe, and 164 cars within 150 miles of Kansas City, and the balance, 7,070 cars, came from the rest of the road.

Mr. SEVERANCE: You did not read that table of mileage for loaded cars, Mr. Stickney.

The WITNESS: The mileage of loaded cars to St. Paul was 68163; to Omaha, 43,400; to St. Joe, 178,464, to Kansas City,
867 80,953; to Chicago, 2,597,216. The average distance the stuff was hauled to St. Paul was 66 miles; to Omaha, 43 miles; to St. Joe, 62 miles; to Kansas City, 250 miles; to Chicago, 263 miles.

Q. There were only 105 cars left at Kansas City?

A. That is all. The following table shows the actual through shipments from market to market: From South St. Paul we shipped three cars to Omaha—that is, from stock yards to stock yards—33 cars to St. Joseph, 15 to Kansas City, 1400 to Chicago. From Kansas City, 1 car went to St. Paul, 20 cars to St. Joseph and 14 to Chicago. Thirty-five cars was all we handled in the year of those through shipments from Kansas City in any way. From St. Joseph, 2 cars went to Kansas City, and 8 to Chicago, making a total of 10. From Omaha, 14 went to St. Paul, 3 to Kansas City and 24 to Chicago, making 41.

The total of these through shipments to St. Paul was, 15 cars; to Omaha, 3 cars; to St. Joe, 53 cars; to Kansas City, 20 cars; to Chicago, 1446 cars; total 1537 cars.

The mileage of loaded cars, was, 3409 to St. Paul; 1044 to Omaha; 16,837 to St. Paul; 10,054 to Kansas City; 612,686 to Chicago. Average distance each load was hauled, to St. Paul, 227 miles; to Omaha, 348 miles; to St. Joseph, 318 miles; to Kansas City, 503 miles; to Chicago, 424 miles. That is all.

868 Mr. SEVERANCE: You may examine, Mr. Cowan.

Mr. COWAN: Mr. Stickney, are you going to be here during the day?

The WITNESS: Yes, sir, I expect to be here today and tomorrow.

Mr. COWAN: If I could have the opportunity of looking this over and preparing a few questions, it would save a good deal of time.

The COURT: That will be all right.

Mr. COWAN: There are some explanations, and a few questions only, and if Mr. Stickney will name an hour that is convenient for him to appear in court again——

The WITNESS: I will suit your convenience.

Mr. SEVERANCE: He can just as well be back here at 2 o'clock.

The WITNESS: That won't give him time enough.

The COURT: Come back here tomorrow morning.

Mr. COWAN: That will suit me a great deal better.

Mr. SEVERANCE: Would any of the other counsel like to ask Mr. Stickney any questions on that?

Mr. COWAN: Mr. Stickney, could you furnish me a copy of your

statement before the Commission? Do you happen to have any copies of it?

Mr. SEVERANCE: I have a copy. I will let you have it.

The COURT: Was Mr. Stickney before the Commission in this same case?

869 Mr. SEVERANCE: Yes, sir.

Cross-examination by Mr. BAXTER:

Q. Mr. Stickney, I note that you say: "I desire to go on record as saying that in my opinion it is entirely possible to construct a tariff mathematically on the basis of adding to the terminal expenses the special burdens of each class of shipment, practically constant quantities for the cost of hauling, which would be symmetrical and equitable and satisfactory both to the railways and to the people." Now, suppose that the calculation which you have suggested should show that the rate on any commodity, I do not care what it is, to Kansas City, or to Chicago, ought to be 20 cents per hundred pounds, and suppose the man who produces that product, whatever it may be, or manufactures it, says to you: "I have no doubt Mr. Stickney, but what your rate is fairly based upon your cost of service, but my profit in the manufacture of this product will not allow me and will not justify me in paying your rate of 20 cents per hundred pounds, and you must either accept a less rate than 20 cents per hundred pounds, or I cannot ship my product over your road." What adjustment would you make there?

A. Well, you would have to—he could not ship.

Q. Now, then, suppose after making your calculation and

870 finding that the rate——

A. That is, if he told the truth he could not ship.

Q. Of course I am assuming that he did tell the truth.

A. That is always important in these matters.

Q. I am assuming, in the first place, that you told the truth that the rate ought to be 20 cents based on the cost to you, and then I am assuming that he told the truth when he said that at that rate he could not afford to ship his product. That product would be excluded from transportation would it, Mr. Stickney?

A. Would be excluded from transportation for that particular point where there was a 20 cent rate.

Q. Now, then, suppose a competing carrier running from Kansas City to Chicago says to that producer: "Mr. Stickney's mathematical rate is 20 cents per hundred pounds, and I have no doubt but that has been correctly arrived at, but I will carry that product for you at 15 cents per hundred pounds," which one of the roads would get the transportation, you or your rival?

A. My rival would not get it if I knew he made that proposition, because I would do the same thing.

Q. Whether you did it or whether he did it, the theoretical mathematical rate would give way to the commercial necessities of the problem, wouldn't it?

A. Well, if you call cutting rates a commercial necessity,
871 why it would. I do not know whether it is or not. That rather involves the whole question.

Mr. COWAN: At that point I will ask you one question, Mr. Stickney, in view of Judge Baxter's question.

Q. Suppose, in his supposed case, that also this was a new concern starting in or about to start in the manufacture, that there was no published rate, and that in neither case was there a proposition to cut the rate, then do you think it would be reasonable to fix the rate on your mathematical estimate based on a cost of service, when to do so would prevent the establishment and carrying on of the business at that particular point?

A. Well, when I was a boy I used to read the New York Tribune. It was a sort of a bible in the family where I was brought up and it had propositions of that kind about establishing infant industries in the United States by the use of a tariff which would only last as long as those industries needed it, and I was a rather enthusiastic supporter of that doctrine; but with more mature years I have learned to doubt it somewhat. It is a question of policy, of course.

The COURT:

Q. Wouldn't you be interested in trying to build up trade on your line so that in the future you could get business?

A. I am not at all certain that the rates that are made
872 ostensibly for that purpose have resulted in building up industries. I am not at all certain of that. The most common illustration is some cheap article like stone. Now, a man has a stone quarry out 100 miles on my road, and a stone quarry out 100 miles on some other road, say, St. Paul, for illustration. The price of stone in St. Paul is largely made up of the bare cost of getting it out plus the freight. Well, when that is the case, why, if you want to establish another stone quarry 200 miles away to knock down and compete with this other one 100 miles away, you have got to make the rate for 200 miles the same as that 100 mile rate. The only question is whether that is sound policy, and whether it results in building up—it might open that quarry there at 200 miles, but whatever he sold here at the same rate that the other two fellows would sell, it is selling stuff that has cost more days work, if you measure your price by days work, than the other fellow's has cost.

Q. Do you think the proper way to fix a rate is to determine what it costs you and put a fair profit on it?

A. All these statements here I have qualified by saying, based on the cost of carriage. If you are going to base everything—my own opinion is all kinds of things may enter into the question of making
873 rates. The Interstate Commerce Commission in this case and in a great many other cases that they have decided, have based everything on the cost of carriage. Well, when you do that, you are confined to that way of making rates.

Q. Do you think that is the best way to do it? I understood you so from your statement?

A. I think, generally speaking, that is so, but now I do not mean

that every commodity should bear the same rate per hundred weight. Take coal: coal is a prime necessity and it moves cheaply. You must establish on that a rate that it will move at, but as between the—you should build up your tariff in such a way that one place don't get a material advantage over another—you understand what I mean—but when you come to take products that would move at a much higher rate, my own idea is that the proper rate to be made is a rate which will allow the stuff to move?

Q. Providing that gives you a profit?

A. You know there are a good many different costs. After we have got a volume of business—say, take the Great Western Road, we have got a volume of business now. Add a few hundred tons to that, or a few thousand tons to that, and it would not increase our interest acount at all, it would not increase our general office force at all, it would not increase—there are a great many items of expense——

Q. It would not increase your profit?

874 A. —that would not increase. We could haul them at the average price and still be better off for hauling it than we would not to haul it.

Q. How do you arrive at this rate on dressed beef? Didn't you give that as what it cost you, adding the profit?

A. No, the rates were not made that way, the dressed meats were not. We had been in business for eight or ten years, I guess,—longer than that,—hauling dressed meats, and the way the rates were made a packer would come around and say: "Well, now, Mr. Great Western Road, if you want to haul any of that dressed meat, you have got to"—they say they are very fond of you and they will give it to you in preference to anybody else at the same price, but you have got to make the same price. "Well, what is the price? The tariff rate is 23 cents, isn't it? What price have we got to make to haul it?" "Well, we do not want to make a price on your stuff. What price will you haul it for?" "Well, the tariff rate is 23 cents. Would 20 cents do?" "No, no; oh, no, not 20 cents." "Well, will 18 cents do?" "Oh, no, no." "Well, what rate will do?" "Well, we can get it hauled for 16 cents. If you want any of it at that price you can have it." Well, we generally take it. That is the way the rates were made, by bargaining. It was all billed at 23 cents, and then if the rate agreed upon was 16 cents, why, it was re-

875 bated.

It went along that way for a great many years, and finally after one of these—I have forgotten whether it was the Elkins' law or what law it was passed, the railroads had sort of a spasm, and they wanted to put up the rate. I think it was one of the decisions of the Interstate Commerce Commission in the Alton case that the rate on packing house products per hundred pounds must be higher than the live stock rate, so they wanted to put up the rate and they were afraid to make rebates, and so forth, and the packers came around and made the proposition that they would give us 20 cents per hundred to Chicago, and 18½ cents per hundred for through business, and give us a certain percentage of their output every

month—not every year but every month—so that we had a steady quantity all the time, provided we would put in a tariff of that kind and keep it in force for seven years, and that is the way the tariff was made. We knew the rates were more than we ever got before.

Q. Is it true that they pay no damage at all on dressed meats, meat products?

A. No, it would average about a mill a ton.

Q. I notice some of your figures there you put amount of damage to live stock a certain amount of damages and nothing on dressed meats?

876 Mr. DAWES: That was for delay missing the market.

The WITNESS: That was for delay, missing the market.

The COURT:

Q. Isn't it true that the Railroad Companies have in the past paid quite a large amount of damages on dressed meats, packing house products?

A. Paid no damages.

The COURT: You may not know, Mr. Dawes, but maybe this man does know.

A. I am speaking now for the Great Western to what I know. We pay nothing for delays. We have never paid anything for delays. If we wreck a train and the stuff is spilled outside, we pay for the damage the same as if we wrecked a live stock train we pay the damage to the live stock.

Q. Haven't these men, these packers, been bringing claims to you for damages of any kind or character?

A. For delays?

Q. Yes, or anything?

A. Nothing except wrecks.

Q. Did you ever hear of them bringing them to any other Railroad Company?

A. No, I don't remember of it.

Q. Isn't that the way the Railroad Companies pay a great many rebates and have been doing it since that injunction?

A. I do not know what they have been doing since then, but in the old times when we were paying rebates on packing house products, we did not hunt around for any excuse. We just paid them, no pretense.

877 Q. Are you sure about the details that it was not done that way on your road?

A. Yes, sir.

Q. You don't want to speak for anybody else?

A. No, sir.

The COURT: He is wrong, in my judgment, as to the eastern roads, I don't know about the western.

Mr. SEVERANCE: He does not pretend to speak for any road but his own.

Mr. DAWES: If your Honor please, I understood the witnesses in this case to testify that there had been no claim made by the packers for years on account of delay in the product. I so understood Mr.

Crosby to testify in behalf of our road. If your Honor has any doubt about that particular question with reference to the roads here——

The COURT: No, I have no doubt they testified that way, but I want them to be sure that they know.

Mr. DAWES: I understood they testified with due solemnity. I should like to have the privilege of recalling Mr. Crosby, if——

The COURT: No, I know what they have all testified to.

Mr. DAWES: I thought possible your Honor thinks they might have been under a misapprehension.

The COURT: Yes.

Mr. SEVERANCE: Your Honor will remember that they testified that there have been no claims presented for delays such as
878 are presented in the case of live stock. They said there were cases where they paid claims arising from lack of refrigeration. For instance, if a car was laid out somewhere by a wreck, or delayed in some way and could not be supplied with ice at a station, then by reason of lack of refrigeration it was the fault of the railroad company and claims were presented, but not for delays.

The COURT: It would not cut much figure here unless they were actual damages. If they paid out rebates, I do not think that would cut any figure.

The WITNESS: The Great Western Road does not give any rebates from these tariffs, they are not asked.

The COURT: I should think not on this contract.

Mr. SEVERANCE: Not since that injunction, they have not paid a rebate.

Mr. JEFFRIES:

Q. In a case a car of live stock was tipped over and a car of dressed meat was tipped over, which do you think would involve the largest money damage to the railroad?

A. You cannot speak of individual cases. Sometimes a wreck of a car of packing house product will take place and there will be very little damage. Other times, it is practically pretty near the whole of it, and it is just so with all wrecks. A wreck sometimes of live stock will occur and you will be surprised how little damage
879 there is. Other times there is tremendous damage. Just so with individuals on a passenger train, you know. Sometimes you will have a wreck and you would think that every passenger in it ought to be killed, and for some reason or other there is very little damage done.

Q. Taking the average of live stock in wrecks, and dressed meat, would you say there was more damage done in the live stock, or in the case of dressed meats?

A. I should hate to—that is a matter that I intended to look through our accounts and get the actual facts on but I did not have time. Our accounts are not kept in a way that is easy to find it out and get the details of such damage. Live stock is liable to be damaged without a wreck. The mere bumping of a train is liable to throw down some of the animals and do damage, and I should think

the number of claims for damage to live stock would be much larger than the number of claims for the product. But I am unable to—I have no data to express an opinion as to the gross amount of those things.

Recess until 2 o'clock p. m. of the same day, Monday, September 25, 1905.

880 SEPTEMBER 25, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon THOMAS D. FOSTER, was called and sworn as a witness on behalf of the defendants and testified as follows:

Direct examination by Mr. SEVERANCE:

The COURT: Where is Mr. Stickney?
Mr. SEVERANCE: He was excused until to-morrow morning, your Honor.
The COURT: Well, I mean to call another witness.

Mr. SEVERANCE:

Q. What is your full name?
A. Thomas D. Foster.
Q. Where do you live?
A. Ottumwa, Iowa.
Q. What is your business?
A. Pork-packer.
Q. What is the name of your firm?
A. John Morrell & Company Limited.
Q. What did you state was the name of your firm?
A. John Morrell & Company, Limited.
Q. How long have you been in business w-th that company?
A. Forty years.
881 Q. What is the rate on packing house products and dressed beef from Ottumwa to Chicago?
A. We are not shippers of dressed beef.
Q. Only pork?
A. Only pork products.
Q. What is your rate on that?
A. At this time, 16 cents.
Q. How long has it been 16 cents?
A. I think since last March or April.
Q. Was that reduced at the same time that the rate was reduced to Cedar Rapids or from Cedar Rapids?
Q. Yes sir.
Q. Are you familiar with the rates into Ottumwa from the surrounding country from which you draw your supplies?
A. Yes sir.
Q. From what region do you draw your supplies of hogs?

A. Largely from 175 miles west, 60 or 80 miles north and 120 miles south and 50 miles east.

Q. What are the rates on packing house products from Ottumwa to Chicago?

A. At this time, 16 cents.

Q. When you say you are familiar with the rates from the surrounding countries into Ottumwa—you say you are, don't you?

A. Yes sir.

Q. And it is the sum of the rates on hogs into Ottumwa added to the rate on the product to Chicago from Ottumwa, compared with the rate on the live stock from the point of origin direct through to Chicago?

882 A. In either case it is a little more, and in some cases as much as ten cents more.

Q. As much as ten cents more?

A. Yes sir.

Q. From what place? That is you say that the sum of the rates on the hogs into Ottumwa and the product from there to Chicago is in all cases higher than the through rate on the hogs from the point of origin to Chicago and in some cases as much as ten cents more?

A. Yes sir.

Q. From what place is it as much as ten cents more, do you remember?

A. Well, down on the Milwaukee road near Kansas City and the Rock Island Road near Kansas City.

Q. What is the annual output of your company?

A. Last year about 125,000,000 pounds of packing house products.

Q. How many people do you employ?

A. It varies from 900 to 1300 according to the season of the year.

Q. From what points do you ship in the casings or barrels or boxes in which your product is shipped out?

A. The barrels come very largely through the Peoria gate-way. The boxes, the lumber comes very largely from Northwestern Wisconsin.

Q. How does the weight of the product that you ship out when added to the casings, barrels or boxes, in which it is placed for shipment, compare with the weight of the hogs coming into your

883 plant?

A. The weight of the product shipped out including the packages amounts to 115 to 120 per cent. of the weight of the hogs shipped in.

Q. If you add to this sum the product, and the packages, the weight of the materials and packages shipped in, that are again shipped out, how does it compare with the weight on the hogs shipped in?

A. I think I scarcely understand that.

Q. You say you ship in your barrels through the Peoria gate-way?

A. Yes sir.

Q. And the lumber for your boxes came from Wisconsin?

A. Yes sir.

Q. If you add the weight of those packages and that lumber to the

outweight of your factory, how does that result compare with the weight of the hogs shipped into your factory?

A. The output of 125,000,000, of 125,000,000 pounds, including the packages, Mr. Severance, and the supplies that go to cover the meat and cure the meat and take care of the meat.

Q. So when you spoke of 125 per cent.——

A. 125,000,000.

Q. You spoke of a per cent. a moment ago.

A. I beg pardon?

Q. You spoke of a percentage a moment ago.

884 A. Yes sir, the percentage includes the rate of the product shipped out and the supplies shipped in, together makes 115 to 120 per cent. of the gross weight of the hogs received but that does not include coal?

Q. That does not include coal?

A. No sir.

Q. Where do you get the coal?

A. We get coal from the surrounding counties.

Q. That does not come from Illinois?

A. No sir.

Q. You have to ship in a good deal of salt, don't you?

A. Yes sir.

Q. Where does that come from?

A. That comes very largely from Michigan, New York State and Liverpool and a portion of which comes through Chicago and a portion through New Orleans and St. Louis.

Q. In what markets do you sell your product?

A. Well, we pretty thoroughly cover the United States and perhaps 5 per cent. of our production is marketed in Europe.

Q. Now where do you sell your products other than meat, such as fresh trimmings, fertilizer, casings, hair and so forth.

A. The fresh trimmings is marketed in Chicago and to a certain extent in the country around Ottumwa. Some of it in Boston and some in New York.

885 Q. Where is the other stuff marketed outside of the fresh trimmings?

A. Oh, the hair goes to Philadelphia. The fertilizer goes to various points in the south, and some of it goes to Norfolk, and some times to Columbia, North Carolina, and some times into Georgia.

Q. As to those products, these by products, so to speak, how are you placed as to being on an equality with Chicago?

A. Chicago has the advantage over us in that it is a market for those products, whereas Ottumwa is not a market. We are not in the same position to get the best out of the by products that the Chicago packer is.

Q. Are there any stock yards maintained at your plant?

A. Only our own private yards for receiving the stock.

Q. Is there a live stock exchange or band of commission men there that receive a commission upon the product sold to you- company?

A. No sir.

Q. From whom do you buy your stock, that is your live animals?

A. From shippers who gather up the hogs at the different stations and ship them into Ottumwa.

Q. Are the hogs shipped to Chicago from all of these stations from which you derive your supplies?

Q. Very largely. Some points that are down near the St. Louis sphere and the Kansas City sphere go to St. Louis and the Missouri river. In a very large degree the hogs are shipped to Chicago from the territory that we draw from.

886 Q. Now, Mr. Foster, what would be the effect upon your business if the rates upon live stock and upon packing house products were equalized as asked by the complainant in this case?

A. It would be very detrimental to our interests.

Q. Explain why?

A. I beg pardon?

Q. Explain to the court why?

A. Because it would give the Chicago packer and the packers in Central Illinois that much advantage over what we would enjoy if the stock, live stock was higher than provisions.

Q. You say you are already at a disadvantage in competition with Chicago?

A. Yes sir.

Q. And you compete with Chicago, do you, in the market?

A. Yes sir.

Q. And also with these points along the Missouri river?

A. Yes sir.

Q. What roads are into Ottumwa?

A. The Chicago Burlington & Quincy, The Chicago, Milwaukee & St. Paul, The Chicago Rock Island & Pacific and the Wabash.

Mr. SEVERANCE: You may cross-examine.

Cross-examination by Mr. COWAN:

Q. The Chicago & Great Western also?

A. No sir, that does not touch Ottumwa.

887 Q. Previous to the putting in of the 16 cent rate to Chicago, what rate did you pay?

A. 21 cents.

Q. Are hogs shipped in to you and offered for sale, or do you buy them at the station and contract for them before they are shipped in?

A. We buy them at our yards.

Q. Are they shipped in without any previous contracts and do you then take the chances of sale?

A. Well, not, altogether. Quite a few are shipped in without any previous contract but I should say a large proportion of them are already sold before they come in.

We issue a circular every time we make a change in the price of hogs at our yards, an- the shippers have a right and do accept prices on those circulars until another one is issued. So that, quite a number of our hogs are sold before they come in.

Q. Have you got a copy of the circular with you?

A. No sir, I have not.

Q. In what form is that issued, a postal card?

A. It is a mimeograph circular issued as we make the changes.

Q. About what are the contents of that circular?

A. We number the circular and date it and say that these prices are good until changed and then we give the different grades, pigs, hogs, weighing from 150 to 200 pounds, 230 to 260 pounds,
888 and from 260 to over that, good packers and rough packers. Each one has its own price and grade.

Q. The circular states the grade and the price?

A. Yes sir.

Q. The grade and price where?

A. At Ottumwa.

Q. If a man ships his hogs in and they fall within the grade of weight named in your circular, you pay him the price named in the circular?

A. Yes sir.

Q. Do you pay the freight?

A. We pay the freight but deduct it from his bill.

Q. It comes out of his pocket?

A. It comes out of his pocket, yes sir.

Q. How do you come to change the price? You spoke of changing the price?

A. We change the price by the changes in Chicago. The Chicago market governs our prices.

Q. How do you get that information?

A. By wire every morning.

Q. And by wire every night?

A. Well, the hog market is practically over by 10 or 11 o'clock in the forenoon.

Q. You get your wire that day and send out your circulars if you make a change?

A. Yes sir.

Q. From whom do you get your information in Chicago?

A. Well, the telegraph companies, the Western Union has
889 a live stock reporting bureau and so has the Postal Telegraph Company and we get both markets.

Q. So it comes from the reporting bureau of the telegraph companies?

A. Yes sir.

Q. Do you offer to pay the same price? For example, to-day you send out a circular after you have received your telegram. Do you offer to pay the same price that is paid in Chicago?

A. No sir.

Q. What is the difference?

A. Well, that differs very largely. Sometimes we pay the Chicago price on a certain grade of hogs that we may require. Sometimes we even pay more than the Chicago price. Then again, there will be a wider margin on the class of hogs that we are not requiring at that particular time.

Q. How is it based on the Chicago price then, if you don't send

your circular stating that you will pay so much based on the Chicago price?

A. Well, in this way. Suppose we are particularly wanting the class of hogs suitable for English meat. Chicago quotations for that class of hogs is a certain price. Now, we fix our price so as to influence a larger proportion of that class of hogs to come to our place. Now, then, suppose Chicago has its price for heavy hogs and we are not particularly seeking that kind of hogs. We make a price on that kind that has a wider margin below the Chicago price than the light hog that we require for the English trade.

890 Q. You say you sometimes pay more than the Chicago market?

A. Yes sir, we do.

Q. Why do you do that?

A. Well, so as to turn our way as many of that particular kind of hogs as we can get.

Q. So your basis is the Chicago market plus your desire for hog?

A. Very largely.

Q. How would it make any difference with you then if the freight rate on hogs were reduced 3 cents a hundred pounds?

A. Why, it would make that same difference, we would have that much more to pay for the hogs, we would have three cents more to pay for the hogs.

Q. If you don't base your prices on the Chicago prices, I don't see how that would be so.

A. Well, it is based on the Chicago prices.

Q. You pay, you pay more than the Chicago prices in some instances?

A. Sometimes, yes sir.

Q. What difference in such case—the difference in such a case would be that the rate on hogs was still 3 cents less than Chicago? That is all the difference there would be?

A. Well, we will take for argument sake that a certain grade of hog in Chicago is five cents. Now, we are wanting this class very badly and we bid 5.5. Now that will bring us so many more hogs. Now, if the shipper could ship to Chicago at 3 cents less, we would have to pay 5.8 to get the same number of hogs at the same time.

891 Q. Your idea is then that in the price you pay for hogs you get the advantage of the difference between the rate of freight to Ottumwa and the rate of freight to Chicago?

A. Yes sir. The lower the freight on live hogs, the better, of course, for the interior packer.

Mr. SEVERANCE: You mean the lower the rate into his packing house, into his town?

A. I did not catch the exact situation there.

Mr. COWAN: You were doing the talking, not I.

Mr. SEVERANCE: I don't think you understood the question. At least your answer is inconsistent with your other testimony.

(The pending question and answer were then read.)

A. I wish to correct that answer and say, the higher the rate on live hogs to Chicago the better for the packing house.

Mr. COWAN:

Q. Is your interest and the shipper's interest identical or opposite?
A. Well, I think they are identical.
Q. How could that be? If he had a lower rate on his hogs, you would have to pay him more for them, wouldn't you? That is the result of your statement?
A. Yes sir.
Q. If you had to pay him more for it he would get more money?

892 A. Yes, but we can save the shipper more money being a nearby market as compared with shipping the longer distance and taking the risk of the market.

Q. How is that, so that you make the difference in the freight rate the difference in your price?
A. Because the advantage is that we are there and make a market every day on which he can sell and know what he is doing.
Q. Well, he can do the same thing by shipping to Chicago, can't he?
A. No sir, he has to take the risk of the market in shipping to Chicago, for instance the shipper——
Q. Won't it average up——

Mr. SEVERANCE: Let him finish his answer.

A. For instance a shipper receives our circular in the morning. He knows of a certain lot of hogs and he can go out and buy those hogs and wire into Ottumwa that he sells so many hogs on such a number circular.

He knows before he ships his hogs practically what he has made on those hogs. If he ships to Chicago he has to run the risk of the market and the risk of loss in transit and the various matters that enter into the shipping of live stock.

Mr. COWAN:

Q. If the shipper thought he had the advantage of your market, why did you have to pay more than the Chicago market to get the hogs?

893 A. Because we have to cover a larger territory in order to get the hogs. The further we go away from Ottumwa the higher the price we have to pay.

Q. To what extent and how often do you pay a higher price for hogs than is paid in Chicago?
A. Not very often.
Q. As a general rule do you pay an amount less than would equal the difference in freight to your place and to Chicago?
A. I should say the average would be about that.
Q. You think that naturally, being located in a hog country you have the advantage of being able to take advantage of the difference in the freight rate, don't you?

A. No, I don't know that we have a particular advantage on the difference in freight.

Q. Well, you do if the shipper knew exactly what he was going to get at Chicago?

A. Yes, but he does not know that.

Q. Are hogs shipped from Ottumwa to Chicago?

A. How is that, sir?

Q. Are hogs shipped from Ottumwa to Chicago?

A. No.

Q. Are they shipped from stations nearby to Chicago?

A. Yes. That is within ten or twelve miles at times.

Q. Why is that?

A. They may have a different class of hogs to what we are requiring.

Q. How many hogs did you consume during the last year?

894 A. About 600,000.

Q. And the year before?

A. About the same.

Q. And the year before that?

A. There were two years there, I think probably 1901 and 1902 or 1902 and 1903 wher- the supply of hogs was very small growing out of the failure of the corn crop in 1901, during that hot year. We were not able to get as many hogs that year, neither were the packers generally.

Q. Well, your proportion of decrease was about the same as it was with other packers was it, or different?

A. Yes sir, about that time.

Q. Well, now, going back say to 1900, before that drouth, how many did you put up then?

A. Oh, we have run up as high as 700,000 or 650,000.

Q. Is it not a fact that the Cincinnati Price Current contains a statement of the number of hogs packed at your place and other packing houses in the country that is considered reliable?

A. Yes sir.

Q. How long had you been paying that 21 cent rate?

A. Well, I could not say exactly, perhaps 10 or 12 years, something like that.

Q. Were you getting any rebates out of it?

A. No sir.

Q. You were absolutely paying out that for good and forever, th-t amount of freight?

A. Yes sir, straight.

895 Q. 50 per cent. of your product, you say is exported?

A. Just about.

Q. Via what gate-ways?

A. Well, almost exclusively Chicago. We have shipped a little via St. Louis but that is infinitisimal.

Q. And that is shipped on a through shipment to New York?

A. Yes, or Boston.

Q. Well, the Atlantic seaboard?

A. Yes sir.

Q. What is the proportional rate from Ottumwa to Mississippi river?

A. On export freight?

Q. Yes?

A. In the neighborhood of five cents 5½.

Q. What is it on shipments to Cincinnati?

A. I don't know that. We ship scarcely anything to Cincinnati.

Q. Do you supply any interior points in Ohio or Indiana?

A. Very rarely in carloads.

Q. What proportion of the product of your packing house is sold locally in Chicago?

A. Perhaps ten per cent.

Q. To whom do you sell, through brokers or to wholesale grocery men?

A. We sell through our agent at the stock yards and on the Board of Trade in the usual course of board of trade transactions for Chicago delivery at the warehouse.

Q. Have you the proportional rate different to the 16 cent rate to Chicago?

A. To the seaboard?

896 Q. To Chicago?

A. No sir.

Q. When you ship through Chicago going to the seaboard, your rate is made up of the proportional to the Mississippi river plus the Mississippi river rate to New York, isn't it?

A. Yes sir.

Q. What does it cost to land your product in New York per hundred pounds?

A. Our rate is 40 cents.

Q. That is 5 cents to the river and 5 cents to the river above Chicago and 30 cents from Chicago to New York?

A. Yes sir, the Mississippi river rate is 116 per cent. of the Chicago rate.

Q. The difference between the Mississippi river rate to Chicago being 5 cents and your rate to the river 5 cents, that adds 10 cents to 30 and makes it 40?

A. Yes sir.

Q. Does that bring you in competition with the product of Chicago packers in the markets of Europe?

A. Yes sir.

Q. Does it also come in competition at Philadelphia, New York, Pittsburg, Buffalo and Boston?

A. Yes sir, where we have agencies. We have no agency in Philadelphia or Pittsburg.

Q. You have in Buffalo, New York and Boston?

A. Well, we have in New York and Boston but not in Buffalo.

Q. What percentage of product is sold in Iowa and points
897 west and south and north thereof, that is all points west of the Mississippi river?

A. Perhaps 15 or 20 per cent.

Q. Do you mean of your meat products?

A. Yes sir, of the packing house products, generally.
Q. Practically all your fertilizer is shipped to the southeast?
A. Yes sir.
Q. And that passes through the Mississippi river gateway?
A. Yes sir.
Q. And the rate on that is made up of the proportional to the Mississippi river plus the rate from there to the Atlantic or such place as you ship to?
A. I could not answer that question.
Q. Has your proportional rate to New York changed in recent years? Your proportional to the Mississippi river and from there to New York.
A. Occasionally there are cuts in the rate but it is set back again in the course of a few weeks. Take the rate generally outside of those occasional depressions, there practically has not been any change in it for a number of years.
Q. You have been paying 5 cents proportional to the Mississippi river for a great many years?
A. I think so.
Q. Have you any statement showing the proportional amount of your product which you have marketed in Chicago during each of the several years last past?
A. I have not.
898 Q. Do you market a greater amount now than you did three or four years ago?
A. I think so.
Q. Why is that?
A. On account of the lower rate on provisions into Chicago.
Q. From your place?
A. Yes sir.
Q. The rate of freight which you pay on live stock to your place does not determine the amount you charge for your meat?
A. Well, that is a hard question to answer. The packing hou-e business is not one that is made up of cost and sale. It is a matter of judgment very largely on the market. In buying, as to the time of buying live stock and the time of selling. We never figure what we have made in a day or in a week.
Q. Do you fix the price of the stuff you sell in Chicago or do you sell at the price that is current?
A. Oh, the price that is current.
Q. How is it in New York and Boston?
A. If we fix the price we would not stay long in the business.
Q. How is it in New York and Boston?
A. The same way, you take the current price.
Q. What makes the current price?
A. Demand and supply.
Q. Who of your competitors furnish the supply name them?
A. Well, all the packers. We meet them all in the market where we sell.
899 Q. Do you have in your mind what factor mainly fixes the price of hams and bacon slaughtered in Chicago?

A. I cannot say beyond the answer that I have already given, that the quantity that is offered for sale is to be considered *versus* the demand for the product. Of course, at times there are manipulations, but the finality is, how much you can make at a certain price. It is possible by a strong combination to hold the price up, but it is also possible on the part of the consumer to refuse to buy at those prices. Then the price has to go down until it meets the views of the purchaser.

Q. Do your products depend more upon the fluctuation of the market or the freight rate?

A. Well, the freight rate cuts the biggest figure.

Q. How is that?

A. The freight rate cuts the biggest figure.

Q. That is not the question that I asked you. Do your profits depend more upon the fluctuation of the market or the freight rate?

Mr. SEVERANCE: He has answered it. He said the freight rate.

A. The freight rate. It depends more upon the freight rate than the fluctuations of the market.

Mr. COWAN:

Q. Do you sell cheaper in Boston than the Chicago packer,

900 A. Sometimes we do.

Q. And sometimes you don't?

A. Sometimes we don't.

Q. You generally sell at the same price?

A. No, we don't always get the same price.

Q. Well, very close to it?

A. Generally, yes sir. That depends upon the kind of goods.

Q. What sort of hogs do you mainly pack, all sorts?

A. All grades.

Q. How much dressed meat do the hogs make per hundred pounds?

A. How much dressed meat?

Q. Suppose you did not put any of it into ham, what would the dressed carcass be?

A. The dressed hog just as it stands before it is cut up will run from 75 to 83 or 84 per cent. according to the character of the hog.

Q. That includes everything except the hair and the entrails and the blood?

A. Yes sir. The cut-up meat and cooked lard will vary from 63 for these light hogs for the English market, to 76 or 78 for well fatted hogs.

Q. What does the total product of the hog amount to in point of weight and the gross weight of the hog?

A. We will average—Our class of hog meat—in the neighborhood of 66 or 67 per cent.

Q. And the other products?

A. The further product?

Q. The other products?

A. The other product perhaps, altogether, 82 or 83 per cent.

901 Q. About 82 or 83 per cent.?

A. I should say so, yes sir, including the meat, lard and by products.

Q. You don't kill cattle and you don't know what the product of the dressed meat amounts to?

A. We kill a few cattle just for local distribution but that is not our business.

Q. You say you pay more for hogs the further away you go from Ottumwa?

A. Yes sir.

Q. And less as you get towards Ottumwa?

A. Yes sir.

Q. Are not the hogs driven in?

A. Well, that is almost a thing of the past now.

Q. Are they hauled in in wagons?

A. All hauled in. It is a very rare thing that we have a driven bunch of hogs.

Q. They haul them in in wagons, do they?

A. Yes sir.

Q. For what distance around do they haul in wagons?

A. Oh, from 6 to 10 miles and in some directions perhaps a little more.

Q. Have you an idea how many hogs you bought, that is hauled in?

A. I should say perhaps 10,000 or 12,000 a year, maybe 15,000.

Q. What proportion of your total product moves east of the Mississippi river for sale or consumption?

902 A. I should say 60 or 75 per cent.

Q. What proportion of that—I believe you said about 10 per cent. was sold in Chicago?

A. About that, I should say.

Q. And the balance of it sold to points east?

A. Yes sir.

Mr. BAXTER:

Q. You spoke of the rate of 5 cents from Ottumwa to the Mississippi river. Isn't that the proportional rate charged by the road west of the Mississippi river on shipments from Ottumwa destined to points east of the river?

A. Yes sir.

Q. It is not a local rate from Ottumwa down to the river?

A. Oh, no.

Q. You could not ship from Ottumwa down to the Mississippi river for local use there at 5 cents?

A. No sir.

Q. What would be your local rate?

A. I think probably 9 cents.

Q. How much?

A. Perhaps 9 cents.

Q. Then the through rate from Ottumwa to New York is made up of this proportional rate of 5 cents charged by the lines west of the river from Ottumwa to the river, and then a proportional rate

charged by the roads east of the river from the river on to New York, is that it?

903 A. Yes sir.

Q. You don't get a through rate made by any road west of the river, do you?

A. Not in the sense of Ottumwa being a terminal point and a fixed rate.

Q. They quote you a through rate?

A. Yes sir, they quote you a through rate.

Q. Made up of their proportion of 5 cents to the river, and the 35 cents proportional and the rates east of the river?

A. Yes sir.

Mr. COWAN:

Q. How many cars do you deliver to the railroads there per day?

A. 7 to 12, perhaps.

Q. Do you divide them up among the different roads?

A. Yes, according to the proportion of live hogs they bring in.

Q. How far is it from your packing house over to the freight depot or yards where the trains are made up where they connect with their trains that come through?

A. We are right at the yards.

Q. Do the railroad companies do the switching or do you do it?

A. We do the switching within our own yards but the railroad comes in and takes the freight out.

Q. Comes into your yards and takes the freight out?

A. And it also brings the freight in.

Q. Do you have your own cars?

A. Yes sir.

Q. What do you get for the use of the cars?

904 A. A cent and three quarters. That is a cent in some territories and three quarters of a cent a mile in others.

Q. Do they return your cars empty to you?

A. Yes sir.

Q. And they pay you on the return movement, also?

A. For what?

Q. They pay you a cent or three quarters of a cent as the case may be on the return movement as well as the going movement?

A. Yes sir.

Q. Are those packing house products that you have, put into other trains of other sorts of freight than packing house products and dressed meat?

A. I think so.

Q. Put into any sort of a train that comes along or do you have certain fast freight trains that it goes on?

A. I cannot answer that question. Our freight moves out very largely in the night and the class of train it goes on, I am not posted on.

Q. Are there any expenses or charges there at Ottumwa that you charge or collect, or any that the railroads charge to you?

A. For yardage?

Q. For all purposes in connection with this traffic?

A. We get, I think it is 75 cents a car for the loaded cars
905 that we deliver to the roads. We get nothing for the cars in.

Q. You get 75 cents switching charge for those cars that you deliver?

A. 75 cents, yes sir.

Q. Is that the only charge that is made?

A. That is the only charge.

Q. Are those cars returned there empty or do they come loaded?

A. The road has a right to load them on the return trip but of course, they always come empty into Ottumwa unless occasionally there might be a car loaded with apples or something like that for a local fruit man, but the great bulk of the cars come empty to Ottumwa.

Q. Do Chicago packers sell meat and meat products in your territory over there shipped from Chicago west?

A. No sir, that is not in the Iowa territory but they do in Illinois.

Q. Not in Iowa?

A. No sir, we have lost about 50 to 75 per cent. of our trade in Illinois from the competition of Chicago packers.

The COURT:

Q. Do you mean your sales or purchases?

A. In our sales, your Honor.

Mr. COWAN:

Q. Do you buy any hogs in Illinois?

A. I beg pardon?

Q. Do you buy any hogs in Illinois?

906 A. No.

Q. And there are none shipped to your place from Illinois?

A. No.

Q. Do you buy on the Kansas City and Omaha markets?

A. Occasionally.

Mr. BAXTER:

Q. In that portion of Illinois where you say you have lost a certain amount of your business in competition with Chicago, what is the distance from Ottumwa to that section of country and what is the distance from Chicago?

A. 100 miles from Ottumwa to 240 miles from Ottumwa and then the reverse is 40 miles from Chicago to 190 miles from Chicago. There is a territory or zone lying in between that mileage where we have lost since this change in rate, where we have lost from 60 to 75 per cent. of the trade that we formerly enjoyed.

Q. You say since this change of rate? What change of rate do you refer to?

A. Well, we formerly had a lower rate to Chicago than the hog rate. That is, we had a lower rate to Chicago on provisions than on hogs. Then the Interstate Commerce Commission changed it to an equality of the two grades of freight, that is the live stock and the packing house provisions, and from that time we lost trade in this zone that I speak of.

Q. You have had then a practical operation of this rule?

907 A. Yes sir.

Mr. DAWES: Has your packing house presented claims against railroads for delay in shipping the product?

A. Never.

Q. Your claims are limited to physical damage or injuries to the product which you ship, is that right?

A. Yes sir.

Q. I don't suppose you could testify about the custom of any packing houses in that regard?

A. No sir, I don't know.

Q. Packing house product is not shipped to a particular market, is it?

A. No sir.

Q. That is to arrive at a particular hour?

A. No sir.

Q. There is no loss to you if there is a delay, within reasonable limits, that is a reasonable loss of time in the arrival of that product?

A. No sir.

Mr. COWAN:

Q. Do you ship any of the fresh meat, do you ship hogs in the carcass, the fresh meat or only in the bacon and hams?

A. All cut up.

Q. All cut up?

A. Yes sir.

Q. It all goes as packing house product and none as fresh meat?

A. No there is some that goes as fresh meat. Quite a little loin and spare-ribs and tender loin go at a higher rate than the

908 packing house product rate. We have quite a little of that but I don't know the percentage.

Q. It don't go at a higher rate by the carload?

A. Yes sir.

Q. Have you got any tariff that shows that?

A. Well, I don't know definitely the rates, no, but I was under the impression that it did.

909 Q. Well, I hadn't heard of it before.

A. I may possibly be mistaken on that, but I was under the impression that was the case.

Q. Well, you have collected damage claims, though, on shipments, haven't you?

A. How is that?

Q. Have you collected any damage claims at all from the Railroad Companies on shipments?

A. Oh, very occasionally, at times there may be some pilfering, or a car may have been knocked around so much that the packages are all broken and the contents spilled occasionally.

Q. Or a wreck, or something of that sort?

A. Yes, but it is a very rare thing, and it practically amounts to nothing.

Mr. BAXTER:

Q. You said something about there being a higher rate on fresh meat than on regular packing house products. Didn't you mention that?

A. How is that, sir?

Q. Didn't you say something about there being a higher rate on fresh meats, tenderloins and things of that sort than you paid on the packing house products?

A. I was under the impression that there was a higher rate on that class of freight by the carload, but I may be mistaken about that.

Q. Isn't the rate on fresh meat from Chicago to New York 45 cents, and the rate on packing house products 30 cents, and the rate on live cattle 28 cents?

910 A. I did not catch that.

Q. Isn't the rate on fresh meat from Chicago to New York 45 cents, and on packing house products only 30 cents,——

A. I could not say as to that.

Mr. COWAN: I had reference in my question to Chicago, not New York.

Mr. SEVERANCE: You did not ask him that.

Mr. COWAN:

Q. I had in my mind the rate to Chicago and not the rate through to New York, when I asked you if there was a different rate. It is different if you go to New York?

A. That is what I had in mind.

Q. The proportion to the Mississippi River is the same in each case?

A. I cannot answer that.

Mr. SEVERANCE:

Q. You merely know that you pay more on the fresh meat shipped from your place to New York than you do on the packing house products?

A. Yes, sir.

A. L. EBERHART, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. What is your full name?
A. A. L. Eberhart.
911 Q. Where do you live?
A. Austin, Minnesota.
Q. What is your business?
A. Pork packing.
Q. What is the name of your firm?
A. George A. Hormell & Company.
Q. What railroads run to Austin, Minnesota?
A. The Milwaukee & St. Paul and the Great Western.
Q. How long have you been in business?
A. Do you mean the firm?
Q. Yes.
A. About fourteen years.
Q. How long have you been connected with the firm?
A. Five years,—a little over.
Q. What is your relation with the company, what is your office?
A. Secretary of the Company.
Q. What is the nature of the business conducted by that company?
A. Almost entirely the packing of pork.
Q. What is the capacity of your plant?
A. That is a rather difficult question to answer.
Q. I mean, what did your product amount to last year?
A. I have the figures—our business year ends November first, and I have the figures of the ten months on this present year. Up to September 1st the total of the outgoing shipments in carloads in local shipments, was 20,668,556 pounds.

912 Q. Now, right in that connection, I will ask you what were your shipments not including hogs, the materials for packages, and salt, and so forth?

A. Well, in that period, the total weight of our hogs in carloads was, 25,800,910 pounds, but not supplies such as coal, boxes, lumber, salt, and all that class of stuff, that amounted in carloads to 10,951,916 pounds, and local shipments, 1,840,000, making a total of supplies in of 12,791,916, or a total of incoming and outgoing freight of 33,450,472 pounds.

Q. Now, what did you say the out-going freight was?
A. The out-going total was 20,668,556.
Q. And the material added to that makes some 33,000,000?
A. 33,000,000.
Q. What is your in-shipment of hogs?
A. 25,800,910 pounds.
Q. So that, including your materials for packages and so forth coming in, and the weight of the packing house products going out, you had about 33,000,000 as against 25,000,000 in round figures of hogs shipped in?

657

A. Yes, in those ten months.
Q. From what territory do you draw your percentage of hogs?
A. Well, southern Minnesota, principally, and some——
Q. And South Dakota, too?
A. Some little in South Dakota and some in northern Iowa. Our principal shipments are in the western part of southern Minnesota.

913 Q. Have you made up a table showing a list of stations together with the rates in Austin, and the rates from those stations on live stock to Chicago?
A. Yes, sir, I have such a table.

Mr. SEVERANCE: I will ask to have this marked as Exhibit 1. Eberhart's Exhibit 1. (Referring to paper produced by the witness.)

(The paper referred to was marked "Eberhart Exhibit No. 1, F. B. D.," and is in words and figures following, to-wit:)

659

KNEEHART EXHIBIT NO. 1. 913

TOWNS & RATES ON HOGS, C. M. & ST. P. R. R.

TOWN. S.M.Div.to Austin.	STATE.	MILES TO AUSTIN.	ACTUAL RATE.	OUR RATE.	MILES TO ST.PAUL.	RATE TO ST.PAUL.	MILES TO CHGO.	RATE TO CHGO.
Bryant	S.D.	280	29 /2	24	359	24	632	38
Lake Preston	"	263	28 1/2	23	352	24	614	37
Howard	"	255	25	20	334	25	605	33
Madison	"	233	23	18	312	23	584	32
Oldham	"	242	24	18	321	24	604	36
Wentworth	"	226	22	18	306	22	576	32
Colman	"	218	22	18	297	22	568	32
Egan	"	208	20	16	287	20	568	32

9/14

TOWN.	STATE.	MILES.	ACTUAL.	OURS.	MILES.	RATE.	MILES.	RATE
Ylandreau	S.D.	204	19	16	283	20	554	32
Airlie	Minn.	195	18 1/2	16	274	19	545	32
Pipestone	"	189	18	16	268	18	539	32
Edgerton	"	175	18	16	254	18	525	29
Chandler	"	165	16	16	244	18	515	28
Iona Lake	"	156	17	14	235	17	506	28
Fulda	"	146	17	14	225	17	496	28
Kinbrae	"	139	17	14	218	17	490	28
Lakeffhad	"	129	16 1/2	14	209	17	471	26
Jackson	"	109	15 1/2	12	198	17	459	26
Alpha	"	104	15 1/2	12	193	17	454	26
Sherburn	"	96	15	12	185	17	447	26
Welcome	"	91	14 1/2	12	180	17	441	26
Fairmont	"	83	13 1/2	12	172	16	433	26
Granada	"	77	13	12	163	15	427	26
Huntley	"	71	12 1/2	12	157	14	421	25 1/2
Winnebago	"	66	12	12	152	14	416	25 1/2
Delavan	"	59	11	11	146	14	409	25 1/2
Easton	"	53	10 1/2	10 1/2	139	14	403	25
Good Thunder	"	68	12	12	98	14	419	26
Rapidan	"	75	12 1/2	12 1/2	92	15	425	26
Mapleton	"	61	11 1/2	11 1/2	106	14	411	26
Minnesota Lake	"	52	10 1/2	10 1/2	115	14	403	25
Wells	"	44	9 1/2	9 1/2	123	14	394	25
Alden	"	35	8 1/2	8 1/2	132	14	385	25

5-d

915.

TOWN.	STATE.	MILES.	ACTUAL.	OURS.	MILES.	RATE.	MILES.	RATE
Albert Lea	Minn.	26	7 1/2	7 1/2	119	12	375	25
Hayward	"	18	6 1/2	6 1/2	115	12	368	25
S.M.Div.East								
Houston	Minn	89	14	9	186	15	302	22
Rushford	"	78	13	9	175	15	314	24
Lanesboro	"	58	11	11	155	15	333	24
Wykoff	"	40	9	9	137	13 1/2	381	24
Spring Valley	"	33	8 1/2	8 1/2	130	12	358	24
Grand Meadow	"	23	7 1/2	7 1/2	120	12	368	25
Dexter	"	17	6 1/2	6 1/2	114	12	363	25
Brownsdale	"	9	4 1/2	4 1/2	106	12	358	25
I. & M.Div.North.								
Northfield	Minn	62	11 1/2	11 1/2	38	9	406	26
Faribault	"	48	10	10	52	9 1/2	398	26
Medford	"	39	9	9	61	10	389	26
Owatonna	"	33	8 1/2	8 1/2	67	12	383	25
Blooming Prairie	"	15	5 1/2	5 1/2	85	12	365	25
I.& M.Div.East.								
Ridgeway,Iowa		58	11	9	158	14	292	23
Decorah	Iowa	73	12 1/2	9	173	17	293	23
Cresco	"	49	10	10	149	14	300	23
Bonair	"	43	9 1/2	9 1/2	143	14	306	24
Lime Springs	"	38	9	9	138	13	311	24
Chester	"	33	8 1/2	8 1/2	133	13	316	24
Le Roy,	Minn	26	8	8	126	12	324	24

662

916

TOWN.	STATE.	MILES.	ACTUAL.	OURS.	MILES.	RATE.	MILES.	RATE.
Tacpi,	Minn.	18	6 1/2	6 1/2	118	112	332	24
Adams	"	14	5 1/2	5 1/2	114	12	335	25
Rose Branch	"	8	4 1/2	4 1/2	108	12	342	25
Preston Branch.								
Caledonia	"	102	15 1/2	15 1/2	158	18	299	24
Mable	"	84	13 1/2	13 1/2	176	18 1/2	318	24
Canton	"	78	12 1/2	12 1/2	188	18 1/2	327	24
Harmony	"	70	12	12	190	18 1/2	332	24
Preston	"	59	11	11	201	18 1/2	342	24
I.& D.Div.East & West.								
Monona	Iowa	96	14 1/2	14 1/2	196	17	253	22
Postville	"	86	14	14	186	17	263	22 1/2
Castalia	"	80	13 1/2	13 1/2	180	17	269	22 1/2
Ossian	"	75	13	13	175	17	274	22 1/2
Calmar	"	68	12	12	168	14	281	22 1/2
Hartley	"	156	18 1/2	18 1/2	256	22 1/2	470	23 1/2
Ruthven	"	126	16 1/2	16 1/2	226	22 1/2	443	23 1/2
Cylinder	"	108	16	16	208	22	425	23 1/2
Wesley	"	80	13 1/2	13 1/2	180	18	396	23 1/2
Britt	"	70	12 1/2	9	170	17 1/2	380	23 1/2
Garner	"	60	11 1/2	9	160	17 1/2	376	23 1/2
Ventura	"	53	10 1/2	6	153	17	370	23 1/2
Clear Lake	"	48	10	6	148	16	368	23 1/2
Charles City	"	67	12	9	167	15	328	23 1/2
Rudd	"	54	10 1/2	9	154	15	340	23 1/2
Nora Springs	"	49	10	9	149	15	345	23 1/2

917.

TOWN.	STATE.	MILES.	ACTUAL.	CUTS.	MILES.	RATE.	MILES.	RATE.
I.& M.South.								
Plymouth	Iowa	31	8 1/2	8 1/2	131	15	363	24 1/2
Grafton	"	25	7 1/2	7 1/2	125	14 1/2	370	25
Carpenter	"	18	6 1/2	6 1/2	118	13 1/2	369	25
Lyle	Minn	11	5 1/2	5 1/2	111	12	361	25
Main Line North.		TOWNS & RATES ON HOGS -- C.& G.T.W.R.R.						
Kenyon,	Minn.	44	9 1/2	9 1/2	57	10	367	25
Dodge Centre	"	25	8	8	77	12	348	25
S OUT N.								
Elma	Iowa	68	12	8	126	17	289	23
Riceville		55	11	8	116	17	299	23
Sargeant	Minn.	22	7 1/2	7 1/2	86	12 1/2	334	25
Hayfield	"	16	6 1/2	6 1/2	80	12 1/2	339	25
Waltham	"	11	3	3	85	12 1/2	344	25
SOUTH ON OMAHA DIV.								
Ft.Dodge,	Iowa	130	16	16	209	18	368	23 1/2
Eagle Grove	"	94	14	14	190	17 1/2	380	23 1/2
Clarion	"	85	13 1/2	13 1/2	181	17 1/2	340	23 1/2
Belmond	"	78	12 1/2	12 1/2	170	17	352	23 1/2
Meservey	"	65	11	11	161	17	369	23 1/2
Thornton	"	59	10	9	165	16 1/2	398	23 1/2
Swaledale,	"	55	10	9	151	16 1/2	393	23 1/2
Burchinal	"	49	10	.	145	16 1/2	398	23 1/2
Manley	"	32	8 1/2	8 1/2	128	16	371	25
Meltonville	"	17	6 1/2	6 1/2	113	15	356	25

918 Q. As I understand it, Mr. Eberhart, this table, Exhibit No. 1, shows the names of the stations the number of miles from those stations respectively to Austin where your packing house is located; the rate in on the goods, the hogs, and then you have a column that is headed "Our rate" (which I will ask you to explain in a moment). This also shows the mileage from these stations to St. Paul, the rate to St. Paul, and the mileage to Chicago, and the rate to Chicago?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. And that is correctly made up, is it?

A. As far as we know, yes. sir, from the rates given us.

Q. What does this column of figures under the head "Our rate" signify?

A. Well, that is the rate that we have to pay to certain points in order to induce the shippers to ship their hogs to Austin.

Q. In all cases where that rate differs from the regular tariff of the railroads, you have underscored the rates in red ink, have you?

A. Yes, sir.

Q. I notice here the town of Bryant, South Dakota, miles to Austin, 280, cattle rate 29½, our rate 24 cents. Now, what does that mean?

A. It means that we have to add the difference between 29½ and 24, to this shipper, in order to induce him to bring his hogs

919 to our point.

Q. That is, you have to give him 5½ cents?

A. We have to give him that benefit as competing with Chicago.

Q. On account of the high rates?

A. Yes, sir.

Q. Now, the rate from—I see on this same paper the rate from this station, Bryant, South Dakota, to Chicago, is 38 cents. What is the packing house rate from Austin, Minnesota, to Chicago?

A. 15.7 cents.

Q. So that you have to pay 29½ cents to get the hogs to Austin, and 15.7 to get them from there to Chicago, get the product from there to Chicago?

A. Yes, sir.

Q. What would make a total of 45.2 and the Chicago rate direct on the live stock from Bryant, South Dakota, is 38 cents?

A. Yes, sir.

Q. So that you are at a disadvantage of 7 cents from that one station?

A. Yes, sir.

Q. You say that in order to get the packer—I mean the shipper—to sell you the hogs, you have to make that rate to him, 24 instead of 29½?

A. We have to give him that special inducement, otherwise he go through with his hogs, he will go on through to Chicago.

Now, what is the rate from your territory around Austin into Chicago, on live stock?

920 A. Twenty-five cents a hundred.

Q. Twenty-five cents a hundred?

A. Yes, sir.

Q. Now, then, if the rate on live stock was put down to level with the packing house rate, it would be the same, 15.7 from Austin, would it?

A. Yes, sir.

Q. And if a similar reduction was made from all these other stations beyond Austin, it would make an additional difference of nearly ten cents?

A. Yes, sir.

Q. A hundred weight?

A. Yes, sir.

Q. So that instead of, for instance, from Bryant, South Dakota, being under the disadvantage of something over 7½ cents per hundred, you would be under the disadvantage of about 17 cents?

A. Yes, sir.

Q. Now, what would be the effect on your business if that should be done?

A. Why, the effect would be that we would either have to pay that much additional for hogs, or go out of business.

Q. Well, which would you have to do, could you do business on that basis?

A. We could not do a profitable business on that basis, no, sir. There is not enough profit in the business.

Q. Now, you figured up at my request the average rate from all these stations to Austin, haven't you?

A. Yes, sir.

Q. Do you remember what it is?

A. 13.6 on the live stock.

921 Q. That is the rate, the average rate, from all the stations on this Exhibit 1?

A. Yes, sir.

Q. Into Austin, is 13.6 cents?

A. Yes, sir.

Q. And your packing house rate, you say, is 15.7?

A. Yes, sir.

Q. Which would make 29.3?

A. Yes, sir.

Q. Adding the two together?

A. Yes, sir.

Q. Have you also figured the average rate from the various points of origin to Chicago?

A. On the live stock, yes, sir. The average rate from those towns is 25½ cents.

Q. So that, taking all these averages together, assuming that you are shipping out as much weight as you ship in, you are at a disadvantage of a little under 4 cents, the difference between 25½ and 29.2?

A. Yes, sir.

Q. As compared with Chicago?

A. Yes, sir, that is, at present, the way it is now.

Q. Yes, I mean at present. What lines of road and what divisions of lines are those towns located on?

A. The Milwaukee road has, I believe—they call it five divisions. They have a division running west of Austin into the Dakotas.

Q. What is that called, that is the Southwestern Minnesota, isn't it?

A. The Southern Minnesota Division, yes, sir. They have
922 a division running east to Lacrosse, and from St. Paul south to Mason City or Calmar and Chicago, running—there are two lines south, the Milwaukee have a line to Mason City from Austin that connects with their Iowa and Dakota divisions; then they have a line running southeast direct to Chicago so that they come in from four different directions to Austin, the Milwaukee road.

Q. Now, Mr. Eberhart, you have stated here in this schedule the distance from Austin to these various points around there, I think, as low as 11 miles, and as high as 280 miles, and in the case of Chicago ranging a little over 300 miles up as high as 632 in one case. Are hogs moved to Chicago from all of these points in this schedule?

A. Well, I think without a doubt they are.

Q. So that you are in competition, actual competition, in Chicago at all these points?

A. Yes, sir.

Mr. SEVERANCE: I will offer this Exhibit in evidence, your Honor.

Q. Mr. Eberhart, is it the custom of your company to make claims against the Railroad Companies for delays in the shipment of packing house products?

A. In carload lots?

Q. Yes.

A. No, sir.

Q. Do you ever make such claims as that unless the goods are damaged in transit?

A. No, sir.

Q. I mean you make no claim for damage on account of
923 some delay where there is no damage to the goods?

A. No, sir, not where there is no damage to the goods.

Q. In disposing of your products other than meats such as fresh trimmings, fertilizers, casings, hair, and so forth, do you or do you not find yourself able to compete on an equal basis with the Chicago packers?

A. Why, no, I don't think we have an equal basis with them on account of the fact that we have to ship most of that product, except fertilizers, to Chicago, and the rate is against us.

Q. You pay the packing house rate on it?

A. Yes, sir.

Q. How many people are employed in your plant?

A. About 200.

Q. How large a town is Austin?

A. 6500.

Q. It is the largest single industry in Austin, then, isn't it?
A. Oh, yes, sir.
Q. Are there any other stock yards maintained there, or any commissions paid for fee-ing or yardage or selling the stock to you?
A. None whatever, no, sir. We maintain our own stock yards, but not as a stock yards company.
Q. Now, with reference to the stations where you have to absorb a portion of the freight rate, from which you have to absorb a portion of the freight rate, is it habitual for you to do that, or only occasionally?
924 A. We do it all the time.
Q. All the time from these particular stations?
A. Yes, sir.
Q. And those are all indicated by a red mark under the figures under the head of, "Our rate"?
A. Yes, sir.

Cross-examination by Mr. COWAN:

Q. Take Bryant, South Dakota. Actual rate 29½, to what place, St. Paul or Chicago?
A. That shows right on there under the heading, I could not tell you off-hand, but I think that 29½ is to Austin.
Q. Why do you put "Our rate 24," is that all you pay?
A. No, sir, but we allow this shipper, we have to pay the railroad 29½ cents, but we allow the shipper 5 cents a hundred, or 5½, or whatever it is there on the hogs he ships as a special inducement.
Q. Why do you mark that "our rate"? Your rate would be 34 cents?
A. It is understood by us that that is the rate we make the shipper.
Q. It is your rate to the shipper?
A. Yes, sir.
Q. In other words, you absorb——
A. That difference.
Q. Enough to make his rate equal to his rate to Chicago?
A. No, to whatever it is there.
Mr. SEVERANCE: Oh, no, it is all shown right there (re-
925 ferring to Exhibit 1).
Mr. COWAN: How does it come to be 5½ cents?
Q. Is the rate to Chicago, we will say, is 38 cents, and to St. Paul is 24 cents, you make him the benefit of the St. Paul rate, do you?
A. In that case, yes, sir.
Q. Well, now, take another case. I see Howard, South Dakota, cattle rate 25, "our rate" 20, rate to St. Paul 25, and rate to Chicago 33.
A. We are offering him that bonus in order to induce his hogs to our market.
Q. While you are doing that, it does not appear from these figures that you are making it on any basis to make his rate that he actually has to pay the same as some other rate?
A. No, not necessarily on any regular basis, but those rates were de-

termined by ourselves as an inducement. We offered them so much, and we make them a standing offer of whatever that amount is.

Q. You figure that that would be an inducement to him to ship?

A. Yes, sir.

Q. According to the locality he was in, and the desire you had for the hogs from that place?

A. Yes, sir.

Q. Where do you buy the hogs when they are shipped in, do you buy them at your place or from the shipper before he starts?

A. We buy them from our place.

926 Q. He just ships in and takes a chance on what you pay him for them?

A. Not always; they frequently telephone and ask us what we are paying, the day before or that evening, and he can ship that night and the hogs are there the next morning.

Q. Don't he always do something of that sort?

A. Some shippers that come regularly and always have come don't take the trouble to ask us always.

Q. Now, do you pay the price based upon the price being paid anywhere else?

A. Yes, sir.

Q. On the price being paid where?

A. Chicago, generally.

Q. How do you get your information?

A. We get it by the Postal Telegraph Company.

Q. Do you send any postal cards or notices of what you are paying for hogs and how many you want?

A. Yes, we send postal cards.

Q. Then it is on the basis of these prices that you offer that shipments are made, practically?

A. Yes, sir, very largely.

Q. Where do you ship your products for sale?

A. In carloads mostly to the south and to Chicago.

Q. What proportion of it do you ship to Chicago, of your total output?

A. Well, it is difficult to say, I presume one-third of our carload business goes to Chicago.

927 Q. Do the Chicago packers ship any stuff to your town?

A. Occasionally we have to buy carloads from some other packers, and sometimes buy it at Chicago, but very rarely.

Q. Do they ship any for sale into that portion of Minnesota from Chicago?

A. No, sir, not from Chicago that I know of.

Q. That all comes from the Missouri River?

A. No, not all, South St. Paul runs two cars out there.

Q. Missouri River and South St. Paul?

A. Yes, sir.

Q. Why is that?

A. I don't understand that.

Q. Why is that so?

A. Why is it so?

Q. That it does not come from Chicago and comes from South St. Paul or Missouri River into Southern Minnesota?

A. I don't know why the packers ship it from their Missouri river plants.

Q. Do you know what the rates of freight are from Chicago up there?

A. To our place?

Q. Yes.

A. I think the same as they are from there to Chicago, 15.7 in carloads.

Q. If the Chicago packer wanted to compete with you, and if he drew hogs from your locality for slaughter, or from points in Iowa, he would not be able to do that and pay the same prices you do for hogs and then ship the product up there for sale?

A. He would find no carload buyers in that section. His
928 business would be very small there in that local way.

Q. How many hogs did your concern kill, for the last four years, I mean each year, if you have got the statement?

A. The year ending November 1, 1903, we killed 52,702.

Q. How many?

A. 52,702. The year ending November 1, 1904, 99,882, and the 10 months of the present year up to September 1st, 119,665.

Q. How many did you kill in 1902?

A. I haven't got that date, but it was about 40,000 that year.

Q. Previously, what has been your capacity?

A. The next year before that was about 30,000, and the year before that, 23,000.

Q. You have been increasing the size of your plant?

A. Yes, sir.

Q. You would not have been able to do that, except for the adjustment of the freight rates that permits you to ship stuff down to Chicago and sell it in competition with the packers, would you?

A. I don't quite understand the question.

The COURT: Read it to him.

(The pending question was then read.)

A. We would not have been able to do it if we had not been able to interest outside capital in our business there.

Q. Did the adjustment of the freight rate have anything
929 to do with it?

A. I think that the present differential between the rate on live hogs and packing house products makes it possible to show an increased business.

Q. That would be the tendency of it, would it?

A. Yes, sir.

Q. What are the comparative rates in the schedules in the State of Minnesota and the products of live stock? Can you ship a car load of packing house product as cheap as you can a carload of hogs killed in the State of Minnesota?

A. I am not informed as to that, because we do not do a carload business in the State of Minnesota. There are no carload buyers there to whom we sell carloads.

Q. Do you ship carloads into the State of Iowa?
A. No, sir.
Q. Where do you ship carloads?
A. To Chicago and points south. Mississippi River Valley points and Texas and southeastern points.
Q. Do you happen to know what your rates are to some points down there?
A. Yes, sir.
Q. What are they?
A. The rate to Texas common points is 75 cents.
Q. What is it to Memphis?
A. Memphis, we don't do any shipping into Memphis, but I think the rate is 28 cents. It is very near that.
Q. Are any hogs driven into your place?
930 A. Very few.
Q. Hauled in in wagons?
A. Well, I don't believe there is any of that done now. They are hauled in in wagons at times.
Q. How many?
A. Oh, a very small proportion of our hogs.
Q. Do you ship a great many in from near by points or do you ship most from long distances?
A. I presume a radius of 100 miles would be a fair estimate, where the most of the hogs come from.
Mr. COWAN: That is all.

GEORGE E. SIMPSON, called and sworn as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. With which of these defendant companies are you connected and in what capacity?
A. Chicago, Milwaukee & St. Paul Railway Company, as Superintendent of Transportation.
Q. How long have you filled that office?
A. About fifteen years or seventeen years.
Q. On that portion of your road which lies between St.
931 Paul and the Missouri River on the one hand, and Chicago on the other, what is the maximum tonnage of loaded cars of ordinary dead freight other than dressed meat and packing house products, cattle, of cars that can be hauled by the same engine at the speed which is required for that service?
A. Well, that varies on each freight division of about 100 miles. Take it on our Kansas City line, from Kansas City and the Missouri River, to Davenport, on the Mississippi River, the average tonnage of our dead freight trains is from 1000 to 1200 tons.
Q. On the same portion of your road, what is the maximum tonnage of loaded cars of live cattle and hogs that can be hauled by one engine at the speed which is required for that service?
A. From 750 to 850 tons.

Q. What is the average weight of the contents of your cars, when loaded with live cattle or hogs?

A. In September, 1902, the average weight of cattle per car arriving at Chicago, was 24,350 pounds; hogs, 16,800 pounds. In May and June, 1905, 149 cars of cattle received at Chicago, the average rate was 21,587 pounds. 139 cars of hogs, 16,781 pounds.

Q. Now, that is the weight of the contents of those cars?

A. That is the weight of the contents of the cars, yes, sir.

932 Q. What is the average weight of the contents of cars on your road when loaded with ordinary dead freight other than the dressed or prepared products of cattle or hogs?

A. We have no statistics covering this for a year, but selecting 500 cars of ordinary dead freight, at random, we find the average weight per car at 40,465 pounds.

Q. Do you mean the weight of the contents of that car, too?

A. The contents of the cars, yes, sir.

Q. On that portion of your road above referred to, what is the average rate of speed at which trains of live stock and live hogs are moved?

A. It is about 20 miles per hour.

Q. If you exclude live stock what would it be?

A. About 24 miles an hour.

Q. On the same portion of your road, what is the average rate of speed at which cars of ordinary dead freight other than the dressed or prepared products of cattle or hogs, are moved?

A. About 10 to 12 miles per hour.

Q. Well, exclude the stock, and what would it be?

A. About 15.

Q. What is the average tonnage rating of locomotives used on that portion of your road in the transportation of live cattle or hogs?

A. Excuse me, I did not catch that question.

933 Q. What is the average tonnage or tonnage rating of locomotives used on that portion of your road in the transportation of live cattle or hogs?

A. About 750 to 850 tons.

Q. What is the average tonnage of locomotives on that portion of your road, used in the transportation of ordinary dead freight?

A. 1,000 to 1,200 tons.

Q. On that portion of your road is preference given to trains loaded with live cattle and live hogs, over trains loaded with the prepared products of cattle and hogs, or over trains loaded with dead freight, or are all of your trains moved upon an equality?

A. We give preference to our live stock trains.

Q. Why do you do that?

A. In order to reach the market at a given time.

Q. Why do you want to reach the market at a given time?

A. We are obliged to get the stock in for the morning market.

Q. Well, why? Why are you anxious to do that?

A. They ship with that view. They load with a view of arriving at Chicago at a given time in the morning. We consider stock ar-

riving at the yards after eight o'clock as late stock, and the market is liable to decline and result in a loss to the shippers.

Q. Well, what does he do if he sustains a loss by reason
934 of not getting there in time?

A. He generally makes a claim.

Q. You give preference to these live stock trains over any train other than freight trains, do you?

A. Yes; we commonly give them preference over our ordinary passenger trains, both in running ahead and at meeting points.

Q. On that portion of your road what proportion of hogs intended for transportation of live stock moved to the points of shipment empty?

A. Well, it depends upon the volume of the live stock business. During the first half of March, 1903, the loaded stock car mileage was 688,953 miles, while the empty mileage was 262,448.

Q. How many—you mean the empty stock car mileage?

A. The empty stock car mileage. The first half of October, the loaded stock car mileage was 772,765. The empty stock car mileage was 656,551. In June, 1905, out of 939 cars of stock received at Chicago, loaded, we returned loaded but 4.66 per cent.

Q. Can't you find any loading, back loading for these live stock cars?

A. We can at times. At this season of the year, the fall months, we are obliged to hurry those cars west bound to take cars of shipments of stock. Our stock car shipment is limited and we have to ship them frequently west bound empty on about as fast a
935 schedule as we do the stock east bound in order to get them back to the point of shipment for reloading.

Q. What proportion of the cars intended for the transportation of ordinary dead freight, are returned to the points of shipment empty?

A. We don't keep—we don't separate the different classes of our equipment showing the empty mileage of each class. The empty mileage of our total equipment for the last fiscal year ending June 30, 1905, was 30 per cent. Separating the movements of the stock cars I should say that the empty mileage of our ordinary box, coal and flat cars would be about 25 per cent.

Q. Between here and the Missouri River is the movement of cattle and hogs uniform throughout the year?

A. No, sir, it is heavier in the fall months.

Q. It is a fact that it is heavier in the fall months, and does that fact prevent you from finding return loading during those months for your live stock cars?

A. Excuse me?

Q. Is the fact that your live stock movement is heaviest in the fall months, does that fact have any effect upon preventing you from being able to load those cars back during the heavy season?

A. As I just explained, during the heavy movement of stock, we could not afford to hold those cars for return loading. When
936 the movement of stock is light we do use some of these cars occasionally for shipments of rails, bituminous coal and oil, and a few other commodities.

Q. About how many months of the year are your stock cars comparatively idle?

A. Well, there is a certain percentage of them idle six to eight months every year.

Q. What percentage of them is idle for that length of time?

A. I should think we could get along with 10 or 15 per cent. less stock cars during that time.

Q. Is the movement of the products of live stock more or less uniform than the movement of the live stock itself?

A. The movement of the product of live stock is more uniform than the live stock itself.

Q. What proportion of your tonnage is live stock, and what proportion of your freight equipment is live stock cars? In other words, how much is your live stock tonnage of your total tonnage, and what proportion of your equipment is live stock cars?

A. During the year ending June 30, 1905, our live stock was 4.53 per cent. of the total tonnage.

Q. What percentage of your total freight equipment was required to carry that tonnage?

A. About 7 per cent.

Q. During the year ending June 30, 1905, what amount was paid for damages to cattle and hogs and to persons traveling in charge of them?

937 A. For the calendar year 1904, our claims paid on stock shipments amounted to $66,029.24. Personal injury claims, $210. That is on stock arriving in Chicago.

Q. Are there not stock yards on your road necessary for the transportation of live cattle and live hogs which are not used for the transportation of dead freight? If so, state the number of them and their cost.

A. Between South St. Paul, Sioux City, Kansas City, Omaha and Chicago, we have 216 stock yards. I am unable to state the original cost of those yards, but an accurate estimate of the cost to duplicate them at the present time would be $183,985.58.

Q. What is the cost of maintenance and renewal per annum of those stock yards?

A. The estimated cost of maintenance and renewal is about 12½ per cent. per annum, or $22,922.32.

Q. Are any of these stock yards provided with side tracks and sheds, and so forth, not used for any other kind of freight?

A. Yes, sir.

Q. Which deteriorates faster, the live stock car or the ordinary box car?

A. It is generally understood that the live stock car deteriorates faster.

Q. Are you able to state the annual cost of repairs upon a stock car and a box car respectively?

938 A. No, sir, we don't separate the cost of the different classes of equipment. I can give you the cost of our entire equipment in that regard, however.

Q. When live cattle and hogs are shipped over your road, arrived

here at Chicago for market in less than train loads, do you hold them at that point, at your point of intersection with the terminal road, until you can accumulate a train load, or do you send them immediately off to the stock yards?

A. We send them immediately to the stock yards.

939 Q. Are there any trains of live cattle and live hogs run special on your road?

A. Yes sir.

Q. In order to make the market?

A. Yes sir, we run quite a good many.

Q. Are any cars of live stock picked up on the line of your road or of its branches between the Missouri River and Chicago and brought on here on what you call pick up trains?

A. Yes sir, we pick up cars at nearly every station.

Q. Well, are those cars picked up by your through stock trains or are they picked up by what is known as local, or pick up trains?

A. They are picked up by a local train. On our line between the Missouri River between Omaha and Chicago we have four divisions—one running from Omaha to Perry, one from Perry to Marion, one from Marion to Savanna, and one from Savanna to Chicago. We star- out local pick up trains from each of these points to pick up the local shipments of stock and also the stock coming to us over the branch lines and connecting lines?

Q. Well, just there, do I understand that you have a pick up train that runs over each division?

A. Yes.

Q. Now if there be branches intersecting that division and these cars of stock are off those branches, do you stop that local

940 train and send it up the branch for the branch stock, or do you bring the branch stock down by separate engine or train?

A. We would bring the branch stock down to the junction by separate engine. We would not pull the stock—we would not delay the stock originating on the main line to send up the branch for stock. As soon as we secure enough stock to justify a special through train, we run it special from that point. For instance, if we get stock enough between Council Bluffs and Perry, which is about 127 miles this side of Council Bluffs, including the stock brought in on our Sioux City and Dakota Division and on our Des Moines Division, we will run that stock from Perry to Chicago special on fast time, and that train would pick up no stock after leaving Perry. The same arrangement would hold good with regard to the local pick up train starting from Perry and running as far as Marion. That would be a through train from Marion to Chicago.

Q. But it would be a pick up train between Perry and Marion?

A. It would be a pick up train between Perry and Marion which is a little over 100 miles.

Q. Are there any branches coming into that division?

A. Yes sir. We receive stock from the Iowa Central at Pickering and from the Des Moines, Iowa Falls & Northern at Cam-

941 bridge, and from our Des Moines Division coming in from Des Moines, and from Boone, at Madrid. And as soon as

we are able to make a fairly good tonnage train, the train is run special from that point, which is generally a division point. Occasionally we will send out a train, an engine and a crew to pick up a full train of stock at one, two, or three stations and run the train special from that point to Chicago, but most of our trains are local trains between the Missouri River and Chicago until we can secure enough tonnage to run them through on fast time.

Q. Are there any special expenses incident to the transpor-ation of live cattle and hogs on your road which are not incident to the transportation of dressed or prepared products of cattle, or hogs, or to the transportation of ordinary dead freight and if so, I wish you would state them?

A. Yes, sir, we provide special equipment for handling live stock. We are obliged to clean those stock cars occasionally. We provide stock yards, and we are obliged to clean and take care of the yards. We run our trains on a faster schedule than we do our ordinary dead freights, and consequently, with less tonnage. Quite frequently orders for stockcars placed with our superintendents are canceled after sending the cars to the point of shipment, which results in some little expense. We are obliged to either hold the cars, delay
942 them there until they are wanted or haul them back to some other point, making additional empty car mileage.

Q. When you take a train of packing house products at Omaha—there are packing houses at Omaha are there not?

A. Yes sir, South Omaha.

Q. Destined for Chicago, do you stop them along the road to pick up packing house products at other packing houses between here and Omaha if there be any?

A. To a limited extent.

Q. How many packing houses have you got between here and Omaha on your line of road?

A. Well, on a direct line we have none, but we get shipments of packing house products coming into Manilla from Sioux City, coming into Madrid from Des Moines, and coming in to Marion from Cedar Rapids.

Q. Now, would you carry those packing house products in the same train that starts from Omaha provided you did not get a full train at Omaha?

A. Yes sir.

Q. Well, from Omaha do you generally get a full train load of packing house products?

A. Very seldom.

Q. What do you fill up your trains with there?

A. We get some stock and some fruit, and failing to get a reasonable tonnage, we fill the trains up with ordinary dead freight.

943 Q. During the five years ending June 30, 1905, has the number of cattle and hogs moved over your road increased or decreased?

A. They have increased.

Q. Do you know to what extent they have increased during that period?

A. Yes sir. During the year ending June 30, 1905, the total tonnage of cattle was five hundred and—oh, you want the increase of live stock?

Q. Yes, cattle and hogs if you have got them separate.

A. In 1900, we brought in 51,475 cars of live stock—I have not separated the different stock; and in 1904, we brought in 58,833 cars.

Q. You cannot separate the cattle and hogs from horses and mules, and so forth. What was the size, capacity of tonnage of your live stock cars in 1888, and what is the size and tonnage of your present live stock cars?

A. In 1888 we had 2223 cars, 30 feet in length, and under; 250 cars, 34 feet; 1219 of these cars were 30,000 pound capacity and 1254 were 40,000 pound capacity.

In 1905, we had 341 cars, 30 feet and under; 226 cars, 34 feet; 2352 cars, 36 feet. 150 of these cars are 30,000 pounds capacity; 417 are 40,000 pounds capacity and 2352 are 60,000 pound

944 capacity.

Q. You seem to have practically abandoned the 30 foot car?

A. Yes sir.

Q. How many live stock cars did your Company have in 1888, and how many has it at the present time?

A. In 1888 we had a total of 2473 cars. At the present time we have 2919.

Q. When your movement of live cattle and hogs is greatest Eastward, in what direction is the movement of your other freight headed?

A. In the same direction.

Q. In your experience how does the cost of transportation of live cattle and live hogs, all questions considered—all conditions considered, compare with the cost of transportation of the dressed or prepared product of cattle or hogs?

A. The first is greatest.

Q. How does the cost of transporting your live cattle and hogs compare with the cost of transporting ordinary dead freight?

Mr. COWAN: I believe I will make an objection to that and let him state the articles. I am rather tired of this character of telling a thing that I think ought to be stated. If he gets it from the annual report, all a conclusion and hearsay to go ahead and say it is greater. The reports ought to say exactly what it will cost.

The COURT: I suppose he will state that before he gets

945 done with the question—give the items if you have them there.

(Question read.)

A. This is a difficult matter to answer. We estimate, however, the cost of handling live stock to be about 12 per cent. greater than the cost of handling ordinary dead freight.

The COURT: Twelve per cent.?

A. Twelve per cent.

Q. Have you the items there upon which you base that?

A. No sir, that is practically an experiment in the consumption of coal and so forth.

Mr. BAXTER:

Q. Are there any packing houses located at stations on your road between South St. Paul and Missouri River points and Chicago except the ones that you have mentioned?

A. There is a packing house located at Austin, and at Ottumwa—

Q. Are they on your main line?

A. No sir. The one at Ottumwa is on our main line between Chicago and Kansas City.

Q. Can you state the number of cars of dressed or prepared products of cattle and hogs received by your company during the year ending June 30, 1905, from packing houses located at stations on your road between St. Paul and Missouri River points on
946 the one hand and Chicago on the other?

A. 3535.

Q. Are the live cattle and hogs which are produced in the territory between the Missouri River and Chicago transported in your through live stock trains, or in local pick up trains?

A. Stock originating at local stations is handled in our local trains.

Q. Does your road furnish free transportation to persons in charge of live stock, and if so, upon what basis?

A. Yes sir, we furnish transportation for one or more cars to one man, two or more cars entitles the party to a return pass in our passenger trains.

Q. Do you use the ordinary freight caboose on your live stock trains, or what kind of a caboose do you use?

A. Where the run is during the night we furnish Drover's cabooses. They are provided with bunks, which bunks are equipped with blankets, mattresses and pillows for the accommodation of these stock men.

The COURT:

Q. What proportion of cabooses do you have of that kind?

A. We have about two hundred.

Q. Out of how many cabooses?

A. Out of a total of 493.

Q. Are all these cabooses used in the carrying of live
947 stock, of the kind you describe?

A. Our drover's cabooses are in service between here and the Mississippi River, in order to give the stock men a night's rest coming into Chicago. The stock originating at points west of the Mississippi River is generally handled in daylight, and those drover's cabooses are not essential on that part of the system.

Q. Do you furnish free transportation to persons in charge of live stock products, packing house products?

A. No sir.

Q. Do you furnish them to persons in charge of ordinary dead freight?

A. No sir.

Q. Have you prepared as a detailed exhibit to your testimony, a statement showing the names of all the stations on the portion of your road between the Missouri River and Chicago at which stock yards are located, the cost of construction of said yards and the annual cost of maintenance and operation of said yards?

A. Yes sir.

Q. Will you file it as "Exhibit No. 1" to your testimony?

A. Yes sir.

(The witness here produced a document which was marked "Simpson's Exhibit No. 1" and filed with the Court as a part of the testimony of said witness.)

946a SIMPSON EX. No. 1.

Statement of Stock Yards.

Located on the Main Lines of the C. M. & St. P. Ry. between St. Paul and Chicago, and between Sioux City, Omaha, Kansas City and Chicago, with the cost of duplicating them at the present time, together with annual cost of maintenance and operation.

Summary.

Main Line B-*w*teen St. Paul and Chicago.

	Cost to Duplicate.	Annual Cost of Maintenance and Operation.
From St. Paul to La Crosse.....	4479 00	559 87
From La Crosse to Milwaukee.....	22022 58	2752 72
From Milwaukee to Chicago.....	4475 00	559 37
	30976 58	3871 96

Main Line Between Sioux City, Omaha, Kansas City and Chicago.

From Sioux City to Manilla.....	14859 00	1857 38
From Omaha to Manilla.....	6050 00	756 25
From Manilla to Sabula.....	28755 00	3594 37
From Kansas City to Savanna.....	39369 00	4921 13
From Savanna to Chicago.....	63985 00	7998 23
	153018 00	19127 36
From St. Paul to Chicago.....	30967 58	3871 96
From Sioux City, Omaha, & Kansas City to Chicago	153018 00	19127 36
	183985 58	22999 32

C. F. Loweth Engineer and Supt. of B. & B.
Chicago, 9/13-05.

948 Cross-examination by Mr. COWAN:

Q. Mr. Simpson, in that statement, did you cause to be put down the detail of the cost against each stock yard so that we could seek other evidence to see whether your cost is correct or not?

A. Yes sir. I think that statement showed the cost of each yard.

Q. No, maintaining each yard.

A. How is that?

Q. Does it show the cost of maintaining the yard at each place?

A. Oh, no sir.

Q. Will you please state in your examination in getting these figures what it cost you to maintain your yards at some of your principal shipping points in Iowa, so we can investigate it and see whether it is correct or not?

A. Yes sir.

Q. Name one of them?

A. I haven't that information. I can get it.

Q. How much did you estimate it cost you to maintain stock yards?

A. About 12½ per cent.

Q. Of the value of the yard?

A. Yes sir.

Q. And what does the company do?

A. I beg pardon?

Q. What do you do that costs that much money there in maintenance?

949 A. Repair the yards, keep the yards in repair, repair the fences and the sheds.

Q. Who made that estimate?

A. Our Bridge & Building Department.

Q. Will you please name some one point, some half dozen prominent shipping points out in Iowa on your line where you have got such yards, and state what the yards are estimated to be worth at each place, and what it costs you per year to maintain those yards?

A. Yes sir. At Hornick on our Sioux City and Dakota Division, the estimated cost, or the estimated value of the yards, is $1100. The cost of maintenance and operation, $137.50.

Q. The cost of operation and maintenance?

A. Yes sir.

Q. You have been talking about maintenance all of the time?

A. That includes the cleaning of the stock yards and the care of the yards.

Q. Yes sir, and you have charged in the item of the cost of the loading somewhere, or some of the witnesses have, the expense of loading and maintaining men about your yards.

A. I have not.

Q. I don't mean you have, but I am talking about the witnesses for the defendants.

950 A. At Mapleton, Iowa, also on our Sioux City and Dakota Division, the estimated value of the yards is $1875; the cost of operation and maintenance, $234.38.

Q. Will you state how much of that is operation and how much for cost of repairs?

A. That I am unable to give.

Q. What department of the road—I was not in when you were first questioned, and I have forgotten—I have examined you before too—what department are you in?

A. Transportation.

Q. Do you personally know what it costs to maintain one of these good stock yards of four or five pens and what the items of cost are to maintain it. I am talking now about repairs.

A. No sir, I only know from the figures given me by our Bridge & Building Department.

Q. Well those figures do not point out what it is that you do to the yards in the way of repairs that you estimate at 12½ per cent. deterioration?

A. That is for the repair of the yards and the repairs necessary to keep the yards in good order.

Q. Now I am trying to get at just what those repairs are, is it nailing the planks that are knocked off?

A. Yes sir.

Q. And how much do you believe from your knowledge of railroading and stock yards that it costs you a year to keep the planks that get knocked off nailed on one of those yards?

951 A. That depends on the class of stock we are handling. Take some of the Texas stock for instance, and they would knock off a good many boards.

Q. I know. They testified that as to Texas down there and I proved that it didn't cost Five Dollars a year at every stock yard in the country.

A. Well, you ought to know, Judge.

Q. Will you name some of the stock yards where you know your company has expended $5 a year in nailing up boards?

A. No sir, I cannot.

Q. Can you name a stock yard where they expended $5 in making any other sort of repairs in a year?

A. No sir, I cannot. I am only able to speak from information given me.

Q. I know. I am trying to get whether these are facts or not, or whether they are from wild guesses. Now, Mr. Simpson, do you believe from your knowledge of stock yards that it would cost you $10 a year to keep the planks nailed on and the hinges fastened on the gates and such repairs as are necessary to these chutes on any of your country stock yards on your line in Iowa?

A. Yes sir, I should think it would. The lumber used in the construction of those yards will deteriorate, and we are obliged to replace the fences and the sheds and the water troughs and the feed

952 racks, and the chutes and everything in connection with the yards.

Q. How often?

A. I should think the natural life of a yard would not be over fifteen years.

Q. Well suppose the natural life of the yards is fifteen years, don't you know that it is an insignificant expense to keep the boards nailed on and such other like repairs as you do at one of these little cpuntry stock yards?

A. Well, no, the expense is quite an item, and in addition, the expense of cleaning the yards is also quite an item, taking care of the wells, and everything in connection with the yards.

Q. Personally, how often do you know that these yards are cleaned?

A. Personally I never saw one cleaned.

Q. Leaving out somebody's figures.

A. Personally I never saw one cleaned in my life.

Q. Do you think you can find a shipper in here, there are a great many of them here in the markets every day, that has lived around one of those yards, who has ever seen one cleaned?

A. I presume there are a good many.

Q. Now, you said awhile ago that your freight trains, your dead freight trains have more freight in them than your live stock trains. Do you know that to be a fact?

A. Yes sir.

953 Q. How do you know it?

A. I know it from the reports which we received.

Q. Whose reports?

A. Reports made to my office by the conductors handling those trains, we require each——

Q. Now, will you bring down here with you some of those conductor's books, the originals, and let us see whether those reports show that or not?

A. Yes sir.

Q. You will?

A. Yes sir.

Q. Mr. Simpson, did you assist in making out a statement for Mr. Calkin's that I requested to be filed in the Texas case showing the consist of your trains out of Savanna eastbound for the first fifteen days of October, and the first fifteen days of February?

A. I think I did.

Q. Don't you know it is a fact that you all testified in that case the same as you do here, that your stock trains were lighter trains, and carried a less number of cars until that statement was made, and that the statement showed exactly the reverse.

Mr. LYNDE: I object to that. Let the statement be produced.

Mr. COWAN: I want to know if this witness doesn't know that is a fact.

Mr. SEVERANCE: Produce the statement and show it to him.

954 Mr. COWAN: I haven't got the statement but I can ask him about it. He helped make it.

The COURT: The objection is overruled.

Mr. COWAN:

Q. Isn't that a fact that that statement showed that?

A. I don't remember that statement. I gave Mr. Calkins some information, I don't remember just what it was at the present time.

Q. Where do you keep these train conductor's books?

A. The conductors keep the books themselves.

Q. Don't they file them as a record in your offices?

A. No sir.

Q. Do you mean that you don't keep them, that the conductor don't file the books with you, and you file them away in the archives?

A. No sir, he does not.

Q. What becomes of the original books which he keeps?

A. Each conductor keeps his own books so long as the conductor is in the service of the company.

Q. Well doesn't he make any report of the number of cars in each train and the consist of it?

A. Yes sir.

Q. And where is that filed?

A. That is filed in the Car Accountant&s office.

Q. And it was from that that you made up these statements if you had anything to do with them?

955 A. Yes sir.

Q. Will you produce those reports of trains, of trains of live stock and dead freight eastbound out of Savanna for—from October 1st to 15th inclusive, in 1904, and February 1st to 15th inclusive, 1904?

A. February 1st to 15th, 1905 and October 1st to 15th, 1904?

Q. Yes sir, eastbound out of Savanna?

A. Yes sir.

Q. Now, Mr. Simpson you stated it cost you 12 per cent. more, or 12½ per cent. more, or rather you stated that you estimated the cost that much more to run live stock than it does other freight, is it not a fact that when you have a large tonnage of a commodity on a railroad you can handle that tonnage cheaper than you can a distributed and small tonnage per car as a rule, isn't that true?

A. I should say it was.

Mr. SEVERANCE: Speak a little louder.

A. I should say we can handle a large tonnage more economically than we could a small tonnage.

Mr. COWAN:

Q. Isn't it a fact that when that tonnage comes on a part of your road where there is a heavy density of traffic that you can handle it cheaper than you can on parts of the road where there is not such a heavy density of traffic, per unit I mean, per car?

956 A. Do you refer to full car loads or less than car loads?

Q. No, take a car load of traffic, that you can handle it cheaper per car when you can handle 40 trains a day than you can where you have got ten trains a day, the total expense of doing the business?

A. Ordinarily, yes sir.
Q. How is that?
A. As a rule, yes. Of course, there is a maximum.
Q. There is a maximum that can be done on a single track road?
A. Yes sir.
Q. Or two tracks for that matter?
A. Yes sir.
Q. As you increase the volume of your traffic on a given division of the railroad here in this western country, increase the number of cars that you are handling per train, don't you decrease the proportionate cost per car when you are doing that?
A. I should say yes.
Q. How many cars of live stock do you handle in a train in your judgment which you bring into Chicago here from the time you get the train made up, you start out in Iowa and you make up a train over there, say in central Iowa, how many cars do you run per train?
A. We figure on a tonnage basis. We will handle between Savanna and Chicago—Savanna is on the Mississippi River,
957 that is our Eastern Division, we will handle from 950 to 1200 tons, according to the time we leave Savanna. If the train leaves there late, we are obliged to reduce the tonnage in order to reach the market on time the following morning.
Q. Isn't it a fact that the engineers simply run the same engine all the time, each engineer stays with his engine with rare exceptions?
A. As a rule.
Q. As a rule that is true. Now doesn't he pull dead freight trains when it comes around his time to be called to go out, and pull live stock trains when it comes at his time to go out?
A. He takes his turn, yes sir.
Q. There is no such thing as having one set of engines to pull live stock trains and another set of engines to pull dead freight trains, is there?
A. No sir.
Q. You have got a class of engines which work out of those Divisions or on the main line, that pulls any sort of train that you happen to want pulled, haven't you?
A. Yes sir, we generally assign our best power to our main lines.
Q. How many loaded cars on the average on your line of road makes the average of train, do you happen to recollect?
A. It depends on what division it is.
958 Q. Well, take your system, take your system, the average load?
A. The average for all divisions.
Q. Yes sir, of loaded cars?
A. I could not say.
Q. If you happen to recollect—I have the annual report here that shows, if you don't recollect.
A. I think our annual report gives that.
Q. Is it not a fact that live stock is moved longer distances than the average of freight on your road, isn't the live stock movement

very much more than the amount of the average tonnage on your road?

A. I could not say.

Q. What would you say would be probably the average distance hauled of the cars of live stock which your road moves?

A. The average distance?

Q. The average distance hauled?

A. I could not say as to that. We haul stock all the way from 25 to 800 miles.

Q. You haul over 800 miles from Evarts?

A. Yes sir.

Q. South Dakota?

A. Yes sir.

Q. Then you pick up all the way through the State of Iowa, a four or five hundred mile haul in?

A. Yes sir.

Q. And you get the great bulk of live stock from points west of the Mississippi River, don't you?

A. No sir.

959 Q. How is that, points west of the Mississippi River?

A. Only excepting the range stock.

Q. You thought I said "Missouri," I said Mississippi?

A. Oh, Mississippi, yes sir.

Q. How far is it from here to the Mississippi River on your line?

A. The nearest point is 138 miles to Savanna.

Q. So that you know that you haul practically all your live stock at least 138 miles?

A. All originating west of the River, yes sir.

Q. And a great deal of it 400 miles?

A. Yes sir.

Q. And a very considerable portion of it 600 miles and 700 miles?

A. No, only that originating, coming to us at the Missouri River and at Evarts.

Q. All that you move out of Kansas City and Missouri River points, you haul an average of 500 miles, from Evarts over 800 miles?

A. Approximately, yes sir.

Q. Now, isn't it a fact that the traffic that moves long distances is always considered desirable traffic?

A. Not always.

Q. Well, it is unless the rate of freight is extremely low, isn't it?

A. Yes sir.

Q. You said that live stock amounted to 4.5 per cent. of your total tonnage, that means of the gross tons handled?

A. Yes sir.

960 Q. Now, have you got any figures that show how large a proportion the live stock ton miles is to your total ton mileage?

A. I have not with me, no sir.

Q. But it would be a very much greater proportion, wouldn't it?

A. I could not say as to that.

Q. The average distance a ton is hauled on your system of road is about 183 miles, isn't it?

A. I could not say; I think our annual statement shows that.

Q. For 1905, it is 175.14 miles, the average miles each ton of revenue freight is carried?

A. Yes sir.

Q. Isn't it a fact that live stock pays more per car mile on your line of road, more revenue per car mile than the average of all your freight per loaded car mile?

A. That is a traffic matter, Judge; I am not up in traffic.

Q. I don't know who to ask these questions of, one fellow says he knows about one thing and one about another. I thought you said you were in Transportation Department, does that mean operating.

A. Operating, yes sir.

Q. Operating Department, have you got the figures which enable you to testify as a fact what amount of coal it costs more to move a live stock train 20 miles an hour than it does a dead freight train 10 or 12 miles an hour?

A. Yes sir, I can furnish that information.

Q. Do you now recall approximately what it is?

961 A. No sir.

Q. Now, how can you get at that information, how do you keep it?

A. Through our Statistical Department.

Q. Your Statistical Department?

A. We keep, our Statistical Department keeps a record of all the coal burned by each engine, of the oil used on each engine, the number of tons hauled, and the number of ton miles.

Q. I know they keep it averaged, but do they keep it for each engine?

A. Yes sir.

Q. Each engine separately?

A. Yes sir.

Q. Now I wish you would make a statement from that statistical report that we can verify as being correct, that shows what the coal consumed is on a live stock train of 30 cars and a dead freight train of 30 loaded cars from Savanna to Chicago, taking the oil, fuel and the coal, and see what the comparison is and let us get down to some actual figures about this extra cost of transportation.

A. All right.

Q. Now, you stated Mr. Simpson, that you selected 500 cars at random that showed 40,000 pounds per car.

A. Yes sir.

Q. Isn't that very much above the average of your loaded cars?

A. I think not.

Q. How much does your grain average?

962 A. Well, from 60,000 to 80,000 pounds.

Q. How much does your lumber average?

A. I don't know what the average would be for our lumber?

Q. If you select out, take out coal, grain, lumber, sand stone,

lime and cement, is it not a fact that your live stock tonnage will average greater than your loaded car mileage on the balance of the freight?

A. I don't think it would.

Q. Do you now recall what the average ton loading is of cars, loaded cars?

A. Live stock?

Q. No, your average loaded car tonnage for your system?

A. No.

Q. 13.73 tons?

A. That includes merchandise however.

Q. Certainly, it includes local less than car loads, in cars that are loaded?

A. Yes sir.

Q. Do you know how much the average earnings per ton per mile is on the average of all your freight, including local and less than car loads?

A. I could not say, that is a matter of record.

Q. You said that it was said that stock cars deteriorated faster than other cars, is that not embraced in the Repair Account, you repair the parts that get broken, if the floor rots out, as it will in course of time, and you repair that, it is all in your account for repairs and renewals of cars?

963 A. We do not separate that from the other classes of equipment. I stated that it was generally conceded by railway men that stock cars deteriorated faster than box cars, or coal cars or flat cars. That is on account of the character of the freight they have to handle. The moisture in the cars naturally rots out the floor and sills faster than commodities handled in other classes of equipment.

Q. You have spoken about cleaning your cars. Have you any contract with any one to clean your cars?

A. Yes sir, we have a contract at the present time at Sabula, Iowa.

Q. And what is that contract?

A. It is 25 cents a car.

Q. Twenty five cents per car?

A. That is the actual rate.

Q. Mr. Simpson, isn't it a fact that 25 cents a car is regarded as about the proper charge for cleaning cars?

A. For the labor of cleaning, I should say at this time of year is a fair price. It is approximately what it actually costs.

Q. The fellow isn't losing money on the contract is he?

A. I don't imagine he is.

Q. Do you know how many cars a man will clean in a day?

A. Well, it depends on the time of year. You can clean

964 more cars in July than you can in January.

Q. Well, the average for the year, what would you say?

A. Oh, I should say in ordinary weather when the manure is not frozen, one man could clean, if the cars are not too dirty, seven or eight cars a day.

Q. Can't he do better than that?

A. Not very much, I don't think.

Q. Now, isn't it a fact that these cars are used over and over again without cleaning?

A. Yes sir.

Q. And when that is done, there is just a little sand thrown in, or additional hay and straw?

A. They are not cleaned every trip, we could not hold them for that purpose, we could not delay them.

Q. You delivered 59,000 cars of live stock in Chicago during 1904, and 60,000 cars in 1903. What proportion of those cars do you believe, you honestly believe were cleaned on every trip?

A. On every trip?

Q. Yes.

A. We don't pretend to clean them on every trip.

Q. I know you don't; I thought maybe you knew the proportion.

A. Oh, not any of them.

Q. Couldn't you find that out Mr. Simpson, by ascertaining how much at 25 cents is paid out in a year for cleaning cars and how many cars purported to be cleaned?

965 A. I could not say. We clean at a large number of points. Our section men do a good deal of cleaning.

Q. Did you ever happen to be at a stock yards when cars came in and had to be cleaned, and saw how long it took a gang of section men to clean bunch of stock cars?

A. No, I don't think I have.

Q. Now, in regard to the bedding of cars, isn't it a fact that much more than half of the cars shipped from Iowa are bedded with hay and straw that the shipper furnishes himself, that don't cost the company a cent?

A. I could not say what proportion are bedded with hay or straw or what proportion bedded with sand or gravel.

Q. On shipments from down in Southwestern Iowa, and from Missouri this side of Kansas City, isn't it a fact that you actually charge the shipper when you furnish him any sand or bedding in the car?

A. I think we make no charge for sand or gravel.

Q. Now if shipments west of the Missouri River—Well, I believe you don't extend west, but in your shipments from Evarts, haven't you got in your published tariff that if the shipper furnishes bedding and puts it in, you allow him 25 cents per car?

A. I could not say.

Q. You said that the product moved more uniformly than the live stock?

A. Yes sir.

966 Q. How could that be the case when the live stock makes the product?

A. The product is moved, the live stock coming into Chicago and slaughtered is moved East—I refer simply to the movement of product over our own road.

Q. Now, you move from the Missouri River, from Omaha say, don't the cattle have to come in there to be slaughtered, and hogs?

A. Yes sir.
Q. And it takes them to make the product?
A. Yes sir.
Q. And isn't there a constant movement in and a constant movement out?
A. Yes sir.
Q. Have you any sort of traffic on your line of road that furnishes you anything like the regularity of traffic that your live stock furnishes, month by month?
A. Why, yes, we have commodities that are more regular than the live stock.
Q. Now, what is that, merchandise?
A. Merchandise, for instance, lumber.
Q. Merchandise, and your merchandise is principally in less than car loads?
A. Yes sir, and lumber and coal—well, I will except coal.

An adjournment was here taken until the following day, Tuesday, September 26, 1905, at 10 o'clock a. m.

967 SEPTEMBER 26, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon GEORGE E. SIMPSON, resumed the stand for cross-examination by Mr. Cowan, and testified as follows:

Q. At the adjournment you were asked to secure a statement relative to the consumption of coal between Savanna and Chicago. Have you examined your records with respect to the matter?
A. No sir, those records are kept in Milwaukee and the statement you asked for called for the comparative cost between handling 30 cars of stock and 30 cars of dead freight. We would have to make the test with two 30-car trains in order to arrive at the cost for consumption of coal as between the two trains.
Q. Well, what is your position with respect to having knowledge, of the relative coal consumption? Do you obtain knowledge in the position you hold, of the coal consumption in the running of trains?
A. Only from our statistical department. We receive monthly reports showing the amount of coal, oil and waste and other supplies used by each engine on the various divisions.
968 Q. That is by the month?
A. That is by the month.
Q. So you haven't it by the train, you haven't the statistics by the train?
A. That information is prepared from such statistics as I understand.
Q. Are there not two factors which bear a direct relation to the coal consumed; one, the weight behind the engine and the other, the speed at which you run?
A. Naturally they depend upon the rate of speed and the tonnage hauled.

Q. How far is it from Savanna to Chicago?
A. 138 miles.
Q. At 12 miles an hour that would take about 11 hours and a half, or eleven hours, say, for your dead freight trains?
A. Yes sir, about that.
Q. At 10 miles an hour it would take 13 hours and more?
A. 13½.
Q. Almost 14. At what point in the time of train crews do you begin to pay over-time? How many hours for that division without over-time?
A. I cannot say.
Q. You don't know what time your over-time begins? Do you know approximately?
A. I could not say, I think it is 10 hours.
Q. That is customary, is it not, 10 hours' time on a division?
A. I am under the impression that it is, yes sir, although I cannot say positively.

969 Q. Isn't that made upon the basis that 10 hours would be sufficient ordinarily to carry a train over the division?

A. No sir, some divisions are shorter than others. We have divisions of 100 miles and some less.
Q. Have you got some schedule trains that run over that division?
A. Yes sir, we have schedule trains on all of our divisions.
Q. You have a time-card that the conductors use that shows the schedule of all your schedule trains, haven't you?
A. Yes sir.
Q. I would like to have you furnish that to us.
A. Of each division?
Q. No sir, just take that division, the division of your company out of——
A. Between Chicago and Savanna?
Q. Yes. Take the division from Savanna to Chicago. Are you certain that your statement that your freight trains other than live stock trains and dressed meat trains run at a speed of 10 or 12 miles an hour, are you certain that that is correct?
A. They often do, yes sir.
Q. If 10 hours is the time that you begin over-time then you have to pay over-time in all cases of that character on that division?
A. Yes sir.
Q. And you pay no over-time on the cattle trains because you run them within 10 hours?
A. As a rule.

970 Q. Is it not a fact that you have schedule trains that run through carrying the fast freight from Omaha to Chicago and in the opposite direction?

A. We have schedule trains west bound through from Chicago to Council Bluffs and Omaha. We have no through schedule trains east bound, however. We have certain schedules for trains leaving South Omaha at noon and Council Bluffs in the evening which are scheduled up to the Mississippi river, up to Savanna. From there we run them as extra trains.

Q. About what is the schedule of those trains from Omaha to Savanna?

A. They vary. I have not——

Q. Well, you will hand up your time-card showing that, also?

A. That will show, yes sir.

Q. Isn't it a fact that the contention that is made of the extraordinary speed of the live stock train and the extraordinary slow time of the dead freight train, is immensely magnified in both cases, for the purpose of this case?

A. I don't think it is. I know we are obliged to run our stock trains at a high rate of speed very often in order to get them into the stock yards in time for the market.

Q. You have no train that carries live stock that is scheduled from Western Iowa that arrives here in less time than 22 hours, have you?

A. From what point?

Q. Say some point in western Iowa 400 miles from Chicago.

971 A. In less than 22 hours.

Q. Yes.

A. Well, no, not at that distance, I don't think.

Q. You have no train that brings live stock from the Missouri river to Chicago in less than 24 hours, have you?

A. No sir.

Q. Isn't it a fact that the live stock which you bring through from Kansas City or Omaha, that would be intended, for example, for Monday's market, would be loaded out there on Saturday night or Saturday evening or do you know?

A. As a rule it would be, although we often get stock on our noon meat train, a few cars which we handle on the schedule of 24 hours.

Q. Your meat train is on a 24-hour schedule?

A. Yes sir.

Q. Do you not know as a matter of fact that the live stock shippers along your road prefer it so and are anxious for their cars of live stock to be put onto your meat trains because they are the faster trains coming into Chicago?

A. I do not know that they do.

Q. How is that?

A. I don't know that they do. We don't pick up any local stock with our fast meat trains.

Q. Do you always have a full train of meat?

A. No sir.

Q. You fill it out with something?

972 A. Yes, we generally get fruit, occasionally, a few cars of stock and then we get meat at our junction points coming in from Sioux City, Des Moines and Cedar Rapids.

Q. Do you dispute the proportion or the statement that the live stock shippers are anxious to get hooked onto that meat train when they can?

A. I don't dispute it, no sir.

Q. Do you contend that the running of the live stock trains interferes with the o-eration of your meat train and that you side track them to let the live stock trains pass?

A. Occasionally we are obliged to give the stock the preference over our meat trains.

Q. Just what do you mean by "preference"? When the two are due to leave a division point at the same time, you then give the live stock train preference or do you stop the meat train on the road to let the live stock train run around it?

A. If we were late coming into Savanna in the evening, say 11 or 12 o'clock at night, if we have meat coming in at that time and stock due about the same time, we would start our stock trains out ahead of the meat train in order to get into the market.

Q. Now, is that not the only character of preference that you know of that is given to the stock train over the meat trains?

A. We very seldom side track a meat train between the Missouri river or Kansas City and Savanna in order to let a stock train by, because they both run practically at the same rate of speed.

973 Q. In the transportation service of meat and the products of meat and live stock, between the Missouri river and Chicago, is it not a fact that there is competition at least to secure the traffic with the several other lines that reach from Chicago to the same point, which try to secure all the traffic they can?

A. I presume there is more or less competition although I am not in the Traffic Department and I could not answer that question intelligently. I am not soliciting freight, I am handling it after they secure it.

Q. Well, the operating department are the people that try to get the business and handle it, too. Ain't everybody engaged in that?

A. The operating department don't solicit business, no sir.

Q. I am not talking about soliciting. Do you not know as a railroad man engaged in the business that each railroad wants all the business it can get?

A. If it is profitable, yes sir.

Q. In order to get it and keep it, you each perform about the same service, is that not true?

A. It is my office to give the business good service after it is secured by the traffic department.

Q. Well, do you not know the character of service that your competitors are giving?

A. In a general way, yes sir.

Q. And you attempt to give substantially the same service?

974 A. Or better.

Q. How is that?

A. Or better.

Q. And that applies to both the live stock and packing house product and dressed meat?

A. It applies to all classes of traffic.

Q. What percentage of say your total freight carried from the Missouri river east is carried on the trains which have the fast freight schedules and what proportion on these slow trains that there has been so much said about?

A. We carry all of our stock and meat on our two regular sched-

ule trains, one leaving the Missouri river at noon and one in the evening about 7 o'clock.

Q. You don't always have a load on these trains if you confine it to dressed meat actually?

A. Not always, no sir.

Q. And you fill it out with other freight?

A. If we cannot secure enough tonnage at the junction points, we do.

Q. What do you mean, if you cannot secure freight at the junction points. Those points further east?

A. East of the Missouri river, for instance Manila, where we receive our Sioux City meat and stock. We would fill out those trains at that point.

Q. So you do not always run a full train out of Omaha?

A. Not always, no sir.

975 Q. And the same applies to Kansas City?

A. Yes sir.

Q. But you depend upon getting the same character of freight, either packing house products, and dressed meats or live stock, at some junction points?

A. As far as possible.

Q. What is the objection to putting live stock that come off of one of your branch lines at some junction point, on that train?

A. There are no objections if it can be handled and it don't cause too much delay.

Q. If the stock is already there it don't cause much delay to put it in the train?

A. We would take it, yes sir.

Q. Isn't it a fact that in those trains you also carry in the course of your business, a lot of grain, empties and various classes of traffic that you have ready to go through?

A. If we have not high class freight we fill up with dead freight tonnage.

Q. Do you have local trains that do local work?

A. Yes sir.

Q. Getting the stuff out from Kansas City to Omaha and distributing it to the various stations over the division?

A. We have local trains on all our divisions.

Q. You mean local trains—How many local trains do you run out of Kansas City and Omaha per day, east bound?

A. We have one regular schedule local train.

976 Q. At each place?

A. Yes sir.

Q. That local train gets over the first division that day?

A. Yes sir.

Q. It is intended to do that without making over-time?

A. Yes sir.

Q. That local train picks up live stock that happens to be loaded for shipment at the different stations?

A. No, we generally start an extra local train to pick up the live stock. I refer to the schedule local train which we term our way-

freight train, carrying merchandise and distributing empties and picking up grain and other freight, other dead freight.

Q. They don't pick up live stock?

A. Not as a rule, not on our main line. They do on our branches.

Q. And when you have got live stock to ship, you send out an extra local to pick it up?

A. Yes sir, on our main lines.

Q. And they pick up these and assemble them at the division points?

A. They center them at the division points and as far as possible make a through train from that point.

Q. What are the items of expense of that local extra, picking up live stock for example, from Council Bluffs east to your first division point?

A. Well, we are obliged to start the train out light. It depends on the number of cars that are reported to be picked
977 up at the different stations. The expense of switching those cars into the train, watering the stock and running the train out with light tonnage, lighter than they would take if they had the average train.

Q. I am talking about the expenses.

A. That enters into it.

Q. It is less expensive to run your train out light, as far as it runs, than it would be if it were loaded, wouldn't it?

A. For that distance, although the switching——

Q. I am going to ask about that. You start that train out from Council Bluffs and you run it light with an engine and a caboose. Your coal consumption is very much less on that run than it would be hauling a train, isn't it?

A. Up to the next station it is.

Q. And your pay for your crew is exactly the same?

A. Yes sir.

Q. And the wear and tear of a train is not present in that sort of a run, it is only the wear and tear on the engine and the caboose?

A. That is all.

Q. The wear and tear on your track is not the same as it would be in the case of the train, would it?

A. No sir.

Q. Now, we will say that you stop at a station out 10 miles and you pick up three cars. To do that your engine cuts loose
978 from the caboose and runs up to the switch, backs in and picks those cars up and takes them up to the caboose, don't it?

A. Yes sir.

Q. Is it not a fact, Mr. Simpson, that it is less expensive than it would have been to have hauled those three cars the 10 miles from the Missouri river to that station?

A. No, I don't think it is.

Q. On what principle can you claim that it costs as much to go in there and switch those three cars out as it would to haul those three cars ten miles?

A. The consumption of coal is greater, and oftentimes the payment of overtime to our train and engine men.

Q. Do you claim that it costs you more to cut the engine loose from the caboose, back into the switch and get those cars and switch them into the train, that it takes more coal to do that than it would to have hauled those cars, ten miles?

A. Yes sir.

Q. Do you swear to that?

A. I swear that it costs more to run a pick-up train than a through train.

Q. Well, we are not talking about that. We are getting into the details of it now. I am asking about those three cars that we are assuming you picked up at the first station. You testify that it would cost you more money for consumption of fuel to back in and get those cars and bring them into the train than it would to carry them ten miles?

A. I could not say exactly as to that.

979 Q. Don't you know that it would be preposterous, Mr. Simpson?

A. Well, it depends on the amount of switching that would be required to get at those three cars.

Q. I am simply assuming that you back in and get them and pull them out?

A. If they happen to be head-end cars it would probably cost less to pick those cars up than it would to run those three cars ten miles.

Q. Well, make the switching as long as you please——

Mr. DAWES: Well, call it an eight mile switch.

Mr. COWAN: There never was such a thing.

Q. You run these three cars on to the next station, ten miles and get three more cars?

A. Yes sir.

Q. And the same thing is done?

A. Yes sir.

Q. Don't you know as an operating man that it costs you less in the expenditure of fuel to get those three cars out of the siding, and put them into the train than it would cost to haul the through cars ten miles?

A. No sir, I don't. You must understand that those three cars are not always the head three cars. Often times we are obliged to handle 40 or 50 cars in order to get those 3 cars out into the train.

Q. The three loaded cars.

A. Yes sir.

Q. Are you certain that that is true?

A. It is an every day occurrence.

Q. Do you mean the loaded live stock cars? How do they

980 ever get them loaded?

A. I did not know that you were talking of live stock. I thought you were speaking of dead freight.

Q. I am talking about live stock. I am talking about the expense of running your extra local trains to pick up live stock?

A. We were talking about our local way-freight train.

Q. No, no, I am talking about live stock. Now, since you understand that I mean live stock, do you claim that it costs you an expenditure of more coal to get them out and put them into the train, than it would to haul them ten miles?

A. I should say if these cars were convenient to pick up that the expense would probably be a little less although you could not demonstrate that without an actual test.

Q. The less the engine pulls, the less the consumption of fuel, is that not true?

A. Naturally, but if——

Q. Well, then——

Mr. SEVERANCE: Let him finish his answer.

A. (Continued.) It consumes coal to do switching, you must understand, as well as hauling tonnage.

Mr. COWAN:

Q. Why does it consume coal to do switching?

A. Because you are pulling tonnage. Every time you move your engine you are consuming more or less fuel.

Q. And the more you move your engine the more fuel you
981 are consuming?

A. Naturally.

Q. And the more weight you pull with the engine, the more fuel you are consuming?

A. Yes, that is at a given speed.

Q. Now, Mr. Simpson, proceed to the next station, we will assume that it is ten miles further, and that would be 30 miles from Omaha and there you get ten cars and switch them into the train. Isn't it a great deal less expensive to take those ten cars out and put them into the train than it would have been to have hauled them from the Missouri river up to that point?

A. It may be at that point, but if you will start out at the Missouri river with 30 cars and run that train right through, or if you will start out at the Missouri river with an engine and caboose and pick up 30 cars at ten different stations, my experience has been that it would cost you more to pick up those 30 cars at ten different stations than it would to haul 30 cars through from the Missouri river to the next division point.

Q. You say your experience has been that?

A. Yes sir.

Q. Awhile ago when I asked you what the relative consumption of fuel was in a train of live stock and in a train of dressed meat or dead freight, you said you could not tell without a test. Did you ever test that proposition?

A. Yes, we did with a given number of cars.

982 Q. Well, did you ever make a test of the cost of running one of those extras out of the Missouri river and picking up a train of live stock, compared to hauling a full train of live stock to the division point?

A. Yes, we have made that test.

Q. When did you make it?
A. It has been within the last year.
Q. Who were the parties that did it?
A. Our mechanical engineer, Mr. Harvey.
Q. Where is he?
A. At Milwaukee.
Q. You were not present when the test was made?
A. No sir.
Q. You don't have personal knowledge of what it cost?
A. I can get that information.
Q. Well, why not get me the man who claims to know?
A. I can do that.
Mr. DAWES: Do you want him as a witness?
Mr. COWAN: I do if they are going to claim that it costs more to run this train.
Q. Were you present at the test that you speak of, that the mechanical engineer made?
A. I was not.
Q. On what division was that made, what line?
A. It was made on several divisions. I could not say now without seeing the report. I had a statement but I have not it with me.
983 Q. What sort of trains were they?
A. They were our through dead freight trains, our through stock train, and our through meat train, and our local dead freight, stock and meat trains.
Q. You have not at present the definite figures to state what the relative costs were?
A. No sir.
Q. Do you claim that it costs you more per train mile to run your live stock train than it does your dressed meat and packing house product train per train mile?
A. No sir, I don't make that claim.
Q. If you haul a train of a thousand tons and another one of 800 tons, at the same rat- of speed, what in your opinion would be the difference in the coal consumption per hundred miles?
A. It would be cheaper to haul the 800 tons.
Q. By how much?
A. Two tenths.
Q. 20 per cent.?
A. As far as the consumption of coal is concerned.
Q. You mean that would only be as to the consumption of coal?
A. Yes sir.
Q. All the other items of train service and engine service would be practically the same, would they not?
A. Yes sir.
Q. The oil and fuel and waste per mile run, is that much different whether it is run fast or slow?
984 A. There is a difference.
Q. How is that?
A. There is a difference.

Q. But in cents it would be very slight, would it not?

A. Well, although there is a difference, it is covered by the rate of speed and the tonnage hauled.

Q. But the proportion of oil and waste, is so small and the other items of expense, that it would practically be nominal?

A. In one train.

Q. It would take more oil and waste for a train of a thousand tons than it would for the 800 tons?

A. Yes sir.

Q. Is it not a fact that a heavily loaded car, one of your grain cars which on your road averages 57,000 pounds, or did in 1902, the average grain load with the weight of the car will injure your track more than the live stock car that weighs one third less?

A. Well, that would depend on the rate of speed the two cars were run.

Q. Well, suppose it is at the same rate of speed.

A. I should say the heavier the car the more it would wear out the tracks and the rails.

Mr. DAWES: Do you say anything about speed in that connection?

A. He said the same rate of speed.

Mr. COWAN:

985 Q. Now have you in your mind a definite opinion resulting from experience as to the difference in cost per mile or per hundred miles of a train, one run at 20 miles an hour and one run at 25 miles an hour?

A. No, I have not those figures in my mind although they are a matter of record. I could produce the figures showing the comparative cost.

Q. Isn't it a fact that in heavy tonnage in the operation of a railroad, that you have to get your train over the road and out of the way and you can do that better than you can to be eternally side tracking these trains for others, and passing them going in the same direction?

A. That depends altogether on circumstances. We occasionally get a dead freight train mixed up with our stock trains, and if it is not convenient to side track it, we will run it at a higher rate of speed in order to get it out of the way of the stock train, but as a rule our dead freight trains are side tracked to let our stock and meat trains pass.

Q. What is the principal expense in the wear and tear of a train in running over say, a division of 100 miles?

A. The wear and tear of the equipment and track.

Q. Now, isn't there more wear and tear on the stopping and starting, on the equipment, a great deal more than there is in the steady running?

A. Yes, I should say there was.

986 Q. Do you know what operating men consider the relative expense of stopping and starting to the actual running?

A. We know what it costs to stop and start our train of given tonnage.

Q. Tell us what that is?

A. I could not say now, I have not those statistics with me.

Q. Is it a greater or less expense in the way of expenses for repairs than that which is incurred in the actual running between stopping and starting?

A. It costs more to stop a train than it does to keep it running.

Q. That is because in setting the brakes you get the wear on the wheels and you get the wear on the tracks?

A. Yes sir.

Q. And you may set it too tight, tight enough to slide the wheels and splinter your track?

A. Yes, and often times you will pull out a draw-bar.

Q. And the injury to freight in the car is done by the stopping and starting?

A. That is what increases the cost of our local trains.

Q. When you start a stock train out from one of your divisions, after you have got a full train, for what purpose need that stock train stop if other trains are not given preference over it?

A. A full train of stock?

Q. Yes sir?

A. Well, only for coal and water and occasionally to shower the stock if it is hogs.

987 Q. Well, that only applies in the hot summer months?

A. Yes sir.

Q. Now, isn't it a fact that you run that train over a division of 100 miles with less wear and tear on the equipment than you would a local train, no matter how slow it runs that stops at every station? In the matter of wear and tear, won't it be more on the local train that stops at every station, necessarily, than it would be on the stock train that runs through on the division without stopping except for water and fuel?

A. Well, I should say that if it was run at a high rate of speed it would cost more, it would wear out the track faster.

Q. How is that?

A. It would wear out the track faster.

Q. I am talking now about the equipment, the cars and the engine.

A. It costs more to stop the train.

Q. So that that expense on the local train that stops at all these stations and runs slow would be greater than it would be on the live stock train?

A. I don't quite catch your meaning.

Q. Well, I will ask the question. Would it not be less expense to run a live stock train that runs steady, as far as the wear and tear of the equipment is concerned than it would the local train that stops at each station?

A. I should say it would be less.

988 Q. How much greater would be the wear and tear on the track for a train running 25 miles an hour and one running 15 miles an hour?

A. I could not say how much greater it would be.

Q. In what does that consist?

A. I should say that the higher rate of speed you ran the train the faster it wears out your tracks. The wheels would pound the rails and necessarily wear them out faster than at a slow rate of speed.

Q. You have mentioned the pounding of the rails?

A. Yes sir.

Q. That is simply at the joints, isn't it?

A. How is that?

Q. That is simply at the joints, there is no pounding of the rail except at the joints?

A. Occasionally there is pounding between the joints, especially if you have a flat wheel.

Q. You have no business to run flat wheels?

Mr. SEVERANCE: Just remember that, will you?

Mr. COWAN:

Q. Do you know whether it increases the cost of the maintenance of your track in proportion to the number of trains you run over these divisions where you run fast than over these divisions where you run slow?

A. I have not any figures to show that.

989 Q. It is a very inappreciable difference on your road, isn't it?

A. I could not say, I have not the statistics.

Q. You were asked yesterday evening to furnish a statement of train conductors' books showing the train consists out of Savanna east bound for the first fifteen days of October and February, 1904. Did you bring those, Mr. Simpson?

A. Yes sir.

Q. You have them?

A. Yes sir.

Q. Have you examined them to see what the consists were?

A. I have not, they just got in.

Q. I won't take your time on the stand to do it, but I will ask you to compare it with the statement that I have here that I spoke to you about yesterday.

A. All right.

Q. Do you know how much damage claims were paid by your road for dressed meat and packing house product for the year 1905?

A. I have not the amount paid in the year 1905 but for the calendar year of 1904, the claims paid for damages on dressed beef and packing house products were $3,769.58.

Q. How much?

A. $3,769.58.

Q. That is the total amount paid?

A. Yes sir.

Q. Have you a statement going back for years before?

A. No sir.

990 That is on dressed beef and packing house product arriving in Chicago.

Q. Oh, well, I want the total; have you got that?

A. I think that only refers to freight arriving in Chicago.
Q. Well, now did you examine the records to get that or did somebody furnish it to you?
A. No, that was furnished by our claim department.
Q. What is the name of your freight claim agent?
A. Mr. H. B. Elliott.
Q. Where does he keep his office?
A. In the Railway Exchange Building.
991 Q. Now, isn't it a fact, Mr. Simpson, that in making the estimate on the dressed meats arriving in Chicago, excluded that which was shipped from the Missouri River and passed around Chicago east bound?
A. Well, this information is not very definite. I would not say positively that that refers only to this class of freight arriving in Chicago, but I am under that impression.
Q. It is not of much value unless you knew which cars were used from which to make the statement.
A. I can give you that information.
Q. What is the difference in cost per train mile in operation of your road between Chicago and St. Paul and between Chicago and the Missouri River?
A. I could not say.
Q. Is it greater or as much expense on the one as on the other?
A. I think the cost is a little greater between Chicago and the Missouri River. That is my impression.
Q. What is the prevailing grade on your line between Chicago and St. Paul?
A. You mean on each division?
Q. I thought you had some standard grade.
A. The ruling grades, do you mean?
Q. Haven't you some standard prevailing gradient on your road?
A. Yes, we have grades out of Milwaukee, coming south bound towards Chicago——
Q. You don't understand what I mean. Don't you have some standard gradient, six-tenths per cent. or one per cent.?
992 A. Do you mean the maximum grades?
Q. Yes.
Q. I cannot say what our maximum grades are between here and St. Paul.
Q. Do you know what they are on your division between here and the Missouri River?
A. No, I could not say at the present time.
Q. Isn't it a fact that your first division out of the Missouri River, east bound is more expensive to operate trains in this direction on than the balance of your road on to Chicago?
A. I think it is, slightly.
Q. How is that?
A. I think it is, slightly.
Q. That is because of the grades and curves coming out of Kansas City and Omaha?
A. The grades, principally.

Q. I understood you to state yesterday that your stock cars were idle a great portion of the time?

A. Yes, sir.

Q. Is that just a guess, or have you got definite figures to show what your stock car mileage was per month?

A. I know that in the fall months and during the winter months they are in more active service than they are in the summer months.

Q. Please speak louder.

A. In the fall and winter months they are in more active service than in the summer months.

Q. Well, now, what do you mean by the summer months,
993 just season summer months?

A. June, July and August. The stock movement is heavier in the fall and winter months than in the summer months and consequently our stock car equipment is in more active service.

Q. Now, you mean to the markets, do you not?

A. How is that?

Q. You mean to the markets?

A. Yes, sir.

Q. Isn't it a fact that in the months of May and June, that you haul some thousands of cars into your Western South Dakota station, Everest, of stock cattle movement?

A. Feeders?

Q. No. The movement of Pan Handle cattle?

A. That is what we term feeders. We receive them at Omaha and Kansas City and move them up onto the ranges.

Q. Those are not feeders, those are range cattle. They are not called feeders.

A. Well, they are going out to feed.

Q. Those are the months that you have the least use for your stock cars to the markets?

A. When the range stock is moving from the southwest and northwest we have a very good demand for our stock cars. After that is over the demand is quiet until the fall months, when our range stock commences to move to market. At the same time our local stock is moving quite heavily.

Q. Your demand for stock cars and the time of the de-
994 mand is reflected in the reports of the stock yards companies, the number of cars you take in and take out, isn't it?

A. Yes, sir, as a rule, it ought to be.

Q. What do you say in regard to the number of cars that you use per month, as to whether it would be subject to what the stock yards reports show that you use, so far as the markets are concerned?

A. You refer to the Chicago Stock Yards?

Q. Chicago, Omaha, Kansas City, Sioux City and St. Paul.

A. And Milwaukee?

Q. Well, I haven't got the Milwaukee report, but that is a very small item. That is true, is it not, that the stock yards reports reflect your business to the markets?

A. Yes, sir.

Q. Is it not a fact that in the month of August that you are

shipping in from Everest range cattle, and that you have the active use of your stock cars for that purpose?

A. That movement don't commence until the first of September.

Q. Are you certain of that?

A. Yes, sir.

Q. How do you know that fact?

A. I get reports from each train.

Q. You were shipping in an abundance of cattle here in August, were you not, here to Chicago?

A. From Everest?

Q. Was not a large Cattle Company shipping in cattle here
995 in the middle of August, and was not Mr. McKenzie, the Manager of that company here at the time?

A. I was under the impression that that commenced the first of September.

Q. I know, but your impressions were wrong.

Mr. DAWES: I object to that.

Mr. COWAN: Well, I asked him if he knows it to be a fact. Do you recollect Mr. McKenzie being here?

A. Yes, it is possible the movement commenced a little earlier.

Q. And that depends on the season and the time at which the cattle get ready out there?

A. Yes, sir.

Q. Some years it is earlier than others?

A. It generally moves about the same time.

Q. When is your heaviest movement from Iowa points into Chicago, do you know?

A. The heaviest movement from Iowa is generally in the fall months.

Q. You said yesterday evening, when you said the total amount of damage claims was $66,029.24, paid on live stock, that that applied to stock which was moving to Chicago?

A. Yes, sir.

Q. What additional damage claims did you pay to any other live stock movement than the $66,029.24?

A. I could not say.

Q. Isn't it a fact that that was your total claims?

996 A. No, sir, that is only the stock arriving at Chicago.

The COURT: That is made on the same data or basis that you make the dressed meat damage statement on?

A. Yes, sir, although I am not positive as to the shipments the claims were paid on dressed beef, what that covers, whether that is only Chicago, or covering the entire system.

Mr. COWAN:

Q. Have you examined the records to see whether this $66,000 does not cover your total payments for claims on shipments of live stock?

A. No, sir, I have not examined the records. It is a statement made by our Claim Agent.

The COURT:

Q. He says that that is to Chicago only?
A. Chicago only.

Mr. COWAN:

Q. Mr. Elliott is the Claim Agent?
A. Yes, sir.
Q. And the reason you say it is Chicago only is because the Claim Agent says so?
A. Yes, sir.
Q. Did he tell you that or just write it down?
A. He gave me a statement.
The COURT: His statement shows that?
A. Yes, sir.

Mr. COWAN:

Q. What was your loss and damage to dead freight?
997 A. I have not that information.
Q. It is contained in your annual report?
A. I think it is.
Q. Well, it is immaterial to hunt it up now, but it is something over $400,000.

Mr. DAWES: Is that testimony?
Mr. COWAN: I am going to introduce it.
The COURT: It is a monologue.

Mr. COWAN:

Q. How many drovers' cabooses do you use altogether?
A. The latest style of drovers' caboose, we have 142. Those cars are provided with berths, with 12 berths. We have other drovers' cabooses with a less number of berths, the total number of them all, all cabooses provided with berths is about 200, although I have not the exact number.
Q. They are used altogether east of the Mississippi River?
A. We use the standard drovers' caboose altogether east of the Mississippi River, yes, sir.
Q. Are there any cabooses which are used—are not they cabooses which are used in dead freight as well as live stock trains, or are they used just on live stock trains?
A. Occasionally they are used on dead freight trains.
Q. Mr. Simpson, you handed me three printed annual reports of the Chicago, Milwaukee & St. Paul Railway Company,
998 for 1904, 1903 and 1905. You identify them as being the annual reports of that company?
A. Yes, sir.
Q. The statistics contained in those reports are correct?
A. I could not say.
Q. Well, they are regarded as correct, are they not?
A. Supposed to be.
Q. That is the source to which you resort for information?

A. Yes, sir.

Mr. COWAN: I will offer those in evidence.
The COURT: You had better put them in altogether.
Mr. COWAN: I am not going to offer them now.
Mr. SEVERANCE: You are not offering them now?
Mr. COWAN: No.

Q. Those are the annual reports that are made up from the books and statistics in your office, are they not?
A. No, sir, not in my office.
Q. How is that?
A. Not in my office.
Q. Well, in the company's office?
A. They are prepared by the president and chief auditor.
Q. You don't question but what they are correct, do you?
A. I never have.
Mr. DAWES: Well, suppose he did?

999 Examination by Mr. LYNDE:

Q. You, as Superintendent of Operation, what do you have to do with the actual running of trains on your road?
A. My title is Superintendent of Transportation. I have nothing to do with the operation of the trains on the different divisions more than a general supervision in arranging the schedules.
Q. You are not personally qualified, are you, to testify as to the cost of operating trains or the consumption of coal, and so forth, from your own personal knowledge?
A. Not from my own personal knowledge, no, sir.
Q. Whatever you have said in that regard is from statements made to you?
A. Prepared by our mechanical engineer, yes, sir.
Q. Now, as to the speed of your trains: What do you know as to the speed at which those trains move on your road?
A. I only know the speed of our regular schedule trains, and the speed of our Montana and Everest stock train.
Q. Those are the through stock trains?
A. Those are the through stock trains and they are reported to my office.
Q. How about the speed of this local pick-up stock train?
A. I don't keep a record of them.
Q. Do you know anything about it of your own knowledge?
A. No, sir, I have no personal information as to the speed
1000 that those trains actually make.
Q. Do you know, as a matter of fact, whether it is not true that those trains run at a higher rate of speed between stations than your regular schedule through stock trains generally?
A. Well, I could not answer from my own personal knowledge, I never see the train sheets. They are kept in our division offices.
Q. You have stated that it is uncommon between the Missouri River and Savanna for meat trains to be side tracked to let a stock

train go by. You say that this is done only very occasionally. I understood you to state that, is that correct?

A. It is very seldom done.

Q. How is it between Savanna and Chicago?

A. It is very seldom done there, between Savanna and Chicago. As I stated, we occasionally start out our stock trains from Savanna ahead of our meat trains.

Q. On what days of the week do you have your stock movement in Chicago?

A. As a rule Monday and Wednesday are generally considered the heavy days.

Q. Which is the heaviest day?

A. Monday morning, as a rule.

Q. Do you run any meat trains on Sunday, coming from the west, starting Sunday from Council Bluffs?

A. No, sir.

Q. So there is not any meat train to side track for the
1001 purpose of your Sunday movement of live stock?

A. Very seldom.

Q. How many trains, when you have a large run of stock on your road, how many live stock would you bring into Chicago Monday morning?

A. That varies.

Q. Give us some idea.

A. We run from 400 to 600 cars of stock.

Q. Well, I am asking for a large movement in the heavy stock period. I would like to get what you consider, not the average, but the large movement?

A. Well, 600 cars would be a large movement for us.

Q. How many trains would that make?

A. That would make in the neighborhood of about 25 trains.

Q. That is the Sunday movement that I am referring to?

A. Yes, sir.

Q. When will these trains begin to come into Chicago?

A. They commence to arrive about midnight Sunday night.

Q. How far apart will they be in their arrival here at Chicago, on the average?

A. Between Savanna and Chicago we have the heaviest movement, and those trains are as a rule run about a block apart.

Q. Well, now, Mr. Simpson, is it a fact that you permit anything on your road to stand in the way of the running of those trains during that movement?

A. Stock trains?

Q. Yes?

A. No, they generally have a clear track.

1002 Q. Don't you aim to give a clear track to these stock trains so that they can follow each other, as you say, about a block apart?

A. Over everything except our passenger trains. Of course if they are late and get mixed up with our through passenger trains,

we are obliged to side track them but they generally get in ahead of our through morning passenger trains.

Q. This movement of trains that come in that way about a block apart, are not running on any schedule time, are they?

A. No, sir, they are not schedule trains, they are running extra.

Q. They are running extra, all of them?

A. Yes, sir.

Q. Isn't it necessary to maintain a high rate of speed between Savanna and Chicago, to bring those trains in so as to have that stock delivered in time for the market Monday morning?

A. Yes, sir, stock coming into Savanna late Sunday night we are obliged to run at a very high rate of speed, twenty-five or thirty miles per hour.

Q. The later the stock starts from Savanna, the greater speed between Savanna and Chicago?

A. Yes, and the lighter the tonnage in order to make that fast time.

Q. How far apart in point of time is it that those trains arrive here in Chicago Monday morning?

A. Why, I should say the average time would be about 25 minutes apart.

1003 Those trains are delivered by your Company at the Stock Yards, are they?

A. Yes, sir.

Q. Do you change the crews?

A. No, sir. Stock coming in by the way of Savanna, our main line crews take it to the yards. Coming in from Milwaukee our switch crews take it from Pacific Junction.

Q. Now, about this operation of stopping and starting a train: I think you stated that the stopping and starting of a train cost more wear and tear than to run a train right along continuously?

A. More wear and tear on the equipment.

Q. Isn't it a fact that the stopping and starting of the engine in the switching movement causes more consumption of coal and more wear and tear on the equipment than the running of the train right along?

A. It is generally conceded that it does.

Q. Every time the engine comes to a stop in the switching movement and is started up, there is a considerable increase in the consumption of coal, isn't there?

A. I understand there is.

Q. You have observed that, haven't you?

A. Yes, sir.

Q. What do you know about this operation of cleaning cars on your road, of your own knowledge? What observation have you given to it yourself?

A. We aim to clean——

Q. I am asking about your own personal knowledge. How

1004 far is that matter under your jurisdiction?

A. I have never seen the cars cleaned myself. I make the arrangements for having them cleaned, however.

Q. Do you know about the amount of bedding in the cars, how much is it, on the average?

A. Well, that depends on the length of time the cars have been in service since they were last cleaned.

Q. Well, would it run as high as two tons?

A. We have had them that heavy.

Q. That I think you said was sand or gravel in your cars?

A. We use sand and gravel on some of them principally for shipments of hogs. Cattle we generally use straw or hay for.

Q. Generally straw or hay on the cattle?

A. Yes, sir.

Q. Now, in the winter time, of course, that bedding—the cars are open, are they not?

A. Yes, sir.

Q. It becomes frozen, doesn't it?

A. Yes, sir.

Q. Where do you do your cleaning?

A. We do most of it at Sabula, Iowa.

Q. You move all the stock cars out there from Chicago?

A. We don't move all of them, we move, I should say, 75 per cent. of them there.

Q. Do you have any special facilities there?

A. We have an old gravel pit where we have put down tracks, where we can clean the cars without causing complaints. It is away from any town.

1005 Q. How far away?

A. It is about two miles from Sabula.

Q. Switching the cars in there and then switching them out, to clean them?

A. We send them there from Savanna. Savanna is our division station between Illinois and Iowa. The trains run to Savanna and then we send the stock cars from there over to Sabula. When they are cleaned we send the engine over to pick them up and distribute them.

Q. How far is that from Savanna?

A. It is about five miles.

Q. Those tracks, are they used for any other purpose?

A. No, sir.

Q. You were asked a contract price of cleaning the cars. That includes simply the cost of labor?

A. Yes, sir.

Q. Are all your cars cleaned by contracts?

A. No, sir, we clean a large number of them with our section men.

Q. The time taken in the cleaning operation varies very much, doesn't it.

A. We aim to clean them when the cars are not actively employed in the stock business.

Q. Explain that, what do you mean?

A. When the shipments of live stock are light and the cars are not needed in that service, we aim to clean our stock cars.

Q. You don't clean your stock cars then after they are brought

in here with a load of live stock, here to Chicago, necessarily,
1006 before sending the same car out?

A. Oh, no.

Q. You clean them, then, from time to time, just as it is convenient, is that right?

A. Just as it is convenient from time to time, yes. I presume our stock cars are cleaned probably three or four times a year.

Q. Is that all?

A. I don't think it will average more than that. They are so bu*d*y we are unable to spare them. We have to keep them in service.

Q. If you have your cars out to clean them after every trip into Chicago, it would deprive you of the use of a large percentage of your cars, wouldn't it?

A. It would.

Q. How many do you have down there in your cleaning yard?

A. How many at one time?

Q. Yes.

A. We generally set in 40 or 50 at a time.

Q. How long will it be before they are taken out and brought back to Savanna?

A. Why, it generally delays them about 24 hours to clean that number of cars.

Mr. LYNE: I think that is all I care to ask him.

Recross-examination by Mr. COWAN:

Q. You try to keep your cars in as good condition as your competitors, don't you?

1007 Mr. LYNDE: That is objected to.

The COURT: Objection overruled, he may answer.

A. I don't know what the condition of our competitors' cars is.

Mr. COWAN:

Q. Do you know anything about how often they clean theirs?

A. I do not.

Q. You know they are not cleaned on every trip, though, don't you?

A. I don't know anything about it.

Q. You answered Mr. Lynde that you have personally observed that it cost more fuel to stop and start an engine than it did to keep it running. How did you come to observe that?

The COURT: You have been all over that. He went over it before, he has gone over it.

Mr. COWAN:

Q. Is it not a fact that in handling your grain you are at considerable expense in the operation of elevators and supplying——

Mr. DAWES: That is objected to.

The COURT: Objection sustained.

Mr. COWAN:

Q. You stated that there was a certain amount of expense per yard for maintaining stock yards?

The COURT: I do not think they brought out anything new
1008 but what you have gone over.

Mr. COWAN:

Q. Your annual report shows that for the year 1905 the total expenditures for the maintenance of stock cars and elevators was $52,517.

Mr. SEVERANCE: That is objected to. This statement is not in evidence.

The COURT: I think you have been over it.

Mr. COWAN: I want to ask him how much of that was for elevators. I don't want to take the time of the Court, but the item here is "Stock Yards and Elevators." I wanted to find out how much of that was for Stock Yards.

Mr. SEVERANCE: There is no evidence in the record of any such thing.

The COURT: You can introduce that in evidence later.

Mr. COWAN: Well, that is all.

The COURT: Call the next witness.

Mr. SHAVER: I would like to ask a few questions.

Examination by Mr. SHAVER:

Q. The cost to the carrier of the service rendered in the transportation of products or the handling of traffic is at the two terminals and on the intermediate haul between the terminals, is it not?

A. Yes, sir.

Q. Are the expenses at the two terminals considerable or
1009 inconsiderable as compared with the other expenses?

Mr. SEVERANCE: I object to that, as asking for a mere conclusion. That would not mean anything if he got an answer.

The COURT: Well, let him say. What do you say about that?

Mr. SEVERANCE: He might think one thing was considerable that another man would not think was considerable.

The COURT:

Q. Can you tell about that?

A. I cannot answer. It depends on the terminals and the number of local stations between the terminals.

Mr. SHAVER:

Q. Are not the terminal expenses considerable or are they inconsiderable?

Mr. SEVERANCE: I object to that, for the same reason.

The COURT: Objection sustained. It is according to how long the haul is.

Mr. SHAVER:

Q. Are not the terminal expenses a very important item with any carrier?

A. I should say they were.

Q. Bryant is a station on your road, and also Austin?

A. I beg pardon?

Q. Bryant is a station on your road and also Austin?

A. Yes, sir.

1010 Q. I believe that hogs are shipped from Bryant to Austin where they are manufactured into product?

A. Bryant, South Dakota?

Q. Yes.

A. I could not say as to that.

Q. Where hogs are shipped, say from Bryant to Austin, and there manufactured into product, and the product is then shipped on to Chicago, are there not two distinct hauls and the expense of four terminals? One terminal at Bryant when the hogs are shipped; one terminal at Austin when the hogs are unloaded there, a third terminal when the product is shipped out of Austin, and a fourth terminal at Chicago?

Mr. SEVERANCE: Anybody would know that.

The COURT: Let him answer.

Mr. SHAVER:

Q. That is four terminal expenses?

A. Yes, sir.

Q. When the hogs are shipped direct from Bryant to Chicago, the shipment is a through shipment, is it not?

A. Yes, sir.

Q. And there are only two terminals, a terminal at Bryant and a terminal at Chicago, two sets of terminal expenses?

A. So far as that particular shipment is concerned. You understand that we change engines and cabooses on every division, but we don't——

Q. I don't understand you.

A. We change engines and cabooses on every division, at

1011 every division station, but that car would not be unloaded and reloaded at every division station.

Q. Aren't through rates, as a rule, made lower per mile than the rates for comparatively short distances, local rates?

A. That is our of my department. I am not qualified to testify as to rates. That is a traffic matter.

Mr. COWAN:

Q. I wish you would get a statement showing the number of packing house product and dressed meat cars delivered at Chicago, to which the statement of damage claims applies, unless you have it there.

A. I can give you that.

Q. You have not the number of cars delivered in Chicago?

A. No sir.

Mr. SEVERANCE:

Q. Counsel asked you a moment ago about shipments of live stock from Bryant, South Dakota to Chicago.

A. Yes, sir.

Q. That is 632 miles, isn't it?

A. I could not say.

Q. Well, you know your own system, don't you? That is, haven't you any idea whether that is about what it is?

A. I should say that is about the distance.

Q. How quickly can you run a train of live stock from there, Bryant, to Chicago?

A. At that distance we would be obliged to unload——

1012 Q. That is what I want to know. I will come to that directly. How long does it take to run through?

A. Including the time for rest, feed and water?

Q. Yes.

A. About 48 hours.

Q. And you have to unload to feed and water the cattle en route?

A. Yes, sir.

Q. That takes you—I mean the hogs—any kind of live stock. How long does that take?

A. Not less than five hours.

Q. Now, you have just as much expense in unloading those hogs and feed and water them and in loading them again on the train when you start them on their way to Chicago as you would if you unloaded them at Austin and loading the product, don't you?

A. Yes, sir.

Q. In fact, you have a greater expense because the product is loaded by the manufacturer himself, isn't that so?

A. Well, the expense would not be very much greater. We would run the car, on arrival at Austin, up to the stock yards and unload it. Then we would run the car to the packing house product and reload it. At Savanna where we would unload for feed, rest and water, we would do the same thing, practically.

Q. You don't understand my question. The matter of loading the packing house product into the car at the packing house is performed by the packer, isn't it?

1013 A. Yes, sir.

Q. The work of reloading your live stock into your car at Savanna is done by your own employés?

A. Yes, sir.

Q. So you have the same four terminal points that counsel spoke about in the case of the shipment of live stock through to Chicago from this point in South Dakota that you would have if you unloaded and manufactured them en route, don't you?

A. Yes, sir.

Mr. SHAVER:

Q. When hogs are shipped from Bryant direct to Chicago are they shipped through Austin?

A. Yes, sir.

Q. The aggregate haul on the shipment of live hogs from Bryant, if brought on to Chicago, is the same as the length of the haul from Bryant via Austin, and then direct to Chicago?

A. Yes, sir. Occasionally Bryant shipments would be routed by Sioux City, in order to take advantage of that market, but the distance is about the same.

1014 Q. You stated that the shipments from Bryant direct to Chicago were through Austin, that is the rule isn't it?

A. That is the rule, yes sir.

Q. Then the distance in both instances is the same?

A. Via Austin and via Sioux City, do you mean?

Q. No; where hogs are shipped to Austin?

A. Yes sir, the distance would be the same.

Q. And manufactured there and then passed on to Chicago, the aggregate distance is the same as when they are shipped direct from Bryant to Chicago?

A. Yes sir.

(Witness excused.)

A. B. STICKNEY, thereupon resumed the stand as a witness in behalf of the defendants, and testified as follows:

Cross-examination by Mr. COWAN:

Q. Mr. Stickney, have you a statement of the number of packing house product and fresh meat cars hauled by you into Chicago, to show the proportion on the 18½ cent rate from Missouri River, and the proportion on the 20 cent rate?

1015 A. I have no such statement here. A statement can be prepared.

Q. Will you be kind enough to furnish such a statement?

A. Yes sir. Will you make a memorandum of it Mr. Severance?

Mr. SEVERANCE: Yes.

The WITNESS: If you will make a memorandum of what statements you would like to have me furnish, I will furnish them.

Mr. COWAN:

Q. I was just inquiring if such a statement could be furnished?

A. Yes sir.

Q. Now, could you furnish a statement that would show the payments which were made on account of loss and damage of all sorts to the packers, or other shippers as for that matter of the packing house products and dressed meats? Your Claim Department has such an account separate from other loss and damage claims?

A. I don't think they are separated, but it would be only a matter of work to separate them, which I would be glad to do if you would like to have me.

Q. Thank you. Now, have you in mind, or have you with you a statement of the amount of loss and damage claims on live stock previous to the one which you referred to yesterday, I have forgotten what year that was, I think, 1905.

1016 Mr. SEVERANCE: That was the year 1905.
A. No, I have not such a statement.

Mr. COWAN:

Q. Will you kindly furnish that statement showing it for 1904 and 1903?

A. Well, do not make—it is a great deal of work to get up those statements, do not ask for any more than you need.

Q. I thought that was probably already made up from the books of the Claim Department.

A. No sir. It is a good deal of work to pick out those items. I will do anything you ask me to do, but——

Q. I will waive that statement for those years for the present, and inquire whether the amount of loss and damage claims on live stock paid in 1905, is more in proportion to the number of cars handled than in the years 1904 and 1903?

Mr. SEVERANCE: That involves the same thing.

Mr. COWAN: I am asking if he knows.

A. The statement I made is not of the loss owing to damage of cattle, but only the damages paid for not arriving in the market on time; that was the statement that I made.

Q. You mean that did not include the total loss and damage claims on cattle or other live stock?

A. Say, for instance, if we wrecked a train of stock and
1017 paid damages for that, that was not included in the statement I made yesterday. I went on the theory that the losses of that kind for the packing house products and the live stock were probably the same. At any rate I didn't have time to investigate that.

Q. You have paid damage claims to the various packers for shipments of—claimed by them to have occurred on shipments of packing house products and dressed meat, have you not, all along?

A. I have no doubt we have.

Q. Whatever that is will be shown in the statement requested?

A. Yes sir.

Mr. SEVERANCE: Not for delays, is it, Mr. Stickney?

A. Not for delays.

Mr. COWAN:

Q. Well, suppose that there was a delay though, at a place where it occasioned injury to the meat?

A. Well, that would be damage to the contents.

Q. That is what I am asking for, is damage of all sorts.

A. Damage to the contents of the packing house product and damage to the contents of the live stock is what I understand you to ask for.

Q. No, I am only asking for total damages paid to the packers. Now, I would like to have had the total damages paid on all
1018 live stock shipments, that is not on each, but on all, for the years that I have mentioned, that you said it would take so much work to make it up, and I said I would waive that.

Is it not a fact Mr. Stickney, that the live stock trains, and the packing house product and dressed meat trains originating on Missouri River move eastward through Oelwein, is that the name of the division point?

A. Yes sir.

Q. The relative sizes and consists of the trains moving eastward out of Oelwein, would represent largely the movement both of packing house product and dressed meat and the live stock, so far as the sizes of the trains are concerned, would they not?

A. I will have to ask you to state that once more.

(Question read by the reporter.)

A. Well, that question cannot be answered. I do not say that in an offensive sense, but it is not an intelligent question. We have on every time card a statement of the rating of the trains cut up into small distances as the varying grades vary. That is, the rating means the number of tons including the car and the contents which each engine must haul. An engineer, if he is loaded, if a yardman puts on more tons than that rating, the engineer is at liberty
1019 to refuse to haul the train. If there is no more tons than that rating, he is not at liberty, he must haul it. Now, then, there are three ratings, first, second and third. The first rating is the largest. The condition of the weather, the condition of the rail, whether wet or dry, are the factors mainly affecting those ratings. Now, if it is extremely cold weather, an extremely cold day, the train dispatcher or the Division Superintendent, I am not quite certain which, sends notice that the trains will take third rating that day, that is the lowest rating, that is the rating for extreme cold weather. If the weather is not cold and the rail is wet, the order will go out to take second rating, and that is the way the sizes of the trains are determined.

Q. Have you any records that would show the actual comparative consists of trains for consecutive days passing out of Oelwein eastward?

A. The record would show, we have a record that shows the gross tonnage, that is the weight of the car and the contents together. Every train that moves out of a division point, every freight train that moves on any of the divisions of the road has a theoretical—every Division Superintendent has a theoretical load that the train must haul, and a theoretical amount of coal that it may
1020 consume, ought to consume in hauling that train over the Division. Now, a record is made of every train, the amount it hauls, the number of gross tons it hauls and the amount of coal it consumes, and there is great competition between the different Divisions to make their record red or black. If they consume more coal than the theoretical quantity, it is a black record, and if they consume less coal than the theoretical quantity, it is a red record. We find this: That there are certain engineers on each Division who will have a red record every month; that is, they manage to haul their tonnage consuming less than the theoretical quantity. Other engineers will consume for hauling the same weight 50 per cent.

more than the theoretical quantity, and we make records of that every month and post them up in our round houses for the engineers to look at to see which one did the best work. The consumption of coal, while it has some relation, considerable relation to the tonnage hauled, it is also varied by the skill and efficiency of the firemen in making fires, and it is never in direct proportion to the tonnage hauled; that is to say, an engine going over the road light will consume some coal. You put a single car behind that engine and it might consume more, and it might consume less, depending altogether upon the skill of the fireman and the engineer in managing it. Then put another car on, it will not double the quantity
1021 of coal consumed, and how much more it will increase, nobody can figure out.

Q. Could you have a statement prepared that would show, not the theoretical, but the actual train loading of each train eastbound out of Oelwein for say, fifteen days of one month and fifteen days of some other month, six or eight months off, that would be representative of the actual train loading respectively?

Mr. SEVERANCE: Just a moment Mr. Stickney, before that is answered. Let me make a suggestion.

Mr. Stickney stated your Honor, in his testimony yesterday that he made no comparison between the coal consumption, or the cost of movement, that is the actual running of the trains as between live stock and packing house products, for he said that on the Great Western Road they were ordinarily hauled in the same train. Now, this testimony is all useful only for purposes of comparison, and as there has been no such comparison attempted as far as the Great Western Road is concerned, as far as Mr. Stickney's testimony is concerned on the contrary, he having stated that the product and the live stock were hauled in the same train, there could be no use for such a table.

The COURT: Your objection is that it is not proper cross examination?

1022 Mr. SEVERANCE: I object because it is not proper cross examination, and the table if prepared would be useless for any purposes so far as the Great Western Road is concerned.

The COURT: What do you say about that Mr. Cowan?

Mr. COWAN: I don't think it would be useless to show what the actualities are with respect*ive* to the respective sizes of the trains as a matter of fact, of live stock and of dressed meat and packing house products. If each has some of the other in the trains that carries either, of course, I would not care for it. I do not so understand that.

The WITNESS: On our road that is practically the case. It is very rarely the case that we run a full train load of live stock and nothing else.

The COURT: The objection is sustained. That ends that, ask him something else.

Mr. COWAN: There is one question I wanted to ask you, and I believe that is all, Mr. Stickney.

Q. You stated the actual cost of the stock yards on the Fort Dodge line, the new line which you built, as I understood you?
A. Yes sir.
Q. How do those stock yards in point of their size, their construction and equipment compare with the average stock yards on the other part of your line, are they better or not?
A. I should think they were a fair average.

1023 Redirect examination by Mr. BAXTER:

Q. Mr. Stickney, you made the calculation in your testimony yesterday showing the relative cost of transporting live stock as compared with packing house products and fresh meats. Had you made that calculation, or any similar calculation as to the relative cost before you made your contract with the packing houses?
A. No sir.
Q. Did you in making that contract have present in your mind what the relative cost of carrying live stock and packing house products was?
A. No sir.
Q. Is it not a fact that the attempt that is now being made by several railroad companies to ascertain, or at least to approximate the relative cost of different commodities, transporting different commodities, is of very recent origin?
A. Yes sir, I should say within the last ten years.

Recross-examination by Mr. SHAVER:

Q. Mr. Stickney, I understood you to say yesterday, that you believe in a rate under which the stuff, to use your language, would move, a rate under which the traffic will not move is pro-
1024 hibitory, is it your idea that any rate is reasonable which is not prohibitory of the movement of traffic?
A. Well, that depends upon what you mean by the word prohibitive. Now, I will state, take the passenger business, a few years ago, the rate on passengers was 5 cents a mile. Well, now, it was reduced to 3 cents a mile, and I think while, when it was reduced there was a good deal of misgiving on the part of a great many railroads that it would be detrimental, and it undoubtedly was in the first instance, or in the beginning reduced the passenger income, still by experiment, 3 cents a mile is generally considered now to be more profitable to the railroads than 5 cents a mile would be. And my opinion on rates is, that the rate which—I almost hesitate to say this because the language has been so construed and it will get into the papers in an entirely different way from what I state it—but my opinion is, the rate which, considering the future, considering the development of the country, the quantity to be moved, and everything, the rate which will give the railroad company the most net earnings is the right rate.
Q. May there not be a margin between a reasonable rate and a prohibitory rate?

A. That in my judgment, is the reasonable rate. Now,
1025 I do not think a 5 cent passenger rate is a reasonable rate because it is too high, the railroads won't earn as much on a 5 cent rate as they will on a 3 cent rate. Now, whether a 3 cent rate is the right rate, or whether the time has come when a 2 cent rate would really produce more revenue to the railroad, more net revenue to the railroads than the 3 cent rate, is a question that I am not clear on. There is no way to determine that except by actual trial.

Q. Is it not a fact that traffic will move under excessive rates, move under rates until they become absolutely prohibitory?

A. Oh, some traffic of course, will move. If you charge 10 cents a mile for passenger fares, there would be some passengers that would move on that rate. Even if you charged 20 cents a mile, there would be an occasional passenger—men have to move, but the real problem is to find the rate that will give the most profit to the railroad company in the moving of it, and that is the rate which would be most advantageous to the shipper, as well as the railroad in my judgment. Now, I am not the Pope of Rome, I am not infallible.

Mr. SHAVER: I have no other questions.

The COURT: Anything else by anybody? Call the next witness.

1026 HARRY GOWER, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. With which one of the defendant companies are you connected?

A. The Chicago, Rock-Island & Pacific Railway Company.

Q. And in what capacity?

A. Assistant Freight Traffic Manager.

Q. How long have you occupied that position?

A. About between eight and nine years.

Q. How long have you been connected with the Freight Traffic Department of railroads in the United States?

A. Twenty-seven years.

Q. During what portion of that period have your duties had relation to making of freight rates?

A. Oh about eighteen or nineteen years.

Q. Please file as "Exhibit No. 1" to your testimony a statement showing correctly the rates in cents per hundred pounds now charged on cattle, hogs and packing house products and fresh meats respectively in car loads to Chicago, Illinois, from the following points, namely, Kansas City, Missouri, St. Joseph, Atchison, Kansas, Leavenworth, Council Bluffs, Iowa, Omaha, Nebraska, South
1027 Omaha, Nebraska City, Sioux City, Iowa, St. Paul, Minnesota, or South St. Paul, Ottumwa, Des Moines, Marshalltown, Cedar Rapids, Iowa, respectively. Indicate on said statement by prefixing the letter "A" to such rates as apply to shipments destined to

points east of the Indiana-Illinois State line; prefixing the letter "B" to such rates as apply to shipments originating beyond the points of shipment named, and by prefixing the letter "C" to such rates as apply when shipments originate beyond the points of shipment named, and are destined beyond the Illinois-Indiana State line.

A. I have this statement, but I have erased Marshalltown. We do not reach Marshalltown.

Q. It covers all the other points except Marshalltown?

A. Yes sir.

(The witness here produced a statement, which was marked, "Gower's Exhibit 1'" and filed with the Court as a part of his testimony.)

1027*a* EXHIBIT No. 1, TESTIMONY H. GOWER.

To Chicago from—	Cattle.	Hogs.	Packing house products.	Fresh meats.
Kansas City, Mo.	23.5 (*b*) 20.0 (*c*) 18.5	23.5 (*b*) 20.0 (*c*) 18.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
St. Joseph, Mo.	23.5 (*b*) 20.0 (*c*) 18.5	23.5 (*b*) 20.0 (*c*) 18.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Atchison, Kan.	23.5 (*b*) 20.0 (*c*) 18.5	23.5 (*b*) 20.0 (*c*) 18.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Leavenworth, Kas.	23.5 (*b*) 20.0 (*c*) 18.5	23.5 (*b*) 20.0 (*c*) 18.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Council Bluffs, Ia.	23.5	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Omaha, Neb.	23.5	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
South Omaha, Neb.	23.5	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Nebraska City, Neb.	23.5	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
Sioux City, Ia.	25.0	23.5	20.0 (*a*) 18.5	20.0 (*a*) 18.5
St. Paul, Minn.	25.0 (*b*) 15.5 (*b*) 20.0 (*)	27.0 (*b*) 17.5	15.7 (*a*) 14.6	17.0 (*a*) 15.7
Ottumwa, Ia.	22.0	21.0	16.0	20.0 (*a*) 18.5 16.0 †
Des Moines, Ia.	22.0	23.5	18.5	20.0 (*a*) 18.5 18.5 †
Cedar Rapids, Ia.	21.0	18.5	13.5	13.5 (*a*) 13.5†

(*a*) When shipments are destined to points east of the Indiana-Illinois State Line.
(*b*) When originating beyond.
(*c*) When originating beyond and destined to points east of the Indiana-Illinois State Line.
(*) Effective Sept. 13th, 1905.
(†) Effective Aug. 20th, 1905.

Q. In the second bill, filed in this case the statement of rates from Kansas City to St. Joseph, Atchison and Leavenworth, Kansas, shows a rate to Chicago of 23½ cents on cattle and hogs, and then a rate of 20 cents with a letter "A" which, from a note shows that that rate applies only when the shipments are destined to points east of the Illinois-Indiana State line. I wish you would look at that
1028 and see if it is correct. In other words, does the 20-cent rate from those points to Chicago apply when the shipments are destined to points east of the Indiana-Illinois line, or does it apply when the shipments originate west of the Missouri River?

A. That is right.

Q. Sir?

A. The 20 cent rate on cattle and hogs from southwest Missouri River points to Chicago, applies only on cattle and hogs originating west of the Missouri River and destined to Chicago proper.

Q. Then according to the note there, the letter "A" should not have been used?

A. No.

Q. The letter "B" should have been used?

A. That is right, the same as we have it in our statement.

Mr. BAXTER: The defendants admitted the corrections to these rates as stated in the petition, and I desire to correct the answer to conform to the testimony of Mr. Gower.

The COURT: Very well.

Mr. BAXTER: It is a typographical error.

Q. I wish you would state whether the rates on cattle and hogs set forth in said exhibit "No. 1" are just or unjust, reasonable or unreasonable, and state fully the grounds of any opinion you may express.

1029 A. Well, I have testified before the Interstate Commerce Commission several times that I consider the rates on cattle and hogs throughout this Western Country were too low, and as these rates from the Missouri River are as low as any rates we have for a similar distance, and the more I hear on the subject, the more I am convinced that our live stock rates are too low. Live stock has various expenses—for instance, it is the most perishable of freight—and has a great many expenses which are peculiar to it.

Q. Are those rates affected or not affected by competition, I mean the rates between the Missouri River and Chicago?

A. Oh, they were put there originally by competition?

Q. Sir?

A. It was competition that put the rates there.

Q. Mr. Gower, I wish you would look at the second bill in this case which enumerates the defendants, and states which of those companies have lines extending from Chicago to the Missouri River and there ending, and which of them have lines west of the Missouri River as well as east of it. You can leave out of your enumeration any lines that do not enter Chicago. Take the lines entering Chi-

cago, and tell the Court which of those lines stop at the Missouri River and which of them go beyond, have lines beyond.

1030 A. The Chicago Great Western Railway Company east of the River only. The Chicago, St. Paul, Minneapolis & Omaha, we call that line an east of the Missouri River line, but they have a line, I believe, that does extend along the west bank of the Missouri River.

Q. But does that reach Chicago?

A. No; St. Paul.

Q. Well, I want you to leave out of your statement all lines that do not reach Chicago?

A. The Chicago & Alton Railroad Company, east of the River only; the Chicago & Northwestern Railway Company east of the River.

Mr. SEVERANCE: Don't they run up to the Black Hills?

A. That is the Elkhorn line, the Fremont, Elkhorn & Missouri River Railroad, part of the Northwestern system.

Mr. SEVERANCE: So is the Omaha, that is part of the Northwestern?

A. Yes sir.

Q. Go ahead.

A. The Chicago, Burlington & Quincy Railroad Company, both east and west of the Missouri River; the Chicago, Milwaukee & St. Paul Railway Company both east and west of the Missouri River.

Mr. SEVERANCE: Are you sure about that?

A. Well, the Chicago, Milwaukee & St. Paul have a line I believe that does extend north of the Missouri River in the extreme north part of the Dakotas.

1031 Mr. SEVERANCE: The terminus is on the River.

The WITNESS: The Chicago, Rock-Island & Pacific Railroad company west and east of the Missouri River. The Hanibal & St. Joe——

Mr. BAXTER:

Q. That does not reach Chicago.

A. No. The Illinois Central Railroad Company east of the Missouri River.

The COURT: Only east?

A. The Illinois Central Railroad Company only east of the Missouri River. The Missouri Pacific Railroad company—they do not reach Chicago. The Wabash Railroad Company, east of the Missouri River. That is all I think.

Mr. BAXTER:

Q. The Wisconsin Central?

A. They are east of the Missouri River, but they do not reach the Missouri River.

Q. Then if I understand you more of the defendant companies

are confined to west of the Missouri river, than there are defendants that have lines extending across that river?

A. You mean east of the Missouri River?

Q. East, yes sir.

A. Yes sir.

Q. Confined east of the Missouri River?

Mr. SEVERANCE: I wish we could have it understood about the Milwaukee & St. Paul now. Mr. Gower said that goes west of
1032 the River?

A. I thought the Milwaukee & St. Paul did, I should know, but I have forgotten.

Mr. SEVERANCE: I think Mr. Cowan will agree that it does not.

Mr. COWAN: They are now constructing a short line from Evarts across the River.

Mr. SEVERANCE: It does not run across the river now, except to get into the Omaha stock yards.

The WITNESS: It is what we call an east of the Missouri River line. I thought they had a few miles west of the Missouri River.

Mr. COWAN: That is correct, but it is only a short line.

Mr. BAXTER: Will you please file as "Exhibit No. 2" to your testimony a statement for the year ending June 30, 1905, showing a total freight earnings of your company, the earnings of your company from cattle, the earnings from your company from hogs, the earnings from your company from packing house products, and the earnings of your company from fresh meat.

A. Yes sir.

(The witness here produced a statement, which is marked "Gower's Exhibit No. 2" and filed with the Court as a part of his testimony.)

1032*a* EXHIBIT #2, TESTIMONY H. GOWER.

a. Total Freight earnings of the Rock Island System for the year ending June 30th, 1905, was...	$29,662,386.08
b. The earnings of the Rock Island System for the year ending June 30th, 1905, from cattle, was...	1,829,400.52
c. The earnings of the Rock Island System for the year ending June 30th, 1905 from hogs, was....	916,014.52
d. The earnings of the Rock Island System for the year ending June 30th, 1905, from P. H. P., was.	413,713.28
e. The earnings of the Rock Island System for the year ending June 30th, 1905 from fresh meat, was	469,391.07

1033 Q. Mr. Gower, how does the amount paid by your company for loss and damage to cattle and hogs and for injuries to persons in charge of cattle and hogs, compare with the amount

paid by your company for similar claims in regard to perishable commodities?

A. I could not give any information in regard to the personaly injuries for the last year. I think I testified in St. Louis in regard to the 1903 claims, I have that information.

Mr. COWAN: I don't quite hear you.

A. I think I testified in St. Louis in regard to 1903. I have that information taken from the record, if you want it, but for 1905, our Auditor tells me that the loss and damage claims paid on live stock as compared with the loss and damage claims paid on all other perishable freight are about 640 per cent.

Mr. BAXTER:

Q. Are the through rates on cattle and hogs from the points of shipment mentioned in your "Exhibit No. 1" to the points of final destination greater or less than the sum of the local rates where the through line is made up of two or more railroads?

A. There is only one case in that exhibit where the through rate is made up on more than one railroad, that is Nebraska City. That is the only rate in that schedule where the rate is made up of
1034 two lines. That of course, is less than the sum of the locals.

Q. What is the established minimum car load weight for cattle and hogs respectively on your road and how does the actual loading on your road of cattle and hogs compare with that minimum?

A. Our minimum on cattle in standard cars, namely 33 feet 9 inches, up to 36 feet 6 inches, is 22,000 pounds. On the hogs for same dimensions, 17,000 pounds. The average loading on our road on our cattle is, 22,423 pounds and on hogs, 16,658 pounds.

Q. How do the rates on cattle and hogs set forth in your "Exhibit No. 1" compare with the rates charged by other railroads in the same and other parts of the United States for the transportation of cattle and hogs from other points of shipment to other points of destination, the distance and other circumstances and conditions being relatively considered?

A. Well, I can give you some comparison showing our rates, for the average distance between Missouri River and Chicago as compared with similar distances in other parts of the country, but I am not in a position to say as to whether the conditions on other roads in other parts of the country are the same.

1035 The COURT: Have you a schedule, a list there, or statement?

A. I have just some memoranda I have made.

Mr. BAXTER:

Q. Well have you got those comparisons compiled there Mr. Gower?

A. Well, take our road from Resolis, Colorado to Omaha, 500 miles, being the same average distance as from the Missouri River to

Chicago, our rate on cattle is 31 cents, and on hogs, 40 cents. Take it from Seibert, Colorado, to Kansas City, on cattle, it is 27½ cents and on hogs, 35½. Texhoma, 493 miles, the rate on cattle is 34½, and on hogs, 42½ cents. From Terral, 496 miles, the rate on cattle is 36½ cents, and on hogs, 45 cents.

Q. How much did you say cattle were?

A. 36½ cents, and hogs 45 cents.

Q. Mr. Gower, we will not take up the time of the Court to read those unless his Honor wants to hear it.

The COURT: File that.

Mr. SEVERANCE: I understood him to say he had no schedule, simply some memoranda.

The COURT: If it is in shape so he can file it, let him file it.

(No statement was filed by the witness at the time he was on the stand.)

1036 Mr. BAXTER:

Q. In proportion to the service performed, is the net revenue received by railroads for the transportation of cattle and hogs, more or less than the net revenue received by them for the transportation of ordinary dead freight?

A. The net revenue ordinarily is less on live stock than dead freight on account of the smaller proportion of pay freight to the gross load.

Q. How does the revenue derived by your company from a car loaded for instance, with coal, lumber or other low grade traffic compare with the revenue derived by your company from the transportation of cattle and hogs in a car of the same capacity between the same points, or for similar distances? If you have any instances of making that comparison, state the general nature of them.

A. Well, take class A freight, which covers machinery of all kinds, certain classes of iron and furniture, $96 a car we earn from Chicago to the Missouri River. The gross loading would be 60,000 pounds on Class A, or about $3.20 per ton for the tonnage haul.

I always figure that by taking the weight of the car and the weight of the load and comparing with live stock. The box cars will average practically the same on our road as our live stock
1037 cars, about 15 tons. Say you take 30,000 pounds to the car and 30,000 pounds to the load, and we earn $3.20 per ton hauled. Fifth class freight includes all the heavy articles of merchandise, most of the iron articles, canned goods and such things of that kind. The average load of that would be about 40,000 pounds; our rate between Chicago and the Missouri River is 27 cents. That gives $108, for which we would haul 70,000 pounds, which would earn us, $3.09 per net ton.

Hard coal, which is a very low rated article pays $2.50 per ton between Chicago and the Missouri River. We get that from Eastern lines in open cars, a good deal of it in large cars, very rarely less than 60,000 pounds, and it pays us $75 per car. I have figured those

cars from the weight of our cars, 28,000 pounds, which is a very liberal estimate, and that pays us $1.70 per ton.

East bound business, butter and eggs, that is a perishable commodity. Our average load of butter and eggs is 22,000 pounds. The rate is 45 cents, which pays up $99 a car. That is one of the articles that it seems quite fair to compare with perishable freight like live stock. That pays us $3.90 per ton hauled.

Coming to grain: I have figured the grain at 16 cents, that is wheat, 16 cents from Kansas City, because the rates in con-
1038 troversy, I understand, are the rates from intermediate points, and in the zone where the Missouri River rates apply. We would apply the local rate of 16 cents on wheat and 15 cents on corn. That at 16 cents on wheat would be $90 per car.

Mr. COWAN: I am under the disability of not being able to hear hardly anything you say.

A. I am sorry. I was saying I figured our grain as a comparison at the intermediate points, because I understand the intermediate point rates on live stock are the rates in controversy; so I have taken the wheat rate of 16 cents per hundred pounds. Our average load of wheat is 60,000 pounds because wheat is usually bought in one thousand bushels. That gives us $96 per car. The empty car weighs 30,000 pounds, or a total of 126,000 pounds, and we earn $2.13 per ton hauled.

The COURT: How much is it a ton on live stock?

A. I have not mentioned live stock yet, I was just coming to it. Now, on cattle I have two computations, on cattle, I figured our cattle at 23,000 pounds, slightly over the average loading. The weight of our cattle cars, including bedding, averages about 31,500 pounds. Now on cattle we have to haul our cars empty to the loading point almost universally on our road, and we have no loading west-
bound. I have figured that 75 per cent. of our cattle cars
1039 at least are hauled empty to the point of loading, so we haul 75 per cent. of the original weight of the car, that gives another 23,625 pounds or a total of 78,125 pounds on which we get pay for 23,000 pounds only. That gives us $54.05 for which we haul 39 tons, or $1.38 per ton. I am figuring on 23½ cents. Figuring on 20 cents, we would get $1.18 on the same basis. Hogs, on the same method of computation give at 23½ cents, $1.11 per ton and at 20 cents, $.94 per ton, less than one dollar per ton.

A recess was here taken until two o'clock of the same day, Tuesday, September 26, 1905.

1040 SEPTEMBER 26, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon HARRY GOWER, resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. I wish you would file as Exhibit No. 3 a statement showing the rates charged by your company on cattle and hogs respectively to Chicago, Illinois, from each intermediate point on its line between St. Paul and Missouri river points on the one hand, and Chicago on the other, in other words, your intermediate rates.

(The statement was produced by the witness, marked Gower Exhibit No. 3 and is attached hereto.)

CHARTS

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LARGE

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Q. I wish you would also file a statement as Exhibit 4 to your testimony showing for the last three years ending June 30th, 1905, the volume of shipments of packing house products and fresh meats from St. Paul and Missouri river points to the north, east, west and south, respectively?

A. I believe I filed three exhibits.

Q. What I want is the volume of shipments of packing house products and fresh meat from St. Paul and Missouri River
1041 points, to the north, east, west and south?

A. I have that.

Q. Does it divide them up into shipments to the north, east, south and west, so as to show how they are divided?

A. This statement shows the movement of packing house product from the Missouri river points and from South St. Paul to the east, west, north and south.

Q. Are they in the aggregate or shown separately?

A. They are shown separately.

(Statement produced by the witness, marked "Gower Exhibit 4" and is attached hereto.)

1041*a*

EXHIBIT 4, TESTIMONY H. GOWER.

The Chicago, Rock Island and Pacific Railway Company.

Office Auditor Freight Traffic.

CHICAGO, *Sept.* 14, 1905.

Statement Showing Number of Cars of Fresh Meats and Packing House Products Forwarded from St. Paul and Missouri River Points Located on C., R. I. & P. Ry. for the Three Years Ending June 30, 1905.

1902/03.

	Fresh meats.					Packing house products.				
	East.	West.	North.	South.	Total.	East.	West.	North.	South.	Total.
So. St. Paul	5	....	....	....	5	14	3	5	....	22
Kansas City	733	251	1	...	985	571	596	12	....	1169
St. Joseph	1594	63	29	5	1691	541	388	27	22	978
So. Omaha	2039	345	...	....	2384	583	529	....	2	1114
Council Bluffs	....	1	....	....	1	....	18	....	....	18
Omaha										
Atchison										
Leavenworth										

1903/04.

	Fresh meats.					Packing house products.				
	East.	West.	North.	South.	Total.	East.	West.	North.	South.	Total.
So. St. Paul	....	....	....	....	....	38	1	....	....	39
Kansas City	267	174	14	....	455	866	762	1	....	1629
St. Joseph	292	....	11	....	303	444	402	1	....	847
So. Omaha	2237	147	3	....	2387	377	313	5	1	696
Council Bluffs	....	....	....	...	....	....	1	....	....	1
Omaha										
Atchison										
Leavenworth										

1904/05.

	Fresh meats.					Packing house products.				
	East.	West.	North.	South.	Total.	East.	West.	North.	South.	Total.
So. St. Paul		1			1	10	13			25
Kansas City	61	125	1	1	188	503	778	12		1293
St. Joseph	221	40			261	220	273			493
So. Omaha	4561	196			4757	297	442			739
Council Bluffs	1				1	3	6			9
Omaha						4				4
Atchison										
Leavenworth										

Q. Is the distance of the Misouri river and St. Paul market of benefit or injury to the persons who produce cattle?

A. I should consider that the nearer the market to the product, whether it is live stock or grain, to be an advantage.

Q. State what effect, if any, the reduction of rates on cattle and hogs at intermediate points east of the Missouri river would have upon the rates on cattle and hogs west of that river?

Mr. COWAN: I think that is merely speculative and I will object to it.

The COURT: I will let him answer.

A. It would reduce the rate—Do I understand that question that the reduction of rates is east of the Missouri river and not at the river?

1042 Mr. BAXTER:

Q. If you reduce the live stock rates in the territory east of the Missouri river, will it have any effect upon the rates west of the Missouri river in your opinion?

A. All our rates are subject to comparison. The trouble we are always having is justifying certain rates in comparison with other rates. All reductions are liable to have the effect that by comparison with other rates it reduces those rates.

Q. State whether the reduction of rates for cattle and hogs at intermediate points east of the Missouri river would have any effect upon the revenue of your company and if so, what would it amount to?

A. Well, we have figured in taking our present rates that are higher than the 20 cents, east of the Missouri river, reducing them to 20 cents would cost us $82,000 per annum.

Q. How much?

A. $82,000.00, and we could not stop there. We would have to go beyond the reduction in grading, we would reduce a good many rates besides those now higher than 20 cents.

Q. You mean your rates on live stock?

A. On live stock, that is what I am talking about.

Q. State what terminal or switching charges are paid by your

company on packing house products and fresh meats at St.
1043 Paul and the Missouri river points?

A. At South St. Paul we pay 75 cents per car. At Kansas City, $3.00 per car. At St. Joe, $1.50, at South Omaha, $2.00.

Q. File a statement as Exhibit No. 5 to your testimony showing the number of cars of packing house product and fresh meats received by your company during the year ending June 30th, 1905, from St. Paul and each of the Missouri river points.

A. It is in the other statement, but I have it separately if you desire.

(Statement produced by the witness, marked "Gower's Exhibit 5", and is attached hereto.)

1042*a* EXHIBIT 5, TESTIMONY H. GOWER.

Statement Showing Number of Cars of Packing House Products and Fresh Meat Received by C., R. I. & P. Ry. During the Year Ending June 30th, 1905, from South St. Paul and Each of the Missouri River Points.

	P. H. P. No. of cars.	F. M. No. of cars.
St. Paul	None	None
South St. Paul	25	1
Kansas City	1293	188
St. Joseph	493	261
South Omaha	739	4757
Council Bluffs	9	1
Omaha	4	None
Leavenworth	None	None
Atchison	None	None

Mr. SEVERANCE: I thought that was in the other.

Mr. BAXTER:

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Kansas City respectively from certain stations on the Chicago Rock Island & Pacific Railway east and west of Kansas City, and showing the straight rates from said stations to Chicago Illinois, on cattle and hogs and the combination of the live stock rates from said stations to Kansas City plus the packing house product and dressed meat rate of 20 cents per hundred to Chicago? If so, please file said statement as Exhibit No. 6 to your testimony and state briefly what it shows.

A. I have a statement here showing the distance from points west and east of the Missouri river to Kansas City, ranging from
1044 54 miles to 301 miles, the rates into Kansas City and the rates added to the packing house product rate of 20 cents from Kansas City to Chicago. Then the rate from the same stations to Chicago showing that the combination is in favor of Chicago.

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(The said statement is produced by the witness, marked "Gower Exhibit No. 6" and is attached hereto.)

1042b

From	Distance to		Straight rate to Chicago.		Rate to K. City.		Comb. of the live stock rates from said stations to K. C. plus P. H. P. rate of 20 cents to Chicago.	
	Ch'go.	Kas. City.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle	Hogs.
West.								
Topeka	585	68	27	28½	8½	11	28½	31
Valencia	596	79	27	29½	8½	11	28½	31
McFarland	616	99	29	32	11	14	31	34
Herington	665	148	31½	34	13	17	33	37
Groveland	718	201	34	37½	16½	21½	36.5	41.5
Brenham	818	301	38	43½	19½	25	39.5	45
East.								
Cameron	463	54	23.5	23.5	8.5	9.5	28.5	29.5
Gallatin	442	75	23.5	23.5	10	12	30	32
Trenton	416	101	22	23.5	10.5	12.5	30.5	32.5

Gower Exhibit No. 6, vol. 9, p. 1043.

A. Have you caused to be correctly compiled a statement of the distances to Chicago, and St. Joseph, Missouri, respectively from certain stations on the Chicago, Rock Island & Pacific Railway, east and west of St. Joseph with straight rates to Chicago on cattle and hogs and the combination of the live stock rates from said stations to St. Joseph plus the packing house product and dressed beef rate of 20 cents per hundred pounds to Chicago? If so, please file said statement stating briefly what it shows.

A. I have a statement showing the distances from certain stations west of St. Joseph and east of St. Joseph, ranging from 24 miles to 228 miles. The rate into St. Joe, also the rate from St. Joe, and also the rate on packing house products, St. Joe to Chicago and the rates from the stations named to Chicago, showing that the combination on St. Joe is in favor of Chicago.

(The statement produced by the witness is marked "Gower Exhibit No. 7" and is attached hereto.)

1044a

From	Distance to		Straight rate to Chicago.		Rate to St. Joe.		Comb. of the live stock rates from said stations to St. Joe, plus P. H. P. rate of 20c. from St. Joe to Chicago.	
	Chicago.	St. Joe.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Denton	522	24	24½	25½	5½	7	25½	27
Powhatton	549	51	25½	27	7	9	27	29
Bern	574	76	27½	30	9½	12	29½	32
Steinauer, Neb.	598	100	28½	32½	11½	15	31½	35
Jansen, "	648	150	33½	37½	13½	17½	33½	37½
Scandia, Kas.	697	199	34½	38½	14½	18½	34½	38½
Prairie View, Kan.	736	238	35½	40	15½	20	35½	40
Amity	471	27	23½	23½	6	7	26	27
Altamont	449	49	23½	23½	7½	8½	27½	28½
Hickory Creek	424	74	23	23½	10½	12	30½	32
Princeton	393	105	22	23½	11½	13½	31½	33½

Gower Ex. 7. Vol. 9, p. 1044.

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Des Moines, Iowa, respectively
1045 from certain stations on the Chicago, Rock Island & Pacific Railway east and west of Des Moines, the straight rates from said stations to Chicago, Illinois, on cattle and hogs, and the combination of the live stock rates from said stations to Des Moines plus the packing house and dressed beef rate of 18½ cents per hundred pounds from Des Moines to Chicago? If so, please file said statement and state briefly what it shows?

A. I have a statement here showing the distance to Des Moines from stations east and west ranging from 23 to 101 miles showing the rates into Des Moines and the rates to Des Moines plus the local rate on packing house products Des Moines to Chicago and the rates from those stations to Chicago, showing the combination is in favor of Chicago.

(The statement produced by the witness is marked "Gower Exhibit No. 8" and is attached hereto.)

1046a

From	Distance to		Straight rate to Chicago.		Rate to Des Moines.		Combination of the live stock rates from said stations to Des Moines, plus P. H. P. rate of 18½ beyond.	
	Chicago.	Des Moines.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
West.								
Earlham	387	29	22.5	23.5	7.11	7.33	25.61	25.83
Casey	410	52	23.5	23.5	8.95	9	27.45	27.5
Wiota	433	75	23.5	23.5	10	10.16	28.5	28.66
Avoca	459	101	23.5	23.5	11.53	11.12	30.03	29.62
East.								
Colfax	335	23	22	23	6.71	7	25.21	25.5
Turner	309	49	22	21	8.68	8.67	27.18	27.17
Victor	280	78	22	21	10.26	10.32	28.76	28.82
Homestead	257	101	21.5	20	11.53	11.12	30.03	29.62

Gower, Exhibit No. 8, vol. 9, p. 1046.

Q. Have you caused to be correctly compiled a statement showing the distance from Chicago and Cedar Rapids, Iowa, respectively from certain stations on your road north and south of Cedar Rapids, the straight rates from said stations to Chicago, Illinois on cattle and hogs and the combination of the live stock rates from said station to Cedar Rapids, Iowa, plus the packing house product and dressed beef rate of 16½ cents to Chicago? If so, please file said state-
1046 ment as an exhibit to your testimony and state what it shows?

A. I have a statement here showing the distances into Cedar Rapids from stations 23 to 98 miles from Cedar Rapids east and west; the rates into Cedar Rapids plus the packing house rate from Cedar Rapids to Chicago and the straight rate of cattle and hogs from those stations to Chicago, showing the combination in favor of Chicago.

(The statement produced by the witness is marked "Gower Exhibit No. 9," and is attached hereto.)

10466 From stations west of Cedar Rapids.	Distance to		Straight rate to Chicago.		Rate to Cedar Rapids.		Combination of the live stock rates from said stations to Cedar Rapids, plus P. H. P. rate of 13½ from Cedar Rapids.	
	Ch'go.	Ced. R.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Vinton	280	23	21	20	6.71	7	20.21	20.5
Waterloo	310	53	22	20	8.95	9	22.45	22.5
Waverly	332	75	22.5	22	10	10.16	23.5	23.66
Marble Rock	355	98	22.5	23	11.32	10.96	24.82	24.46
Oasis	232	25	20	18.5	6.71	7	20.21	20.5
Sunbury	286	54	17	16	8.95	9	22.45	22.5
Rock Island	181	76	11.1	15	10.26	10.32	23.76	23.82
Genesco	159	98	11	10	11.32	10.92	24.82	24.46

Gower Exhibit No. 9, vol. 9, p. 1046.

Q. State whether there are any other stations on your road than those mentioned in your exhibits which I have just called for, with reference to which the rate adjustment is in favor of Chicago against the packing house points which are covered in your exhibits?

A. Ottumwa would show the same figures.

Q. Your exhibits show a number of stations scattered along your line for a distance of say, from 25 to 100 miles. They are not all the stations on that part of your line, are they?

A. No.

Q. Would the same rule apply to intermediate stations *stations* between those stations?

A. The same distance, because the Iowa tariff is the same all through the state.

Q. Are any packing house products shipped from any point on your line between the Missouri river or St. Paul and Chicago unless there be a packing house at such intermediate points?

1047 A. There is one article that may be shipped from any station in Iowa and that is hides, green hides which are included in the packing house list. Outside of that there would be no meats shipped in car loads from stations where there are no packing houses.

Q. Do any of the different companies join in making through rates from points west of the Mississippi river to New York or other eastern points and by eastern points, I mean points east of the Indiana and Illinois state line or are the rates made on the combination?

A. The rates are made on the combination on the Mississippi river unless the combination happens to be lower on Chicago, which is rarely the case.

Q. If the combination be lower at Chicago, then Chicago would control?

A. Yes, if the combination on Chicago was lower, than the combination on the river would prevail.

Q. Explain to the court the difference between the local rate charged from any point on your line to the Mississippi river and the proportional rate which your road exacts from th- same point to the Mississippi river when the packing house products are destined for points east of the Indiana and Illinois state line. Why is that proportional rate put in there?

A. You mean from Iowa?

Q. Yes.

1048 A. The local rate from Iowa stations to the Mississippi river is the state tariff. It is absolute. We don't vary from it. In order to equalize the gateways which are not equal distances, we have to make a rate to the Mississippi river which, added to the Mississippi river rate is uniform, from Topeka to East St. Louis or some other of the river crossings,—so as to equalize all of the gate-ways we have to make a proportional rate to all of the river points. The proportional rate is really an equalizer to make the through rates the same for all river gate-ways.

Q. Are the rates charged by the lines east of the Mississippi river on packing house products originating in Iowa, are they the regular local rates from the Mississippi river to the eastern points or are they less?

A. They are the east St. Louis rates. The basis of all through rates in East St. Louis. The East St. Louis basis is applied from all the Mississippi river stations on business going east of the Indiana and Illinois state line with a few exceptions in short points. That is the basis and we have to make our rates, of course, up to the river the same to every river point regardless of the distance. That is the short line distance from Ottumwa to Burlington would be about 100 miles or less than that, probably 75 miles but any other road taking the business from Ottumwa might carry it 150 miles to their

1049 river point and yet have to make the same proportion as the C. B. & Q. make on their short lines. It is on the equalizing basis. The local rate from the Mississippi river to the seaboard is much higher.

Q. Sir?

A. The local rates from the Mississippi river to the seaboard is much higher that the proportional rate.

Q. You cannot exact on packing house products originating in Iowa, any higher rate than your rate to the Mississippi river plus whatever the rate may happen to be that is charged by the roads east of the Mississippi river?

A. No, that is the maximum.

Q. Can you state how the rates on packing house products from Chicago to Pacific coast points compare with the rate- *rates* on pack-

ing house products from Missouri river points to the Pacific coast points, are they higher or lower or the same?

A. From Chicago?

Q. Yes?

A. They are certainly not lower. I don't recall the figures exactly, but my judgment would be that there is not more than 5 cents between them.

Q. How do the rates on packing house products from Chicago to Texas points *points* compare with the rates on packing house products from the Missouri river to Texas points?

A. Higher from Chicago.

Q. How do the rates from Chicago to New York and eastern points compare with the rate on packing house products from the Missouri river points to New York and other eastern points?

1050 A. They are lower from Chicago.

Q. Will you be kind enough to get the figures between now and to-morrow morning and be prepared to answer those questions?

A. Yes sir.

Cross-examination by Mr. COWAN:

Q. Do you speak for the Rock Island road in your testimony here?

A. Yes sir.

Q. How is that?

A. As far as the Traffic Department is conce-ned.

Q. Well, do you stand here as a representative of the Chicago Rock Island & Pacific System in the expressions that you have given here?

A. Only the Traffic Department.

Q. You will have to speak louder?

A. Only the traffic department.

Q. Do you not know that it is a fact that Mr. Boyd of your traffic department testified in this case before the Interstate Commerce Commission?

A. Well, I remember that he testified. I thought you were going to tell me what he testified to.

Q. What position did he hold?

Mr. SEVERANCE: I object to that as immaterial. Of course, that is only preliminary to endeavoring to show, otherwise it can-

1051 not be competent, it must be preliminary to endeavoring to show that Mr. Boyd has given expression to different views than are now given here on the witness stand by Mr. Gower. I don't think this witness can be contradicted or impeached in that way.

The COURT: You can prove what the other man said and get it into the record.

Mr. SEVERANCE: He can unless we are able to convince your Honor, that it is incompetent. He cannot prove it to impeach this gentleman. Mr. Gower is not the Rock Island Road and neither is Mr. Boyd. This is a witness testifying under oath as to his opinions.

The COURT: He has a right to cross-examine him.

Mr. COWAN: My object is this, and I will state it here. In the hearing before the Interstate Commerce Commission, through a traffic official of the Rock Island Road, a statement is made before the Commission with respect to these very matters, pertaining to the rates and cost and what the relative rates ought to be on this kind of traffic. The statements are made by the Burlington and other roads with respect to that matter. The commission hears the testimony and they go out and decide the case. Then when it comes before the court, they bring in some other official or some other man before the court who expresses a different opinion and I think it is competent for the court to ascertain who speaks for this company. If it
1052 was an individual they could be impeached. They would not dare testify to the contrary of what they did in the former hearing, yet, when they come in with a different individual——

Mr. SEVERANCE: Nothing in the world could be more clearly incompetent. There is no corporation in here testifying. It is a witness here testifying under oath. The mere fact that he is connected with the Rock Island Road or some other road don't make any difference. It don't make any difference what Mr. Boyd has testified to in the other proceeding, unless your Honor should hold that Mr. Boyd's testimony in a proceeding where the same issue was involved would be properly receivable. That was the question that we discussed with your Honor at the beginning of the trial.

The COURT: And I held that that was competent evidence.

Mr. SEVERANCE: Your Honor so held, yes sir.

The COURT: Well, let me have the question now, let's see what the question is.

(The pending question was then read.)

The COURT: Objection overruled.

A. He is general Freight Agent of the Company. He is not with us at present.

Mr. COWAN:

Q. Is it not a fact that at the time it was the belief on the part of the Rock Island Railroad that the rates on dressed meats and packing house products ought to be higher or as high at least as
1053 the rates on the live stock from the Missouri river points and intermediate, to Chicago?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant and immaterial.

The COURT: Objection sustained.

Mr. COWAN:

Q. What was your opinion at that time?

A. I don't remember what my opinion was at that time.

Q. What is your opinion now?

A. I have not seen so far any close relationship between the rates on dressed beef and cattle.

Q. That does not answer my question.

A. I have not seen any very close relationship between cattle and dressed beef.

Q. Why then do you add the rates on cattle to Ottumwa or some other local station, Cedar Rapids, for example, to the rates on packing house products and dressed meats, when you testify that there is no preference given in favor of Chicago?

A. I added them to the packing house products.

Q. Didn't you add the live stock rate in a number of the computations you filed here, to the rates on packing house products and dressed meats?

A. The rates on packing house products.

Q. I cannot hear you?

A. Packing house products.

Q. Added on the product and not the dressed meat?

1054 A. Yes sir.

Q. Isn't it a very much closer relation betwe-n the dressed meat and the live stock than there is between packing house products and live stock?

A. Well, I don't know about that. We hear so many very strange movements of both live stock and packing house produ-ts and occasionally dressed meats, that it would seem that the rate was not as close to it as I think we have generally assumed.

Q. Well, that does not answer my question. Is it or not your opinion that the rates on dressed meats ought to be as high as on the live animal?

A. No, I have not arrived at that opinion yet.

Q. What?

A. I have not arrived at that opinion yet.

Q. Have you an opinion to the contrary?

A. In most cases, yes.

Q. Why don't you make your dressed meat from Fort Worth to Kansas City as low as you do your live stock rate then?

A. We don't have the rate making power. We don't have the power of making the rate anything we want to. We cannot make the rate anything we want to. We have other roads running there and if we reduce the dressed beef rate, to the live stock rate, we will probably run against some road with a different opinion, and they might reduce the live stock rate.

Q. How would their opinion keep you from reducing your

1055 dressed beef rate from Fort Worth to Chicago?

A. If they did not agree with us they could simply reduce the live stock rate.

Q. How is that?

A. If they did not agree with us they could reduce the live stock rate.

Q. Do you mean to say that you agree on these rates?

A. I do not say so. I say if they did not agree with our opinion, if their opinion was different, they might reduce the live stock rate.

Q. Why don't other roads make the packing house products and dressed meat rates as low from Fort Worth, if they ought to be as low?

A. I don't know.

Mr. SEVERANCE: That is objected to.

Mr. COWAN:

Q. Now your rate on dressed meat from Denver to Omaha is higher than it is on your live stock, isn't it?

A. I have not the figures here.

Q. Well, don't you recollect? You are Assistant Traffic Manager, you recollect, don't you?

A. No, I don't recollect the figures.

Q. Have you the tariffs here with you?

A. I don't think I have. I have the rate on cattle here.

Q. What have you that rate from Missouri to Omaha?

A. 49 cents.

Q. How is that?

A. Oh, no, that is Chicago.

Q. The dressed meat rate from Denver to Omaha.

1056 A. 33 cents on the cattle to Omaha.

Q. What is it on dressed meat from Denver?

A. I don't remember that figure, Mr. Cowan.

Q. Well, it is higher than on the live stock, isn't it?

A. Oh, yes, I think it is.

Q. What is your dressed meat rate from Ottumwa to Missouri river points? Higher than the live stock, isn't it?

A. Yes sir.

Q. What is your dressed meat rate from killing points elsewhere on your line as compared to the live stock to any point except the Missouri river rates and the interior Iowa packing house rates to Chicago, with that exception?

A. Well, our rate from Des Moines to Chicago on dressed beef is 18 cents and a half and cattle 22.

Q. I say with the exception of the rates from interior packing towns in Iowa and with the exception of Missouri river to Chicago, what are the relative rates on the two? To put it in another form, isn't it a fact that all of your dressed meat rates and your packing house product rates are higher than they are on the live animals with the exceptions I have mentioned?

A. Well, I can only tell by taking the killing points because at other points where there are no packing houses, we practically have no rates except class rates.

Q. Well, it don't matter what sort of rates they have got, whether they are class or not. What they have to pay is more to ship

1057 the dressed carcasses than the live animal in all the instances except those I have mentioned.

The COURT: Answer that yes or no if you can.

A. I don't know without seeing.

Mr. COWAN:

Q. The Iowa distance tariff is higher on the packing house product and dressed meat, isn't it?

A. We did not make it, though.

Q. Well, that don't answer my question.

Mr. SEVERANCE: I don't see why we need spend any time on

that. We can introduce the Iowa tariffs if it is necessary. That will show for itself.

The COURT: Well, yes, that is true.

Mr. COWAN:

Q. Take the rates on dressed meats and packing house products from Missouri river points and from Chicago to Texas common points, Fort Worth, for example. Isn't it a fact that the dressed meat and packing house product rates are higher than the live stock rates?

A. I think that is true.

Q. And the same from St. Louis?

A. Yes, that would be true from St. Louis, also.

Q. In shipments from Fort Worth to New Orleans and Memphis and Little Rock and other points supplied from Fort Worth, isn't it a fact that the dressed meats and packing house products rates are higher than the rates on the live animal?

1058 A. Yes sir.

Q. Now, which of the rates are expressive of the judgment of your railroad, those from places where the live stock is higher or those from places where it is the lower.

Mr. SEVERANCE: That is objected to as incompetent.

The COURT: Let him answer.

A. Why, I don't know that any rates are expressive of our judgment on the question as to what they should be.

Mr. COWAN:

Q. Were these rates from the Missouri river on the product of live stock made lower as a matter of judgment or not?

A. The rates from the Missouri river were made to meet the competition of another road that established the rate.

Q. Is it not a fact that your road had been carrying the live stock at less than the published rate, before the Great Western contract was made and before the lower rates were published?

A. I don't remember.

The COURT:

Q. How long have you been in your present position? How does it happen that you do not know?

A. Eight or nine years. I don't remember what we were carrying the live stock at in 1901.

Q. Is there any doubt about that, that the live stock was lower before?

A. No, I think the rate was exactly the same then as it

1059 is now.

Q. What was the local rate of the Iowa distance tariff from Cedar Rapids and Ottumwa to the Mississippi river, do you recollect?

A. I do not recollect.

Q. I understood you to say that the proportional rate to the Mississippi river was based on the Iowa distance tariff, on dressed meats?

A. I did not say so.

Q. You were speaking so low that I did not understand you. The proportional rate is very much less, isn't it?

A. Yes, I should judge it is on packing house products.

Q. Do you claim that the packing house rates on packing house products and dressed meats from any point should be higher or lower dependent upon what was paid on the live stock rate into that killing point?

A. No, I have not made any such claim.

Q. No such basis has ever been adopted, has it?

A. Not in establishing rates, no.

Q. Isn't it a fact that there are shipments into Kansas City to the packing houses or rather to the market on which 10 cents a hundred is paid, 20 cents a hundred, 40 cents a hundred, 50 cents a hundred?

A. On live stock?

Q. Yes.

A. Yes sir, live stock moves into Kansas City and Omaha from points in the west where the rates would be as high as you say.

Q. The rates vary very much?

A. Yes sir.

1060 Q. The price paid for live stock in the market is not dependent at all on what the rate of freight is or was on the live stock into the market?

A. I don't know about that.

Q. Well, suppose a man ships in a 1200 pound steer from El Paso over your line and another comes in from Herrington to Kansas City. Would there be a higher price paid on the steer from El Paso than from Herrington, because of the rate there?

A. I presume not, I don't know about the market.

Q. You did not and do not base packing house rates at all upon that fact, do you?

A. Well, we have considered that from interior points.

Q. How is that?

A. We have considered them sometimes from interior points. We have considered them in the making of rates occasionally.

Q. Who did?

A. I say we have.

Q. Whom do you mean by "we"?

A. I mean the roads.

Q. Have considered the rate of freight paid into the point?

A. We have considered that.

Q. Where and when was that considered?

A. Well, I could not give you the exact day or the week or the month.

Q. I mean as applied to what places?

A. I think we considered them a short time ago in regard to Cedar Rapids.

1061 Q. Now, did you adopt the schedule based on what they had to pay on live stock into Cedar Rapids?

A. Not on the price, on the rate. On the rate, not on the price.

Q. Did you base the rate on the packing house product out, on the rate which they paid on the live stock in?

A. It was one of the elements we took into consideration in reducing the rate from Cedar Rapids to Chicago.

Q. Why did you do that?

A. We did that on the representation of the shipper, that the rates were based against him.

Q. What shippers?

A. The shippers at Cedar Rapids.

Q. Did some shippers of hogs to Cedar Rapids make such representation to you?

A. That the rates into Cedar Rapids and the local from Cedar Rapids to Chicago were not fairly adjusted as against the rates on cattle from the Iowa points to Chicago.

Q. Who made that representation except the packing house at Cedar Rapids?

A. That is right.

Q. Did any party else except the packing house or somebody interested in it make that representation?

A. No, I don't recall anybody else.

Q. You answered a moment ago that — based on the price, that that was based on the price that the Cedar Rapids man paid?

A. The rate, not the price. I mean the rate on the live
1062 stock in and the packing house products out.

Q. Did you base your product rate out on the price he pays on live stock?

A. No.

Q. Did you base it on the price that he pays for the freight in?

A. On the rate he pays in?

Q. Yes?

A. Yes sir.

Q. How did you make the figures, what was the method of computation?

A. Very similar to what I have filed here in the exhibits. I think it is Exhibit C.

Q. That is you made him a rate on the product out, which would be equal to the Chicago rate from the point of origin on the live stock——

A. No, it was not equal. The figures show different. There is a difference of about 3½ cents, I think, and in some cases it was greater.

Q. You reduced that on the assumption that he paid the freight?

A. He certainly paid the freight on the packing house product out of Cedar Rapids.

Q. Did you make it on the assumption that he paid the freight on the live hogs into Cedar Rapids?

A. We did not care about that. The rates themselves showed.

Q. Did you know then that he bought the live hogs at the price

minus the rate of freight to Chicago and expenses at the terminal yards there?

A. No.

1063 Q. If you had known that would that have made a difference in your rate?

A. No, I don't think that is anything we woud take into consideration, if he was competing against a Chicago buyer.

Q. You said these live stock rates you considered too low. Too low for what?

A. Too low for the service performed and the extraordinary expenses contingent upon handling the live stock business.

1064 Q. You stated today that the rate from Terral, Indian Territory to Kansas City was 36½ cents on cattle and about 42 or 43 cents on hogs. You testified in the Texas rate case before the Interstate Commission that all those southwestern rates were too low, didn't you?

A. No, I don't think I testified, Mr. Cowan, specifically as to any rates. I think my statement was that our live stock business was handled at too low a rate.

Q. You testified that all the live stock rates on your road were too low, didn't you?

A. I testified that the live stock business did not yield the revenue it ought to as compared with other commodities moved under similar conditions.

Q. What was the distance from Terral to Kansas City, little less than 500 miles?

A. 427, I think it is.

Q. About the same distance it is from Kansas City to Chicago?

A. Yes, sir.

Q. Isn't it a fact that on a shipment from Terral that is routed to Chicago, you carry it for 16¼ cents more if the shipper brings it on to Chicago from Kansas City than if he stops it at Kansas City?

A. It is possibly so.

Q. Don't you know whether it is or not?

A. By figuring the two rates I can tell, but I will admit that it is less than 20 cents, the difference.

1065 Q. Don't you know that from Texas common points the differential of 16¼ to Chicago is above Kansas City?

A. With some exceptions.

Q. And Terral is within that district?

A. 16¼ cents generally but not always.

Q. What service do you perform for the service of cattle from Terral to Kansas City, different to that from Kansas City to Chicago?

A. Well, I could not tell you anything about service. I could only tell you by second-hand information. It is an operating matter and we will have one of our operating officials on the stand who will give all that information.

Q. How far east of Kansas City does your 23½ cent rate apply on shipments to Chicago?

A. Oh, I should think 140 miles.

Q. 140 miles?
A. Yes, sir.
Q. So that it will be about 460 or 470 miles from Chicago or 360 or 370 miles, rather, that the 23½ cent rate applies?
A. Yes, sir.
Q. If the 23½ cent rate for 367 miles from Western Iowa to Chicago is too low, what about the 16¼ additional that you charge from Kansas City to Chicago on the Texas shipments?
A. That is too low, also.

The COURT:

Q. What about the packing house products and dressed meat rate from Kansas City? Do you think that is too low, the 20 cent rate?
1066
A. Yes, sir.
Q. You think that ought to be raised up to 23½ cents?
A. I think it ought to be raised up considerable particularly dressed meat. Packing house product is a better traffic, loading pretty near 30,000 pounds. The dressed meat is altogether too low.

The COURT:

Q. Is there much more to examine him about that is different?
Mr. COWAN: There are other points I want to bring out.

Q. Now, in regard to the dressed meat and packing house product rate, you did not make that as an exercise of your judgment, so far as you know of?
A. I know we did not. If it should have been ten cents, we probably would have adopted it.
Q. You have a 20 cent rate on live stock from Kansas City to Chicago, if it originates west of the river?
A. Yes, sir.
Q. Does that rate apply only on shipments which have come in to the river?
A. Yes, sir.
Q. By rail?
A. By rail.
Q. Isn't it a fact that in all such cases there is a published rate from the point of origin to Chicago that does not have a greater difference than 20 cents. Take Topeka, for example.
A. What do you mean by difference?
Q. Topeka, Kansas, and Chicago, that is not more than 20 cents greater than the Kansas City rate to Chicago?
1067
A. Now, just on that——
Q. What I am trying to get at is whether that proportional rate from Kansas City there applies except on a shipment which you have taken the Chicago rate on with not a greater difference to begin on?
A. Well, that 20 cent rate did apply absolutely for quite a period in 1902. The 20 cent rate absolutely applied in 1902, for quite a long period on all rates except on the Texas stock.

Q. Do you mean to say that there was a 20 cent difference on all the stuff shipped in from Kansas?

A. No, but the roads did not use the balance of the rate. It is a question now whether the balance of the rate is a legal rate or not.

Q. Isn't it a fact that the proportional rate used on cattle was in order to give the packers who buy the cattle on the Missouri River a chance to ship them at a lower rate than the 23½ cent rate?

A. No, the idea was to give the Kansas stock man a chance to stop at Kansas City and take advantage of the market if he wanted to and then come on to Chicago and not pay any more freight than he would have if he had come direct.

Q. Are you certain of that?

A. Yes, sir.

Q. Isn't it a fact that there is not a Kansas shipper that
1068 cannot ship from his own station to Chicago and bill to Chicago with the privilege of the Kansas City market, and, if he don't sell, to come on to Chicago on a rate that is less than 20 cents?

A. Not in every case.

Q. What advantage would it give the Kansas shipper if he could bill out from his own station to Chicago, the idea being that if he did not go on he paid the local rate to Kansas City and if he did go on he paid the rate through to Chicago?

A. I am trying to state that the question arose as to whether the balance of the rate was a legal proposition, and you will probably remember that in the early days of the Interstate Commerce Commission lawone of the first suits heard was in regard to the balance of the rate proposition and it was not definitely settled in 1902 when the question arose again, and it was decided that a 20 cent proportional rate was the only legal rate to be applied on any live stock no matter where it came from and for a long time all stock that went to the Missouri River came out again, paid 20 cents to the line that brought it in. If you brought a car of live stock in it would take our local rate and if the Milwaukee & St. Paul took it out we understand that they collected 20 cents, when the balance might have only been 18 cents.

Q. If it ran over your line it went on the 18 cent rate?

1069 A. It went on the original bill. There was no 18 or 20 cents about it.

Q. Suppose the live stock changed ownership at Kansas City?

A. Then with us it would be a 20 cent rate.

Q. Who was it that would get the advantage of the 20 cent rate or of the shipment at the 20 cent rate excepting the speculators at Kansas City who bought the live stock and shipped it on on a new billing?

A. The 20 cent rate was made for the purpose——

Q. Does it apply to people who drive their cattle in?

A. No, not if we know it.

Q. So then you give to the man who buys and rebills and makes a new shipment, 3½ cent less rate than you do to the man who was feeding his cattle near Kansas City and drives them in, is that right?

A. That is right.

Q. Isn't it a fact that it was the custom previous to the publishing of that 20 cent proportional rate, so-called to Chicago, that when the packers bought the live stock and shipped it out, they did it on the 23½ cent rate and were rebated down to the balance of the through rate? Isn't that true?

A. I could not answer definitely as to that but I will say frankly I think it would be true if they could show that the cattle originated west of the Missouri River. I have so testified before the Grand Jury in the beef case.

1070 Q. Are your packing house products and dressed meat rates maintained today entirely?

A. I believe absolutely entirely. If we don't get any business the last thing we do is to accuse a competitor now of cutting the rate.

Q. When did that stop?

A. I don't remember the date but it has been in pretty good condition on packing house products and dressed beef for the last two years, anyway, and probably longer.

The COURT:

Q. Three years?

A. Three years at least.

Mr. COWAN:

Q. Is it not a fact that it was the custom or a frequent occurrence, at all events that it occurred, that there was a less rate paid than the published rate on the packing house and dressed meat products, say, probably two years ago?

A. Well, how long prior?

The COURT:

Q. Prior to the injunction, say?

A. Well, I will have to say in answer to that that I do not remember any case so far as our road is concerned.

Mr. COWAN:

Q. Would you know?

A. Possibly not. I was not handling that line of business at that time.

Q. Is it not a fact that a lower rate tends to increase traffic in the direction that the lower rate is made?

1071 A. Well, I could not answer that generally.

Q. Is that the tendency?

A. Well, that is putting the cart before the horse. We very often make a lower rate to increase the business.

Q. Well, does it do it?

A. When we do it with that deliberate intention usually, yes, sir, but to reduce your rates haphazard would not necessarily increase the traffic.

Q. Suppose you reduce the rate on live stock from points between Kansas City and Chicago and between Omaha and Chicago, would that tend to increase the traffic in that direction?

A. I think not. I think the tendency of the western country, Iowa, Kansas and Nebraska, is to decrease the shipments of grain

and increase the shipments of live stock. That is the history of every state, I think, the tendency is gradually to increase in the cattle irrespective of the rate, providing the rate is not prohibitive.

Q. A reduction in the cattle rate to one place, as against another, wouldn't it tend to increase the shipments in that direction? Is that your meaning?

A. That is a very broad way of putting it. If we were to reduce the rates on live stock from Iowa to Omaha, it might have a tendency to induce certain shippers to ship to Omaha instead of Chicago.

1072 Q. Suppose you reduce the rates to Chicago, what tendency would that have?

A. Oh, if they were reduced a great deal it might have that tendency.

Q. Suppose it was reduced 3½ cents, would that have that tendency?

A. I don't think it would increase the shipments to Chicago. There are other inducements that bring the freight to Chicago.

Q. Why do you think it would not induce the shipments?

A. I think the shipper has a preference for the Chicago market, anyway.

Q. Is it not a fact that a very large proportion of the live stock shipped by your road from Iowa is shipped to Chicago?

A. Yes, a very large proportion.

Q. Do you know what proportion of your total Iowa shipments to market come to Chicago?

A. I don't think I have that.

Q. Do you have in mind some approximation of it?

A. I would say about 60 per cent. I am talking of cattle. Not as much as that of hogs.

Q. Now, you have testified that the live stock rates were too low, and the dressed beef and packing house product was too low. What rates are high enough?

A. You mean on any comm-dities?

Q. Anything?

A. Well, that is a difficult question. I have not examined other rates like I have live stock.

1073 Q. Did you testify in the investigation of the grain rate case when the advance had been made in the proportional rate to the Mississippi River of two cents a hundred, and they investigated the reasonableness of it about two or three years ago?

A. No, I did not testify in that case.

Q. Do you know whether or not it is a fact that at that time it was contended by your road in that hearing that those rates had been too low previously?

Mr. SEVERANCE: I object to that, as immaterial.

The COURT: The objection is sustained.

Mr. COWAN:

Q. How much does it cost you to haul a carload of cattle from your western Iowa points to Chicago in the manner in which the business is done?

A. I have not any idea.
Q. What is the profit that you make upon it?
A. I don't know that we make any.
Q. Do you know that you do not?
A. I do not, no.
Q. How much profit do you make on a carload of packing house products or dressed meats from Missouri River to Chicago?
A. It is impossible to tell.
Q. Do you know what it costs to perform the service on the average per car load?
A. No, sir.
Q. Is it not a fact, Mr. Gower, that rates of freight are not made for the purpose of producing an equivalent profit per car or per ton on freight to other freight or to the average of other
1074 freight?
A. Yes, that is true.
Q. You don't undertake to move your grain on the basis that each carload you move shall pay the same profit that some other carload of grain paid, do you?
A. It is impossible.
Q. Is it not a fact that you participate in grain traffic from Kansas City to Galveston for export, at 17 cents per hundred pounds?
A. Yes, sir.
Q. And that the grain that goes from Ft. Worth, locally, to the same point is 26 cents?
A. Yes, sir.
Q. Isn't it a fact that grain shipped from Kansas City and from Missouri River points to Chicago moves on a basis of 9 cents proportional to the Mississippi River and 3 cents to Chicago?
A. Yes, three cents over the Mississippi River to Chicago.
Q. From the Missouri River to the Mississippi of 9 cents and Chicago 3 cents additional?
A. Yes, sir.
Q. The local rates you figure on on grain was 16 cents from interior Iowa points to Chicago?
A. On wheat.
Q. Over the same line?
A. Yes, sir.
Q. What is it on corn?
A. 15 cents.
Q. In making your estimate in regard to the amount of tonnage in a car of wheat, and the tonnage in a car of cattle, you estimated the return of the empty car in the case of the cattle?
1075 A. I figured 75 per cent. of it.
Q. Isn't it a fact that you take the empty car to the points where you get the corn in Iowa, in the case of the grain?
A. Yes, but we generally load it back very near the destination.
Q. Now, the grain movement from—the grain movement, Mr. Gower,—isn't it a fact that you are running often trains of empty grain cars out to get the grain?
A. That may be for a short period of the year, yes.

769

Q. Isn't it at short periods of the year that grain moves, dependant on the market conditions?

A. No, the grain moves in the fall and winter.

Q. Isn't the grain made to move largely because of the market conditions at Chicago? If the grain market is high, the grain will move?

A. Chicago is not the only market that grain moves to. If the Chicago market is better than Galveston or Memphis, or St. Louis, it will come here, yes, sir.

Q. Now, on live stock shipments you don't, do you, on your road make the same profit off each carload of live stock that is moved per mile or per hundred miles, do you?

A. Oh, no, we have to take the tariffs as we find them, whether they are high or low.

Q. No rates are based upon the idea of each article paying a certain proportion of the operating expenses and a certain — of
1076 the interest and dividends?

A. That would be impossible.

Q. Nobody takes the interest account and the dividends that they expect to pay and the operating expenses, and figures a rate on any commodity on that basis, do they?

A. No, sir.

Q. Now, you state that if you reduced the rate from Western Iowa points on live stock, you were of the opinion, as I understood you, that it would have some effect on the rates from the west in the sense that it would be used as a comparison. When you put in the 20-cent proportional rate from Kansas City, did that have any effect on the other rates, were they reduced on that account?

A. No, I don't recall of any reduction.

Q. What are the terminal charges that you pay at Chicago on dressed meat and packing house products, carloads delivered at Chicago?

A. Forty cents switching each way, 40 cents trackage each way, and switching two dollars.

The COURT:

Q. Forty cents for what?

A. Switching for the loaded and empty cars, two switchings.

Mr. COWAN:

Q. Total $2.80?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Now, in the case of the live stock you pay only 40
1077 cents each way?

A. And trackage, I mean an unloading charge of 25 cents and the cost of the engine and crew for getting the business out to the stock yards.

Q. What engine and crew takes the packing house product and the dressed meats in?

A. I could not answer you only second hand on that subject. An operating official will be on the stand to give you all the detail about that.

Q. Do you pay a bridge charge at Omaha, or do you have your own bridge?

A. We have a contract.

Q. You have the expense of maintenance?

A. Not at all. We have an annual contract.

Q. What does that amount to per car, the business handled out of South Omaha?

A. I have never figured it.

Q. How much is the total that you pay for the use of the bridge at Omaha?

A. I don't know.

Q. You have an idea about it, haven't you?

A. I have no idea about that.

Q. The roads which do not have a contract for the bridge, what is the average charge at Omaha?

A. On live stock?

Q. No, on packing house product or meat?

A. Well, I could not say, I do not know.

Q. Take the package house products in delivering to the yards here. Well, let us take the packing house products that is
1078 not delivered to the yards here. Suppose it was destined east of Chicago, what switching charges do you pay them?

A. Not any.

Q. How is that?

A. Not any.

Q. Have you a contract for cleaning your cars?

A. I could not answer. That is an operating proposition and I don't know.

Q. You don't know?

A. No, sir.

Q. Is it not a fact that you charged the shippers on your line this side of Kansas City for the bedding that you furnish them for the bedding of cars?

A. If we furnish straw or hay we charge them but not for sand. The sand we furnish free. I think that is right.

Q. Are you certain of that?

A. Well, there has been some discussion of changing that.

Q. Heretofore how has it been done?

A. Well, the rule has been always to furnish the sand free. We have to haul the sand from different points as we have not got any, and we furnish the sand free and leave it to the shippers to put it in.

Q. What are some of the principal shipping points on your line in Missouri? Tarkio, is that a big shipping point?

A. It is not on our road, but Cameron is.

Q. Do you claim that it costs you more money to send out a local train and pick up a full train of live stock which we will assume

gets a train by the time it reaches a first division point out of
1079 Missouri River, than it would to haul a full train of live stock from the river to such a point?

Mr. SEVERANCE: That is not cross-examination, and I object to it. That was not gone into.

The COURT: Objection sustained.

Mr. COWAN:

Q. Have you got a statement of the total amount of damage claims paid on dressed meat and packing house product by your company?

A. For the year 1905?

Q. Well, or any other year that you have got in mind?

A. We paid $3,000 in 1905.

Q. What was the total number of cars you hauled?

A. I am afraid I have given all my statements in. Dressed beef and packing house products?

Q. Yes.

A. 7781.

Q. And the damage claims amounted to how much?

A. $3,000.

Q. That was the total damage claims paid for all purposes?

A. No, we paid $3,000 for the claims on dressed beef and packing house products for the year 1905.

Q. That includes your total payment?

A. Yes, sir.

Q. Now, do you recollect what the total payments were on live stock for 1905?

A. No, sir; I intended to have that here but our auditor misunderstood the question and is still working at it. We hoped
1080 to bring it over this afternoon but he only had three months completed.

Q. Where is the division point on your road at which your live stock train- from Iowa are generally made up into full trains, either live stock or something else?

A. Nitick.

Q. Do the trains in which live stock are carried have more or less loaded cars of freight than the trains in which dressed meats and packing house products are carried?

A. I could not answer that.

Q. Do you run live stock trains as regularly, through trains, from points on the River to Chicago?

A. I could not answer those questions of operation only in the most superficial manner.

Mr. COWAN: That is all.

Re-direct examination by Mr. BAXTER:

Q. You were asked whether you knew of any territory other than that between the Missouri River and Chicago where the rates on packing house products were less than the rates on live stock. I

understood you to say that you could not recall any. I will ask you if you know of any territory except the territory between the Missouri River and Chicago where one of your competitors has put in a lower rate on the packing house product than is prevail-
1081 ing on the live stock?

A. Do I know of any territory?

Q. Yes.

A. No, I don't recollect of any.

Q. You were asked if your rates were made with relation to the cost of performing the service. I will ask you if there are not a great many commodities where your division of the through rate, especially on this long distance transcontinental traffic yields you a revenue very much less than the average cost of the operation per ton per mile as shown in your annual report?

A. Yes. The more through business you have the less will be your rate per ton per mile, the less you will get per ton per mile. That does not necessarily show that it will make the net revenue lower. The rate per ton per mile is no criterion at all of the earnings of a railroad.

Mr. COWAN:

Q. Did you bring over your printed annual reports?

A. I left word for them to be sent over and they will be here before you adjourn.

Q. I will ask you now, as you are on the stand, whether those reports contain accurate data, or data which is regarded as being an accurate statement of your financial condition and operating expenses?

Mr. SEVERANCE: That would be all right if he knows anything about it. He says he don't have anything to do with the operation and he probably don't with the finances, do you?

1082 A. No, sir.

Mr. COWAN: Well, statistics concerning the traffic and operation, are they correct?

A. I could not say whether they are correct. I will say that we accept them as such in our department.

Examination by Mr. SEVERANCE:

Q. You were asked by counsel if he did not have a higher rate on dressed meat from Denver to Omaha. You said that there was no such rate, it was only in the classification. There is not any dressed meat moving from Denver to Omaha, is there?

A. No.

Q. Nor there are not any cattle moving down to Texas from these points that he has cross-examined you about?

A. Very rarely any cattle go south.

Q. Isn't it a fact that in all that line of questions where the cattle rate was lower than the dressed meat rate, he asked questions as to the opposite direction from which the product or the live animal did move?

A. Except in reference to Ft. Worth.

Mr. SEVERANCE: That is all.
The COURT: Call the next witness.

1083 MARK D. FLOWER, called as a witness on behalf of the defendant, the South St. Paul Stock Yards Company, being first duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Where do you live?
A. St. Paul, Minnesota.
Q. What is your business?
A. I am President and General Manager of the St. Paul Union Stock Yards Company.
Q. How long have you occupied that position?
A. About sixteen years.
Q. Where are the stock yards of that company located?
A. At South St. Paul, Minnesota.
Q. How far is that out of the city of St. Paul?
A. Four miles below the city.
Q. Down the river?
A. Below the city on the Mississippi River.
Q. When were those yards built?
A. They were built in 1886 and 1887.
Q. You have been president, then, nearly all the time the yards have been in existence?
A. Nearly so.
Q. What packing houses are located at these yards?
A. The principal packing house there is Swift & Company. There are some smaller packers there.
Q. What are their names?

1084 A. Well, McCormick & Company, and Brunsen & Company and the Armour Packing Company do some killing there in one of these houses, or have some killing done for them, rather. That is perhaps the better way to put it.

Q. By whom?
A. By McCormick.
Q. That is a small matter, though, isn't it?
A. A small packer and it don't amount to a great deal.
Q. Are you familiar with the rates upon cattle and packing house products in and out of South St. Paul?
A. Fairly so, I think.
Q. And to Chicago?
A. Yes, sir.
Q. It is claimed in this proceeding on the part of the complainant that the rates upon live stock to Chicago from South St. Paul and Minnesota points generally below South St. Paul should be as low as the packing house rate from South St. Paul. Now, if that reduction in live stock rates was put into force, what effect would it have,

in your opinion, upon the industries at South St. Paul including your stock yards?

A. I think it would have a serious effect. The tendency would be to decrease the shipments to our market and increase the shipments to the Chicago market.

Q. Have you any knowledge with reference to the relative railway service given to shipments to Chicago and to South St. Paul from points in Southern Minnesota?

A. Yes, sir.

1085 Q. What about it?

A. Well, the railroads, the service on all of the railroads up in that country is especially in favor of Chicago.

Q. What way in favor of Chicago?

A. Well, their trains are arranged on better time and in such a way as to connect with their scrub tracks or feeder lines, and they connect with their main systems and their trains generally are made up for Chicago.

Q. How long does it take to get stock into Chicago from a point, say, 100 miles south of St. Paul?

A. About 20 to 22 hours.

Q. How long did you take to get stock from those same points, say, from down around Wells, between there and Mankato, how long does it take to get stock from there up to South St. Paul?

A. The distance in there is about a hundred miles from South St. Paul and nearly 400 miles from Chicago. It is perhaps 360 or 370 to Chicago. On the Wells division of the Milwaukee Railway, which is a new division that has been built within the past two years, running over to Mankato and across from Mankato to Farmington——

Q. I don't care about the details. How long does it take to get stock to St. Paul and how long to Chicago?

A. It takes nearly 24 hours to get stock to St. Paul and 24 hours to Chicago.

1086 Q. How far is that from St. Paul, those points?

A. Within a radius of about a hundred miles; in some instances 120 or 125, and in some instances shorter.

Q. Are there other cases of the same character where stock can be shipped into Chicago as readily as into South St. Paul where there is as great a difference in the distance?

A. There are other cases where it is not as marked as it is there, but where the service is so arranged that the stock can go to Chicago without any serious delay, but cannot come to our market without serious delay. One instance I would refer to is one of the Milwaukee short lines that runs from Wabashaw on the River division at about Zumbrota.

Q. Wabasha is only about 70 miles below St. Paul?

A. About 70.

Q. And Zumbrota is how far from Wabasha?

A. Forty or 50 miles, 40 probably.

Q. Back from the river?

A. Back from the river.

Q. Joining the main line from Wabasha?

A. Joins the main line from Wabasha.

Q. Well, go ahead with your statement.

A. The Milwaukee, bringing stock off of that line, it has to lay over at Wabasha, if it comes to St. Paul, several hours. If it goes to Chicago and the train is on time, it makes a fairly close connection.

1087 Q. So that you are able to state that as a general proposition the train service is so organized as to give straight rapid service into Chicago, and all kinds of delays in getting up to your market from these points in southern Minnesota?

A. Yes, that is undoubtedly correct. I don't consider that on the part of the railroads, as being or representing any feeling against us or against our market, but it is in the interests of a larger revenue and the longer haul. That is the reason it is done, undoubtedly.

Q. Do you recollect any case where the tariffs have been readjusted by the railroads for the purpose of diverting the traffic to Chicago?

A. A number of years ago after we had our packing house established, we began to draw live stock into our market off from the Winona and St. Paul divisions of the Northwestern Railway.

We drew live stock as far east as Rochester, Minnesota, and as far west as Dakota, the south Dakota line. A considerable quantity of the live stock which we received in those days came from that country along that line. The Northwestern Railway shortened its time and made numerous changes in its tariff, reducing the rate to Chicago.

Q. You mean shortened its time to Chicago?

A. Shortened its time to Chicago and reduced its rate,

1088 but made no corresponding reduction either in time or rates to our market. I took the matter up with the traffic manager by correspondence. I think Mr. McCullough, in fact I know, he was the traffic manager at that time, but I received no encouragement in his replies to my letters. I finally considered it important enough to come to Chicago. I saw Mr. McCullough and talked it over with him. He was very courteous and pleasant, but he frankly told me that it was according to the policy of his line to do everything they could to increase its revenue, and that the long haul was what they were after, and that he could not do anything about changing the plan that they had adopted.

Q. Now, do you know whether, as a matter of fact, this practice of giving better service to Chicago than to South St. Paul from southern Minnesota has actually resulted in the loss of stock to South St. Paul?

A. I have no doubt of it at all, I am certain that that is the case.

Q. Have you ever been so informed by shippers?

A. I have been so informed by numerous shippers at different times covering a period of several years past, that the train service did not favor our market, and that the rates were rather in favor of Chicago.

Q. Even now?

A. Yes, and now, too.

Q. What town is the chief competitor of South St. Paul
1089 in this territory?
A. Chicago.
Q. Almost your only competitor?
A. Well, we have some competition at Sioux City, but that is confined to a very limited part of our territory in the southwestern part of the state.
Q. Some hogs go to Austin?
A. Yes, they have established a new packing house at Austin and they draw some hogs.
Q. Have you prepared a statement of tables showing the actual receipts of cattle and hogs shipped to South St. Paul from southern Minnesota for the last five years and also a table showing the number of live stock listed for taxation during that time in various counties in southern Minnesota?
A. I have.
Q. Will you produce that?

The COURT: You want to file that?
Mr. SEVERANCE: Yes.

A. These tables that I have prepared show that in southern Minnesota—they cover a period of five years. During that time there has been a very marked decrease in the number of cars of live stock coming from that territory which is very close to us, to our market.

The COURT:

Q. A gradual decrease?
A. A very decided decrease.
Q. How has it been lately, the last two years, has it been decreasing under these new rates?
1090 A. Yes, sir.
Q. The change ought to have made it better for you?

Mr. SEVERANCE: If it had not been for the change they would have been wiped off. The stock rates, as your Honor will see by an inspection of the tariffs, are all in favor of Chicago now. The result is that under the present tariffs, as between South St. Paul and Chicago, Chicago gets it all.
The COURT: These rates don't cut much figure in it, then, it is the market that cuts the figure?
Mr. SEVERANCE: No, that does not follow.

The COURT:

Q. Are any of these large packers at St. Paul?
A. Yes, sir.
Q. Which one?
A. Swift.
Q. How large a packing house is it?
A. They have a very large packing house there; they have a capacity for 4,000 hogs a day and 4,000 beeves a day and 4,000 sheep a day.

1091 Mr. SEVERANCE: I was about to offer the tables, your Honor. I request this paper consisting of four sheets be marked "Flower Exhibit No. 1."

(The Document was marked as requested.)

The WITNESS: Those tables in Southern Minnesota give the rate to St. Paul and to Chicago, and also the distance to both markets. I omitted to state that.

Q. And this table "Exhibit 1" shows the receipts of cattle by car loads?

A. Stock.

Q. Of stock I mean by car loads from the Southern tier of counties, and next to the Southern tier of counties, and the third tier of counties, running across Minnesota from west to east, and also from the northern tier of counties of Iowa, does it not?

A. Yes sir.

Q. Gives and shows the extent of this movement to South St. Paul, and also shows the rates in force from these various points to Chicago and to St. Paul and the distances from the principal town in each county to Chicago and to St. Paul?

A. Yes sir.

Q. And under those rates, and under the service as you have described it, the receipts at South St. Paul have fallen off to the extent shown by this table?

A. Yes sir.

1092 (The table marked "Flower Exhibit No. 1" was filed with the Court as part of the testimony of the witness.)

FLOWER, EXHIBIT NO. 1. 1093

M I N N E S O T A ,

SOUTHERN TIER OF COUNTIES. EAST AND WEST RAILWAYS MORE OR LESS DIRECT TO CHICAGO.

C A R L O A D S .

County.	1900.	1901.	1902.	1903.	1904.
Rock	--	11	4	--	--
Nobles	52	73	34	18	10
Jackson	73	47	64	36	12
Martin	100	79	88	34	29
Faribault	113	136	61	80	34
Freeborn	147	163	141	131	44
Mower	132	221	126	94	39
Fillmore	9	19	2	--	3
Houston	--	1	--	--	--
Totals	626	780	520	363	171

County.	Town	Distance. St.P.	Chgo.	Tariff. St.Paul. C.	H.	S.	Chicago. C.	H.	S.
Rock	Luverne	210	386	15	18	18	25	26	30
Nobles	Worthington	177	522	17	17	17	*	*	*
Jackson	Jackson	203	496	17	*	*	25	26	29
Martin	Fairmont	179	470	16	16	16	24	26	27
Faribault	Winnebago	160	453	14	14	14	25	25 1/2	26 1/2
Freeborn	Albert Lea	119	412	12	12	12	24	25	25
Mower	Austin	100	392	*	*	*	25	25	25
Fillmore	Fountain	141	348	14	14	14	22	24	25
Houston	Caledonia	188	340	15	18	18	20	24	25

780

MINNESOTA

1094.

THIRD TIER OF COUNTIES. EAST AND WEST LINE MORE OR LESS DIRECT TO SAINT PAUL.

CARLOADS.

County.	1900.	1901.	1902.	1903.	1904.
Lincoln	28	44	56	95	72
Lyon	184	247	235	298	300
Redwood	173	220	297	472	506
Nicollet	203	259	296	345	274
Le Sueur	268	374	361	500	588
Rice	196	307	313	345	379
Goodhue	469	482	464	473	584
Wabasha	188	210	144	101	64
	1709	2113	2166	2629	2767

County.	Town.	Distance. St.Paul.	Chgo.	Tariff. St. Paul. C.	H.	S.	Chicago. C.	H.	S.
Lincoln	Tyler	194	548	18	18	18	32	34	36 1/2
Lyon	Marshall	165	536	15	15	15	31	32 1/2	32 *
Redwood	Redwood Falls	152	497	13[2]	13[2]	13[2]	28	31	34
Nicollet	St. Peter	74	439	12	12	12	25	26	28
Le Sueur	Le Sueur	62	455	11	11	11	25	26	27 1/2
Rice	Faribault	52	440	p[2]	p[2]	p[2]	25	26	27
Goodhue	Kenyon	53	367	p[4]	p[4]	p[4]	25	26	27
Wabasha	Wabasha	71	341	11	11	11	22	25	27

1095.

MINNESOTA

Second tier of Counties, having east and west direct lines to Chicago.

CARLOADS

County	1900	1901	1902	1903	1904
Pipestone	68	29	9	2	-
Murray	56	56	46	16	6
Cottonwood	66	73	64	17	41
Watonwan	252	318	324	232	105
Blue Earth	183	284	190	171	151
Waseca	271	363	336	286	167
Steele	221	295	206	210	90
Dodge	307	350	332	238	144
Olmstead	11	8	11	19	37
Winona	10	8	4	7	1
	1425	1777	1621	1198	742

Tariff

County	Town	Distance St. Paul	Distance Chgo.	St. Paul C	St. Paul H	St. Paul S	Chicago C	Chicago H	Chicago S
Pipestone	Pipestone	283	576	16	18	18	28	32	33
Murray	Slayton	186	531	17	17	17	26	28	31
Cottonwood	Windon	148	493	16	16	16	25	27½	30
Watonwan	St. James	122	467	15	15	15	25	27	29
Blue Earth	Mankato	86	431	13½	13½	13½	25	26	28
Waseca	Waseca	86	402	12	12	12	24½	26	27
Steele	Owatonna	67	387	*	*	*	24	25	27
Dodge	Dodge Center	72	368	*	*	*	23	25	26
Olmstead	Rochester	92	347	15	15	15	22	24	25
Winona	Winona	102	308	15	15	15	19	22	23

782

1096

I O W A

TEN COUNTIES IN THE NORTHERN TIER IN WHICH RECEIPTS AT SOUTH ST. PAUL ORIGINATE.

CARLOADS.

County.	1900.	1901.	1902.	1903.	1904.
Kossuth	4	1	2	1	1
Winnebago	100	38	10	7	-
Hancock	1	--	1	-	1
Worth	33	35	42	28	20
Cerro Gordo	19	28	11	1	2
Mitchell	118	140	58	42	15
Floyd	4	2	4	2	-
Howard	56	161	51	11	8
Chickasaw	56	122	27	3	-
Winneshiek	11	24	5	2	-
	401	551	211	97	47

County.	Town.	Distance St.Paul.	Distance Chgo.	Tariff. St.Paul. C.	St.Paul. H.	St.Paul. S.	Chicago. C.	Chicago. H.	Chicago. S.
Kossuth	Algona	192	408	19	19	19	23^2	23^2	26
Winnebago	Forest City	183	416	16	16	16	23^2	23^2	25
Hancock	Britt	168	387	17^2	17^2	17^2	"	"	"
Worth	Manly	130	385	15	15	15	"	25	25
Cerro Gordo	Mason City	156	356	"	"	"	"	23^2	25
Mitchell	Osage	150	340	"	"	"	23	24	25
Floyd	Charles City	167	328	"	"	"	23^2	23^2	25
Howard	Elma	131	289	13	13	15	22^2	23^2	25
Chickasaw	New Hampton	148	274	15	14	15	22 1/2	22 1/2	25
Winneshiek	Calmar	170	281	15	14	15	22	22 1/2	25

WISCONSIN. 1097.

Eight counties in which receipts at So. St. Paul are originated.

CARLOADS.

County	1900	1901	1902	1903	1904
Polk	181	116	163	245	223
St. Croix	197	201	251	279	303
Pierce	427	477	463	442	525
Pepin	78	124	92	77	66
Dunn	102	130	88	86	89
Chippewa	19	30	23	22	19
Barron	97	81	123	103	163
Buffalo	177	234	224	177	109
	1228	1383	1427	1451	1520

County	Town	Distance St. Paul	Distance Chgo.	Tariff St. Paul C	St. Paul H	St. Paul S	Chicago C	Chicago H	Chicago S
Polk	St. Croix Falls	52	450	7	8	8	27½		
St. Croix	New Richmond	39	426	6	8	8	25	27	27
Pierce	Ellsworth	43	413	7	8	8	25	27	27
Pepin	Durand	89	389				23	27	27
Dunn	Menominee	60	347	12	13	13	25	27	27
Chippewa	Chip Falls	105	360	12	13	13	23½	27	27
Barron	Barron	90	500	14½	17	17	28		
Buffalo	Alma	91	351	12	12	12			

(A document produced by the witness was here marked "Flower Exhibit No. 2.)

Q. I show you "Exhibit No. 2" and ask you what that is?
A. That is a table showing the rate to Chicago, the rate to St. Paul, and the proportional rate from St. Paul to Chicago; the distances to Chicago and the distances to St. Paul.
Q. From points where?
A. From points in the northwest and west.
Q. Beyond St. Paul?
A. Beyond St. Paul, extending over a country of 900 or 1000 miles.
Q. You mean about a thousand miles from St. Paul is the fartherest point?
A. From St. Paul is what I mean.
Q. This shows from one point 973 miles beyond St. Paul, that is Big Timber, Montana, a proportional rate St. Paul to Chicago, as low as 12.88 cents?
A. Yes sir.
Q. Now, General, I notice here two or three places, Fargo, Jamestown, Moorehead, Larimore, Devil's Lake, and Minot, where the proportional from St. Paul to Chicago is 20 cents. How long has it been 20 cents?
1098 A. I should say about ten or fifteen days.
Q. Since the 13th of this month, hasn't it?
A. Yes sir, about that.
Q. And the through rate to Chicago is not changed?
A. There is something very peculiar about the action of the railroads in regard to this proportional rate.
Q. You know the reason of it, don't you?
A. Yes, I do.
Q. Well, what is it, as to that particular rate, I mean?
A. The railroads entering at St. Paul were dissatisfied with what they considered the manipulation of rates.
Q. Of billings you mean?
A. Of Billings. Live stock coming in from certain territory in the north and west, arriving at St. Paul, the proportional rate would be 18 or 18½ cents. The proportional rate from other places was about 15½ cents, and the railroads discovered finally that everything was moving out of there on the 15½ cent rate.
Q. That is everything from that zone?
A. From that zone. Of course, the shipper coming from a far distant territory where the proportional rate was 13.4 or 12 and something, would always take advantage of that and take the lower rate, but the railroad companies never got to exceed 15½ cents, everything was billed through on the proportional rate of
1099 15½ cents no matter where it originated.
Q. That is lesser, or lower?
A. Yes. Then they increased the proportional rate to 20 cents from certain points without changing the rate into St. Paul, or without changing the rate to Chicago.
Q. So that produces this peculiar situation: Take the rate from

Fargo for instance, the rate is now 34¼ cents to Chicago, and 18¾ cents to St. Paul. It was originally 15½ cents, the proportion through to Chicago which made up the 34¼ cents. Now, they have made the proportional 20 cents, which makes a total of 38¾ cents, and the through rate is 34¼?

A. That is right.

Q. That only applies to points east of Jamestown and Dakota?

A. Yes sir. East of Aberdeen, east of Lakota and east of Jamestown.

Mr. SEVERANCE: I thought that ought to be explained because it is very peculiar. You see the rate into Chicago on what they call the proportional, exceeds 34¼ cents, the through rate. That table Mr. Gower filed states that the 15½ rate — effective prior to that time on one of the tables he filed.

The WITNESS: I want to say, there is nothing moving on that 20 cent rate.

1100 (The document marked "Exhibit 2" and commented upon by the witness, was filed with the Court as part of the testimony of said witness.)

1101

Stations.	Rate to Chicago.	Rate to St. Paul.	Proportional rate St. Paul to Chicago.	Miles. St. Paul.	Chgo.
N. P.					
Fargo	34¼	18¾	20	261	661
Jamestown	39½	24	20	342	742
Mandan	44½	25½	20	449	849
Hebron	45½	27½	18.2	519	919
Dickinson	48	29	19.2	558	958
Wibaux	48	32½	15.8	635	1035
Miles City	48	34	14.4	745	1145
Rosebud	48	35	13.4	778	1178
Billings	53	40½	13.25	892	1292
Big Timber	56	44	12.88	973	1373
G. N.					
Moorehead	34¼	18¾	20	324	724
Larimore	36½	21	20	348	748
Devils Lake	41½	24½	20	409	809
Minot	44	26½	20	527	927
Culbertson	49	35	16.67	700	1100
Glasgow	51	39½	15.26	804	1204
Havre	56	43½	14.38	957	1357
Soo.					
Hankinson	33½	18	20	222	622
Valley City	36	20½	20	307	707
Washburn	44	26¼	17.75	475.7	875.7

Q. Now, you have a map here of Southern Minnesota counties, showing the receipts from those counties of South St. Paul for a period of five years of cattle and calves and hogs and sheep, and also in most cases the number of those various classes of animals assessed for taxation in the county, is that it?

A. Yes sir.

(The map identified by the witness, was marked "Flower Exhibit No. 3" and filed as part of his testimony.)

A. (Continued.) This statement shows the number of cattle and hogs and sheep shipped for a term of five years from these counties to South St. Paul. Another statement on the map shows, during the same five years, cattle, hogs and sheep that were listed for taxation. The map shows that in all cases nearly, the receipts have steadily declined to South St. Paul from this territory. The tax list shows that in most cases, the live stock has held its own or increased, and where it shows to the contrary, it shows only a decrease of from 10 to 25 per cent., while the decrease of stock from the same localities to our market, ranges from 50 to 75 per cent.

1102 Q. Now, have the receipts at St. Paul from all quarters decreased during this period, or have they increased?

A. They have increased from every section tributary to us excepting south and east of St. Paul.

Q. Well, have your total receipts at South St. Paul increased or decreased during the last five years?

A. They have increased very rapidly. They have more than doubles, or about doubled in most things.

Q. Now, are there sufficient cattle killed at South St. Paul to supply the markets tributary to that point?

A. No sir.

Q. How about the territory north of St. Paul, north and west, the ragne towns, like the range towns, the towns on the iron ranges back of Duluth, and Duluth itself, and all of northwestern Minnesota?

A. They receive their beef supply, their meat supply very largely from South St. Paul, at least up to the extent of our ability to supply them.

Q. Yes, now, in addition to your output, where do they get the rest of their supplies?

A. The rest of their supplies are shipped in by other packers from Omaha and Kansas City.

Q. What packers ship in there outside of Swift & Company who have a packing house at South St. Paul?

1103 A. Nelson Morris, and the S. & S. Company.

Q. That is Schwartzschild & Sulzberger?

A. Yes sir, I never attempt to pronounce the name. The Cudahy's.

Q. The Armour packing company?

A. The Armour Packing Company from Kansas City.

Q. Now, can you state whether any considerable quantity of

packing house products is shipped east from the South St. Paul packing houses?

A. Yes, there is a considerable amount, quite a large amount.

Q. Well is it in proportion to the total output?

A. Do you mean of all kinds of products, beef, pork and mutton.

Q. Yes, I mean beef, pork and mutton.

A. I should think, taking the entire output, it is probably 70 per cent. *sg*ipped east.

Q. How about dressed meat?

A. Very little dressed meat, hardly any.

Q. Almost none, isn't that true?

A. Most of it is consumed in the twin cities, and the large cities of Minnesota, the pineries and the mines of Minnesota and the large towns north and west of us.

Q. Now, what kind of a market have you there at South St. Paul?

A. We have a good market, an excellent market.

1104 Q. Upon what do the buyers there base their prices?

A. The buyers base their prices upon the Chicago market, upon all kinds of live stock sold there. The rule is to deduct the freight, pay the Chicago price less the freight.

Q. Less what freight, the local rate or the proportional rate?

A. Well, less the amount they have to pay to ship it to Chicago.

Q. Everything from there is shipped on the proportional rate?

A. Well, less than the proportional rate in that case.

Q. Yes.

A. There are some cases where some hogs are shipped out of there, have been in the past where they paid a little more than the proportional rate.

Q. Now, is it a fact, or is it not, that the market prices at South St. Paul are at times above the Chicago rate less the freight?

A. That is very often the case when the receipts are less than are required to keep the packing houses *is* operation, they will pay larger prices in order to induce the shippers to come to that market. In other words, they pay a premium to get the stock.

Q. Do you know of any cases General, where the prices at South St. Paul have been less than the Chicago price less the freight?

A. I do not know of any case.

Q. Now, the Northern Pacific and the Great Northern

1105 running through to the coast have their termini in St. Paul, do they not?

A. Yes sir.

Q. And they reach up into the cattle country in Dakota and Montana?

A. Yes sir.

Q. What proportion would you say of the cattle shipped in from the cattle country in Montana and Dakota, stops at South St. Paul, and what proportion goes on to Chicago?

A. Do you mean is stopped there to sell?

Q. Stopped there to sell?

A. Yes sir.

Q. And to be packed there, to be killed there?

A. Well, the beef cattle?

Q. Yes, the beef cattle?

A. Of the beef cattle coming from the ranges and the ranches, there is not over 20 per cent. stopped there and bought there.

Q. The balance of it goes through to Chicago?

A. The balance of it comes through on the lower rate to Chicago.

Q. Well then, from what source do the packers at South St. Paul derive their supplies of beef and hogs, from northern Minnesota?

A. Nearly entirely from northern Minnesota and western Minnesota, and somewhat from north Wisconsin.

Q. Northwestern Wisconsin?

A. Yes, northwestern Wisconsin, within a distance of 75 to 80 miles from us.

1106 Q. Have you with you a copy of your annual reports, of your annual report for 1904?

A. I have in my valise at the hotel.

Q. Can you state that the figures shown in that report are correct, General?

A. Yes sir, I supervised that work myself.

Q. You know all the statements copied into the report are correct?

A. You mean in the printed report?

Q. I mean the printed report of the Union Stock Yards?

A. Yes sir, it is correct. It shows the origin of the stock and the numbers covering a series of years.

Q. Well the statements of receipts there are correct as set forth?

A. Are correct, taken from our books.

Q. I think I asked you the question as to the destination of this stock in Southern Minnesota, where your receipts have fallen off, and you stated that a small amount went to Sioux City, and a small amount to Austin, but the bulk of it went to Chicago. Is that correct?

A. That is correct.

Cross-examination by Mr. COWAN:

Q. General, you say that the prices you pay at St. Paul are in all cases, not less, sometimes greater than the price on the
1107 same class and kind of live stock as that paid in Chicago, minus the freight to Chicago?

A. Yes, I think that is almost absolutely correct. There might have been perhaps some cases where it would vary a little.

Q. How long has that been so?

A. Well, it has been so during all the time since Swift & Company have got thoroughly established on that market.

Q. And how long has that been?

A. Well, I should think that statement of fact is true for five years.

Q. Is that a fact that is generally understood?

A. It is the fact as understood by us people at South St. Paul.

Q. Well it is understood by people who are in the business of selling cattle and hogs, is it or not?

A. Well, I don't know what their opinion might be. You know cattle shippers and hog shippers sometimes do not figure those things correctly and they are not always satisfied even when they have the best prices, and the best obtainable prices, but as far as my knowledge goes, it has generally been satisfactory to the shippers.

Q. Well, do you get as much live stock at St. Paul as the packers want there, or is the supply short?

A. Taking the year as a whole, it is short.

1108 Q. During what periods is it long?

A. Well, during the fall months, starting in with about the first of September, September, October and November, our cattle supply from the West is generally sufficient to supply us with cattle. The same is true of sheep. During the months of July, August and September, the supply of hogs which comes from the farms of Minnesota is very short, not over a third of what we want during these months. During the winter month, our large receipt of hogs takes place, and during those winter months, say starting in with December, January and February, our cattle supply begins to run down and runs down again until the Western receipts begin to arrive the next September.

Q. I understood you to testify that your train schedules are arranged so that one can ship live stock to Chicago, a distance of four or five hundred miles as easily, or as quickly as you can ship to St. Paul, 100 or 150 miles?

A. I did not say 500 miles, I said about 400 miles and qualified that a little I think, by saying 375 to 400 miles.

Q. Do they haul live stock slow in going into St. Paul?

A. Not particularly so. It is usually caused by delays in connections with those trunk lines that run through where they connect with some other lines bringing stock to us, and they do not

1109 arrange those connections so as to give quick service.

Q. Is it not a fact that it depends entirely on where the stock originates as to whether it has a good train schedule to St. Paul or not?

A. Well, yes, in a measure that is true. You take the lines in the north part of the State, and you take the Minneapolis & St. Louis line which do not have Chicago connection, and has a connection running west, a line running west from St. Paul, their service is made up with reference to the St. Paul market. That is true of the Soo and of the Northern Pacific and of the Great Northern, but with all of the other lines south of a line drawn parallel across the State with St. Paul, the other is true.

Q. Well, suppose it takes 24 hours to reach St. Paul from some given point, and 24 hours to reach Chicago from the same point, could you name such a point?

A. About—I would not say 24 hours, I said about 24 hours, it runs from 20 to 23 hours.

Q. Well, name a point, and put it at 20.

A. Well, I will name the division of road running from Wells to Mankato and from Mankato to Farmington.

Q. What is the rate of freight from St. Paul to there?

A. I can't tell without reference to my tables.

1110 Q. Well, it is a good deal less than it is to Chicago?

A. Oh, yes, about one-third, yes sir.

Mr. SEVERANCE: Excuse me, let him look at the tables Mr. Cowan. Have you got that table. He can give it exact. It is better than to guess at it. It is a good deal more than a third (handing the witness a paper.)

A. Well, Blue Earth County, this line that I speak of runs through quite a large part of Blue Earth County. The distance from Mankato, the County Seat of Blue Earth County, through which this line runs to St. Paul, is 86 miles. The distance to Chicago is 451 miles.

Q. What is the rate respectively?

A. The distance is about five times, and the rate to St. Paul is 12½ cents on cattle, hogs and sheep, and to Chicago, it is 25 cents on cattle, 26 on hogs, and 28 on sheep.

Q. Now, if your market pays to the man as much as he can get in Chicago, why don't he ship there?

A. I didn't state, I do not state that he can get as much as he can by going to Chicago.

Q. Well, he gets as much net?

A. He can get as much, less the freight from St. Paul.

Q. Well, he gets as much in his pocket?

Mr. SEVERANCE: He don't say that.

A. Yes, I think he does, and more too.

Mr. COWAN:

Q. If he thinks that, why don't he ship to St. Paul?

A. Because of the delays in going there.

1111 Q. Well you said it took about the same time in getting to each place?

A. Yes, it does, but he is subjected to very serious and exasperating delays in one case and in the other he is not, he goes right on to the initial market, which is Chicago.

Q. But he don't get there any quicker?

A. No, he don't get there any quicker, but he goes along a good deal farther. Oh, he may get there a little quicker, and travel quicker.

Q. Is the 15.7 cents, or whatever it is——

A. 15½.

Q. From St. Paul to Chicago on packing house products an advantage?

A. In what way.

Q. Over what it would be if the rate were higher?

A. Well I should think it was something of an advantage, yes; the cheaper the packer can get his stuff to market, the more he can afford to pay for the raw material.

Q. To whom is it an advantage?

A. Well, I should say it was an advantage to the shipper as a rule.

Q. Why?

A. Because I think it would firm up the prices on live stock.

Q. That accounts for him getting these good prices?

A. Well, I think it would have its effect in that direction.

1112 Q. It appears from the statement which you have filed that there is a large shipment of cattle and hogs from the territory within Southern Minnesota to Chicago, a proportionally very much greater than there is to St. Paul?

A. Yes sir.

Q. You don't claim that all of that territory is subject to those difficulties about reaching the market, do you?

A. Well a good share of it, reaching our market.

Q. But they can reach your market as quick as they can reach Chicago?

A. They might reach it as quick, yes.

Q. Now, why is it that you do not have a supply sufficient for your market if your prices are as good, from those sources which are constantly shipping to Chicago?

A. Well for the reasons that I stated a moment ago, that there are exasperating delays in coming to our market and they have to pay something in the way of freight to get to our market, and when they arrive at our market, they have to sell at the Chicago price, less the rate from St. Paul to Chicago. That would mean that it would be an advantage to them to come to Chicago unless we shade—unless we paid an additional price to cover the difference in the rate from his home station to our market.

Q. If the rate from St. Paul to Chicago on live stock was reduced, then that would induce the shipper to ship more live stock

1113 in there because he could get a better price?

A. If it was reduced to Chicago?

Q. Yes.

A. Well it would not induce him to come to our market, it would induce him to go to the Chicago market.

Q. Suppose it was reduced at the same time to your market, you say it is deducted out of the price?

A. Well the rates as they exist now relatively between South St. Paul and Chicago, taking into consideration the terminal charge in Chicago and the terminal charge at South St. Paul, and taking into account further the distance of the haul, is cheaper to Chicago than it is to South St. Paul, there is no question about that.

Q. You say it is cheaper to ship to Chicago now?

A. I say it is a cheaper rate. I do not say it is cheaper to come to Chicago, I say it is a cheaper rate to come to Chicago than it is to us.

Q. What do you mean, cheaper per mile?

A. No, I don't mean that—yes, it is cheaper per mile.

Q. What do you mean, a cheaper rate in toto?

A. I mean that the entire rate to Chicago is cheaper in proportion than it is from the same shipping point to South St. Paul.

Q. Cannot he ship to South St. Paul with the privilege

1114 of that market and then ship on to Chicago?

A. Yes, but in doing that he has to pay the Chicago rate from his own locality through to Chicago, plus something at St. Paul. I don't know just what that is.

Q. Do you get a greater percentage of your cattle from the north-

western range cattle, or from the cattle that are produced in Minnesota?

A. Killing cattle?

Q. Yes.

A. The largest number of killing cattle which we get taking the year as the basis, comes from the farms of Minnesota, South Dakota and North Dakota.

Q. Don't they have the privilege of stopping at your market, and if they don't sell to go on on the through rate from their point of shipment?

A. They do if they bill through to Chicago with the privilege of stopping off and trying our market, then they can go through to Chicago at the rate from their home station to Chicago.

Q. Well don't they always do that?

A. Yes, largely, not always, but probably in a large majority of cases.

Q. They have got nothing to lose by doing that have they?

A. No, nothing at all.

Q. If they sell them, they would pay the local rate to St. Paul, if they don't, they ship on the through rate from their
1115 original point to Chicago?

A. That only applies to stock originating north and west of us, it does not apply to stock originating south of us, as I understand it.

Q. Now, if your Minnesota rates were reduced, would that tend to bring shipments into your place?

A. Yes, it would. And while we do not regard the present relative rates to South St. Paul, and to Chicago as really fair to us, yet the rates are bearable as they exist now, and if we were to get to South St. Paul the same reduction that Chicago got from all of these market counties, we should not be particularly opposed to it, because it would put us on a par with Chicago and that is all we ask.

The COURT: How about raising the rates on packing house products and dressed meats, are you in favor of that?

A. I do not care what they do with the packing house product providing they let the live stock rates to our market, if they create the live stock rates to our market on a fair basis with the rates to our competing markets.

Q. Suppose they put packing house products where they were, about equal with your live stock, then what?

A. That would be a higher price, wouldn't it?

Q. Yes.

A. Well, in that case I think the tendency would be to
1116 injure us, for the reason that it would compel our packers to pay a little higher price for their raw material, and when the packers are prosperous and successful we find that our market sometimes goes above the mere limit of the difference in freight, we get a higher price for live stock. There is another thing too, that I think enters into this which I will be perhaps, excused for mentioning, and that is the shrinkage and the additional time which it usually takes to go to a more distant market.

Q. Shrinkage in the live stock?

A. Shrinkage in the live stock.

Q. They will shrink more coming from the northwest to Chicago than they would to St. Paul?

A. Yes; a distance say of 100 miles to St. Paul, the shrinkage would be less than it would to come 400 miles to Chicago.

Mr. COWAN:

Q. Who owns the stock yards company that you represent?

Mr. SEVERANCE: I object to that as immaterial, who owns it.

Mr. COWAN: I don't think it is, it shows his relation to the company.

Mr. SEVERANCE: That don't make any difference.

The COURT: Do you claim he is interested with the railroads, that the railroads own it, or anything like that?

1117 The WITNESS: The railroads do not own it, or the packers do not own it.

Mr. COWAN: The railroads do not own it, but there are others interested.

Mr. SEVERANCE: You cannot make him produce a list of the stockholders. It is quite immaterial who owns the stock yards.

The COURT: He says the railroads or the packers do not own it. I do not think it makes any difference then, who owns it.

Mr. COWAN: That is what I was going to show.

Mr. SEVERANCE: I do not think it makes the slightest difference. I see no reason why he should gratify Mr. Cowan's curiosity as long as it can have nothing whatever to do with the case.

The COURT: It might have something to do with it if the railroads and packers owned it. He might have an interest in the testimony and it might be viewed from a different point of view.

Mr. SEVERANCE: He is not representing anybody but himself.

The COURT: The objection I have to it, is that it is taking time. Go ahead.

Mr. SEVERANCE: I desire to protest against it, and object to it as incompetent, irrelevant and immaterial, and I further object

1118 on the ground that it is not cross-examination.

The COURT: Let us see what the question is.

(Question read.)

The COURT: He may answer.

A. I think the best answer to that would be, the stockholders.

Mr. COWAN:

Q. Well, now, who are the principal stockholders, and who have the controlling interest, if you know?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant and immaterial and not cross-examination.

The COURT: The objection is overruled. The main objection is, it takes time. Go ahead.

Mr. SEVERANCE: That is not my objection. I do not care how much time it takes.

The COURT: Proceed.

A. Well, the stock of our company is largely owned in Europe, there is considerable of it owned in the United States. It is generally understood that Swift & Company own the controlling interest in the South St. Paul stock yards. I want to state that they do not own a dollar's worth of stock of the St. Paul Union Stock Yards Company unless they have bought it since I have left St. Paul.

Mr. COWAN:

Q. Do they control it?
1119 A. Swift & Company?
Q. You said they did not own it, do they control it?
A. That I do not know, I cannot answer that question.

Mr. SEVERANCE: They do not control you?
A. No.
The COURT: You say you do not know who the control is in?
A. Swift & Company may own not to exceed ten shares.

The COURT: I think that is enough.

Mr. COWAN:

Q. You said Swift & Company, what about the individual members of the various firms in which Swift is interested in the packing business, or some of them owning an interest in the stock yards company?

Mr. SEVERANCE: That is objected to as incompetent and not cross examination.

The COURT: You can answer that.
A. Well, L. F. Swift owns a small interest, I think about 100 shares; I think E. F. Swift owns about the same, and I think Mr. Carden owns about the same, and that is all that I know of connected with Swift & Company that own any of the stock. Mr. Bangs, Swift's Manager at South St. Paul I think owns one share, $100.

Mr. SEVERANCE:

Q. What is the total number of shares in the corporation?
1120 A. There are two million dollars of shares of one hundred dollars each, 20,000 shares, isn't it?

Mr. COWAN:

Q. Who votes the stock at the Stockholders' meeting?

Mr. SEVERANCE: I object to this, your Honor.
The COURT: The objection is sustained.

Mr. COWAN:

Q. Are there any packing house products and dressed meat shipped East via the lake?
A. Yes sir, a good deal.

Mr. SEVERANCE:

Q. Dressed meat, do you mean?
A. No, packing house products, not dressed meats.

Mr. COWAN:

Q. Are there any packing house products shipped in there from Chicago?
A. I do not know that there is any shipped in from Chicago, if there is, the amount is small.
Q. You spoke of having talked with some railroad gentleman, I desire to inquire when it was, you spoke of an extended conversation.
A. I suppose you refer to what I said in regard to Mr. McCullough.
Q. I think that is the gentleman.
A. I should think it was ten or twelve years ago, it was before Swift & Company located at our yards. They have been there about eight years.

1121 Q. Do you attribute the decrease in the amount of business done at your place, the amount of stock shipped in if I understood the statement, I have not read it over, to the rates of freight.

A. Well, I didn't make the statement that there was less stock shipped in; we have been showing great increase every year, a most remarkable increase in the receipt of live stock there for the last three or four years, making about 20 or 25 per cent. a year. I spoke of the stock coming to us from Southern Minnesota and points east of us.
Q. Oh, from Southern Minnesota and points east only?
A. Yes sir.
Q. All of that coming from the points west and north and northwest may come with the privilege of the Chicago market, stop and offer for sale and come on?
A. Yes sir.
Q. And in that there has been a large increase?
A. Yes sir, that country north of us is developing very rapidly in the live stock business.

Re-direct examination by Mr. SEVERANCE:

1122 Q. There is just one question. You state that stock originating north and west of St. Paul could be billed through to Chicago, and if purchased in St. Paul would pay the local rate into St. Paul. If it was not purchased there, it could be sent on to Chicago and the only additional expense would be the proportional?

A. Yes sir.
Q. That does not apply to stock coming from Southern Minnesota, does it?
A. No.

Q. That could not go up to St. Paul and then back over the same track to Chicago?

A. No sir, that would not apply to anything south or east.

Q. Now, it is also a fact isn't it, that stock shipped in from those stations in Southern Minnesota shown on this table that you have introduced bears such a rate into South St. Paul that that rate added to the proportional from St. Paul to Chicago, on which it is testified most of the live stock moves, exceeds in the aggregate those two together, exceed the rate from the point of origin direct to Chicago?

A. Oh, yes sir.

Q. So that you are at a distinct disadvantage in all of that territory?

A. Yes sir.

Examination.

By Mr. BAXTER:

Q. What is the proportional rate upon which you say that live stock actually moves, I mean by live stock, cattle and hogs, actually moves from South St. Paul to Chicago?

A. Why, it differs. I think you misunderstood my answer to that question. There are no hogs coming from northern Min-
1123 nesota or from the territory north and west of us, that is all cattle and sheep in that territory, and that is the only territory where they are entitled to the proportional rate through to Chicago.

Q. What is the proportional rate, General?

A. Why, I stated a few minutes ago that they had recently raised the rate to 20 cents from certain territories east of Lakota, Aberdeen and Jamestown, but that notwithstanding they had raised it to 20 cents, that there was nothing went on that rate.

The COURT: He asks you what it does actually move on.

Mr. BAXTER:

Q. Yes, that is what I want to get at.

A. Oh, well, it differs from different places. My table shows there, I can read it to you if you would like.

Q. It ranges between what figures, General?

A. Well from 17½ cents down to 12 and a fraction.

Q. Well, now, what is the packing house product rate and fresh meat rate from St. Paul to Chicago?

A. 15.7 I think.

Q. That is on fresh meat business?

A. Fresh meat and packing house products.

Mr. SEVERANCE: So that taking those stations you speak of, Mankato and that region of road, the rate to Chicago is 12 cents on cattle?

A. Yes sir.

1124 Q. And the packing house rate from there to Chicago is 15.7?

A. Yes sir.

Q. Making 27.7?

A. Yes sir.

Q. And you said the rate direct from Mankato to St. Paul was 25 cents ?
A. Yes sir.
Q. That is a fair sample?
A. Yes sir.

JOHN M. DALY, called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. What is your name?
A. John M. Daly.
Q. With which one of the defendant companies, are you connected Mr. Daly?
A. The Illinois Central.
Q. In what capacity?
A. Car accountant.
Q. What has been your railroad experience?
A. I was three years with the Wabash Railroad as Clerk, switchman and yard master; one year with the Wabash Railroad as Clerk; three years with the Chicago & Northwestern as Clerk; three years with the Chicago Great Western as Car Accountant, Trainmaster and assistant to their general superintendent; about three years with the Nickle Plate Road at Cleveland, as Car Accountant; two
1125 years with the Delaware, Lackawanna & Western at Scranton as Superintendent of Tranportation; one year with the Government Railway of Canada as Inspector of Transportation and organizing their transportation Departments; about one year as General Manager of the Cape Breton Railroad, Cape Breton, Nova Scotia; ten years Superintendent of Transportation for the Illinois Central at Chicago and the Yazoo & Mississippi Valley; two years as Car Accountant with the Illinois Central at Chicago.

The COURT:

Q. At what age did you begin?
A. About fifteen.

Mr. BAXTER:

Q. Then you have had quite extensive experience in the operation of railroads?
A. Yes sir.
Q. On that portion of your road which runs between the Missouri River and South St. Paul on the one hand and Chicago on the other, what is the average maximum number of loaded cars of live cattle and live hogs, that can be hauled by one engine at the speed which is required for that service?
A. Taking our main line in solid trains of live stock, it will average about 27 or 28 cars per train mile; taking our branches and it will reduce that average to possibly 24 or 25 cars per train mile.

Q. For that portion of your roads, what is the average
1126 maximum of loaded cars of dressed product of cattle and hogs that can be hauled by the same engine at the speed which is required for that traffic?

A. About 24 to 25 cars.

Q. For the same portion of your railroad, what is the maximum number of loaded cars of ordinary dead freight that can be hauled by the same engine at the speed which is required for that service?

A. About thirty to thirty one cars.

Q. What is the average weight of the cars employed on your road in the transportation of live cattle and hogs?

A. The stock cars will average about 16 tons, and about an average of 2 tons of bedding and manure.

Q. Making a total of——

A. The total would be 18 tons, about that.

Q. What is the average weight of the car employed in your road for the transportation of dressed or prepared products of cattle and hogs?

A. They will run about 20 tons light, and about 2 tons of ice, making a total of about 22 tons.

Q. What is the average weight of cars employed on your road in the transportation of ordinary dead freight?

A. About 16 tons.

Q. What is the average weight of the contents of cars on your road when loaded with live cattle or live hogs?

1127 A. The hogs will run about 17,000 pounds and the cattle will go a trifle over 22,000 pounds. The average of both is about 9½ to 10 tons. Probably 10 tons.

Q. What is the average weight of the contents of cars on your road when loaded with dressed products of cattle or hogs?

A. Something over 29,000 pounds, or between 14½ and 15 tons.

Q. What is the average weight of the contents of cars on your road when loaded with ordinary dead freight?

A. Moving in the same direction between the same points that the cattle and packing house product moves, our average tonnage is about 23 tons per car of dead freight or freight other than live stock, excepting in that the tonnage of dairy freight, game and fish, I think they excepted in that which they called perishable, and not dead freight.

Q. Speaking of the same direction, you mean from the Missouri River to Chicago?

A. From the Missouri River to Chicago, it will average about 23 tons on dead freight.

Q. On that portion of your road what is the average rate of speed at which trains of live cattle and live hogs are moved?

A. About 19 to 20 miles per hour.

Q. What is the average rate of speed at which trains of dressed products of cattle or hogs are moved?

A. Between 16 and 17 miles per hour.

1128 Q. And the rate of speed that cars of dead freight are moved?

A. From 10 to 12 miles per hour.

Q. On your road, what is meant by the tonnage rating of a locomotive engine, and is it arrived at theoretically or by actual test?

A. The meaning of the term tonnage rating is the number of gross tons of car and contents which an engine can haul over given grades at a given speed. This rating is made after practical tests have been made and tests with dynamometer cars. For example in rating a stock train, the chief dispatcher, the train master, the superintendent, the master mechanic, and mechanical engineer on that division all have a good general idea of what an engine can do with a train of stock, for the reason that the weight of the contents and the car of stock is about the same year in and year out, the speed required is the same. Then they will take for instance, 26 or 28 cars, put an engine on them and call upon the engineer to make the run at the rate of 18 or 20 miles per hour, which is required. With a dead freight train, they will take the average make up of a train that is usually hauled by an engine, so many cars of grain, lumber, coal and other freight that moves in that direction, getting as near to an average train as possible for this reason: That the draw bar pull, or the resistence of a ton of freight depends very largely on how many tons of freight you load into each individual car; and the
1129 second is the speed at which you are required to run that car. This holds good in passenger traffic just the same as freight. If we want to run a train an average of 60 miles per hour, we much reduce our tonnage in cars. The number of cars sufficient to enable that engine to make that time, for the reason that especially in Iowa, and between the Missouri River and the Mississippi River, we have some very frequent grades, it is undulating, the nature of the country and while an engine may run down hill 40 or 50 miles an hour, it must — slower up the hills if it is loaded with an economical load.

To make that plainer, I would state this: On our Chicago Division we can haul with an engine, and we do haul it, that is their rating, 2400 tons on a coal train, if that 2400 tons is contained in less than 45 cars. Now, take 43 cars of 40 tons each, coal cars, loaded to their maximum, there is 1720 revenue tons in that train. We haul it at 12 miles per hour. Now, if, in testing that engine, we put 10 tons of coal in each of these cars, it would take four trains, four engines to haul it, but by loading 40 tons in each car one engine is able to haul it at the 12 miles an hour speed.

1130 Now, if we were to move that coal in 10 ton cars, or lots of 10 tons each at the speed of 18 or 20 miles an hour, we have to make another different rating on it. We would then class it "A" rating, and it would require five engines of the same capacity to handle it that one engine now hauls it at the slower speed; for that reason we have what we call an "A" rating and a "B" rating. The "A" rating is one that applies on trains that are required to make fast speed; the "B" rating is that that applies to trains that are going to make a slow speed; and further the "A" rating applies on cars that contains a light revenue load; the "B" rating on cars that contain a heavy load.

Our fruit, vegetables, strawberries, bananas and merchandise are

all in Class "A" along with live stock and packing house products—are all in class "A".

The "B" class takes lumber, grain, coal, iron and heavy commodities that load heavy in the cars.

An adjournment was here taken until the following day, Wednesday, September 27, 1905, at 10 o'clock a. m.

1131 WEDNESDAY, *September* 27, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon JOHN M. DALY, resumed the stand for further direct examination and testified as follows:

Q. What is the average tonnage rating of the locomotives used on sa-d portion of your road, in the tra-sportation of live cattle and hogs, I mean the portion of your road between the Missouri river and Chicago?

A. The locomotives haul about an average of 780 gross tons per train.

Q. On the same portion of your road what is the average tons rating of locomotives used for the transportation of the dressed or prepared product of cattle or hogs?

A. 867 gross tons.

Q. On the same portion of your road, what is the average tonnage rating used in the transportation of ordinary dead freight?

A. 120 4 gross tons.

Q. Take an engine that can pull a given number of tons over a given railroad, at the rate of 12 miles an hour, what effect would the increase of speed to 18 or 20 miles per hour, have upon
1132 the tonnage that could be pulled by the same locomotive under similar conditions?

A. We make a reduction of about 39 per cent. for going at a speed of 18 or 19 miles per hour as compared with the slow train at 12 miles per hour.

Q. On that portion of your road, what proportion of the trains in which live cattle and hogs are moved is composed exclusively of cars containing live cattle or hogs?

A. About 24 per cent. on the main line divisions.

Q. How is it on your branch lines?

A. Well, there is very seldom a solid train of stock on the branches.

Q. On the same portion of your road, what proportion of the trains in which the dressed or prepared product of cattle or hogs are moved is composed exclusively of cars containing dressed or prepared product of cattle or hogs?

A. I have not been able to find a train that is composed entirely of packing house or dressed beef. There is other freight mixed in always.

Q. On the same portion of your road what proportion of the trains

in which ordinary dead freight is moved, is composed exclusively of cars containing ordinary dead freight?

A. About 42 per cent.

The COURT:

Q. 42 per cent. of what?

A. 42 per cent. of all the trains run east-bound from the
1133 Missouri river to Chicago on our main line districts or divisions is made up of solid dead freight. No stock or packing house products in it.

The COURT: If you explain all these answers I can understand them better.

A. Yes sir.

Mr. BAXTER:

Q. On that portion of your road is preference given to live stock trains over trains loaded with dressed and prepared products of cattle and hogs, or are all of the said trains moved upon an equality?

A. The live stock trains have preference at all times over the trains carrying dressed meats or packing house products.

Q. How is it with reference to trains carrying dead freight?

A. Also over trains carrying dead freight.

Q. What effect does that preference have upon the movement of other freight trains?

A. Well, it delays the other trains, sometimes materially and sometimes immaterially. The movement of live stock from western Iowa or from the state of Iowa to Chicago is made largely on Sundays and Mondays.

About 70 per cent. of all the stock that we handle to Chicago from that territory moves on Sundays in order to reach Chicago for Monday's market, and in moving it on that day each week,
1134 it creates a demand for a larger number of engines. In winter-time we have seven or eight sections which take nearly all the power that we have regularly assigned to those divisions, and by reason of holding this power at the ends of the districts awaiting the arrival of this fleet of stock trains—For example, we may have an engine at Fort Dodge at 1 o'clock in the morning, that operates between Fort Dodge and Waterloo, east-bound on that district and we have got five or six stock trains due to arrive at Fort Dodge at 10 or 11 A. M. We cannot use that engine, although our Fort Dodge yard, may be full of dead freight coming this way, for the reason that if we start it out we will be short an engine to protect the live stock trains arriving.

Consequently, we lose the use of that engine, wher-as the dead freight, the moment an engine is cleaned and gotten ready at the round-house, and if we have a train for it, we put it on and move it out.

In that way, we get the maximum service out of our power which in the winter-time (and during the heavy movement of the traffic) is the one important factor in transportation.

Now, again, by reason of this bunching of the stock for one day's

market, that is five or six or eight trains moving on the Di-
1135 vision east-bound, and they must be all close together in order that the last train will reach the market as near to the first as possible, and as safety will permit. Consequently, we may get two trains west-bound out of the way or ahead of the arrival of this fleet of stock trains. We are a single track load and consequently these trains are side tracked to meet the first section. Now, the six or seven sections, as the case may be, are blocked, one or two stations apart, or one may be delayed for some reason and delay the others behind it. The two west-bound trains must lay in that siding until the last stock train has passed.

Now there is no estimating the damage that occurs or that the railroad suffers when it permits any class of traffic to become congested on a terminal, or delayed. It invariably results in claims that are justified and paid. It frequently, no doubt results in certain patrons at competitive points diverting their business from the road that becomes usually in that condition. And it is no infrequent occurrence in winter—for the past three or four years—for us to have a congested yard at Freeport and Waterloo, especially, from Sunday until Wednesday, and Thursday and sometimes that congestion would extend over the entire week by reason of using the gradual movement of this traffic through those yards when it should
1136 be made, instead of taking the engines and using them all on the stock business.

Q. On that portion of your road, what proportion of the cars intended for the transportation of live stock moves to the points of shipment empty?

A. About 86 per cent.

Q. On the same portion of your road, what proportion of your cars intended for the transportation of the dressed or prepared product of cattle or hogs move to the points of shipment, empty?

A. About 48 per cent. of all the refrigerator cars loaded with packing house products move west, empty.

Q. What do you load the remainder of them with moving west?

A. I would explain that in this way. We operate a very large refrigerator equipment, we have some 2500 refrigerator cars.

The COURT:

Q. Of your own?

A. Yes sir. We load bannanas, fruits and vegetables and clean merchandise freight from the South to points in the north-west via our own line and frequently via the St. Louis gate-way, which refrigerator cars come back to us at Omaha and Sioux City and western points, empty.

We also load a large number of refrigerator cars each day at our freight house, in summer-time with fruits and vegetables,
1137 such as peaches, grapes, bannanas in small lots and strawberries and South Water Street truck fruit and ice these cars west in order to refrigerator and preserve the products, the same as all other roads operating at Chicago, do.

In winter-time, we must supply refrigerator cars at Chicago freight house to protect the same commodities from freezing. That is, a

refrigerator car is a warmer car in winter than the ordinary car and it is cooler in summer. Now, when we get these refrigerator cars west under load, the packers invariably utilize them and load them back with packing house products but not with fresh beef for the reason that our car is not adapted to the handling of fresh beef. They require a tank in which salt can be used with the ice, but on packing house products they do not.

Q. Your road reaches New Orleans, does it not?

A. Yes sir.

Q. And there is where you get your bannana traffic?

A. Yes sir.

Q. On that portion of your road, what proportion of your cars intended for the transportation of ordinary dead freight move to the points of shipment, empty?

A. About 12 per cent., west-bound.

The COURT:

Q. How much is the per cent. *on* live stock?

1138 A. 86 per cent. of the live stock cars return empty.

Q. 48 per cent.?

A. Of the refrigerator cars.

Q. Most of them go back filled?

A. The refrigerators, about 52 per cent. and the box cars, there is 88 per cent. of them go back loaded with merchandise and other freight.

Q. Nearly all the live stock cars go back empty?

A. 86 per cent., yes sir.

Mr. BAXTER:

Q. On that portion of your road, is the movement of live stock and hogs continuous throughout the year or are there periods when there is little or no movement?

A. The movement of live stock in this section covered, between the Missouri river and the Mississippi river, there is 128 per cent. more moved during the five winter-months than during the five summer-months. That is, from November to March as against May and October. It averages 1769 cars against 700 and some or an average of 69 cars per day in winter against 30 cars per day in summer.

Q. During that portion of the year when that live stock movement is light, the summer months, as you just stated, do you find back loading for your live stock cars at that time?

1139 A. In the summer we have some demand for our cars from southern Illinois and from central Illinois points and we use them in that section in summer and we also turn back to the owners of the private cars, the bulk of their cars. We also use some of our old small capacity stock cars in handling brick and ties and we can use about 70 per cent. of our stock cars during the dullest period.

Q. How is it with reference to the movement of dressed products, is that uniform throughout the year?

A. It is about five per cent. heavier during the winter months than during summer. I have got the number of cars, I think, of that. Five winter-months—Well, it is five per cent. greater in

winter than summer. I thought I had the exact number of cars handled for each period but I find I have got it in another place.

Q. There is practically no difference then between your winter and your summer movement?

A. Very little.

Q. In the handling of packing house products?

A. Yes, very little.

Q. During the year ending June 30th, 1905, what amount of revenue was received by your company for the transportation of live cattle and live hogs, between Omaha and stations located between the Missouri river and Mississippi river on the one hand and Chicago on the other?

A. Between the Missouri river and the Mississippi river, the live stock to Chicago, our gross receipts were $433,115.

1140 Q. Now what amount was claimed for damages to those cattle and hogs and persons traveling in charge of them?

A. $14,016 was paid in claims on the handling of the live stock and taking the past five years as an average on personal injury claims it amounts to $9,997 per annum paid for injury to attendants in charge of live stock from that section.

Q. During the year ending June 30th, 1905, what amount of revenue was received by your company for the transportation of dressed or prepared products of cattle and hogs between Omaha and stations between the Missouri river and Mississippi river on the one hand and Chicago on the other?

A. I think an explanation would be in order there, that only about 13 per cent. of our packing house and dressed beef products originating in that section, come to Chicago or go east via Chicago. The balance of it goes to the south and southeast.

The COURT:

Q. What section is that, in Iowa?

A. Yes sir. I am confining all my testimony to the territory lying between the Missouri river and the Mississippi river. Only 13 per cent. of that comes to Chicago. Our earnings on that were $18,411.36.

Mr. BAXTER:

Q. What amount of damage did you pay on that?

1141 A. $390.84 or an average of about $1.16 per car.

Q. Do you remember what that damage was paid for, was it a wreck or what?

A. I don't know, the figures were furnished me by our claim agent after an inspection of his books.

Q. During the year ending June 30th, 1905, what amount of revenue was received by your company for the transportation of ordinary dead freight between South Omaha and stations between the Missouri and the Mississippi river on the one hand and Chicago on the other?

A. On the east-bound dead freight from this same territory, our gross receipts were $920,107.35. That does not include the revenue

received on dairy products or on perishable commodities such as fish, but it includes all the dead freight.

Q. What amount of damages did you pay on account of that dead freight?

A. The best estimate that we can get on that is $7,000.00. The commodities consist largely of hay and grain, shingles from the Pacific coast, wool and fruit from the Pacific cost and oranges.

Q. During said year what was the tonnage of live cattle and live hogs carried over your road between Omaha and stations between the Missouri and Mississippi river on the one hand and Chicago on the other?

A. 99,356 tons.

1142 Q. During the same year what was the tonnage of the dressed or prepared products of cattle and hogs carried over your road from the same stations?

A. To Chicago?

Q. Yes.

A. 4696 tons.

Q. You have already stated that the bulk of your packing house products go to the south.

A. Yes sir, 87 per cent. and 13 per cent. go to Chicago.

Q. During the same year what was the tonnage of ordinary dead freight other than packing house products carried over your road between Omaha and stations between the Missouri and Mississippi river on the one side and Chicago on the other?

A. 395,842 tons.

Q. Does that include horses and sheep and poultry?

A. No sir. No live stock. Just dead freight, as explained in the other.

Q. It does not include butter and cheese or other dairy product?

A. No sir, that is perishable.

Q. Are there or not stock yards and stock pens on your road between the Missouri and Mississippi rivers which are necessary for the transportation of live cattle and live hogs, which are not used in the transportation of dead freight? If so, state the number of them and their cost of construction and maintenance also the cost of insurance and depreciation.

1143 A. We have 125 stock yards located in that territory and the cost is $138,000.00. The value of the ground on which they are located is $102,000.00. The interest of 5 per cent. on the $138,000.00 invested in the yards sheds, etc., is $12,016.00 per annum. The depreciation based on 10 per cent. per annum, the usual standard is $13,806.00. The cost of maintenance, cleaning the yards, and taking care of the water supply, etc., is $15,068.00. We carry our own insurance but our first Vice President made inquiry among the larger insurance companies on the basis of $138,000.00 valuation of the yards and sheds. They named 3 per cent., but it would be impossible to determine what part of the yards and what portions of those yards would burn down in case of fire, so I think that element which amounts to some $4,000.00—I don't think we can get a correct line on the cost of insurance.

Q. What did you say was the value of the ground occupied by your stock yards?

A. $102,000.00.

Q. What are the equipment or appurtenances that belong to your stock yards, side tracks, etc.?

A. Well, at some points and at other points a part of the regular side track is used and we have houses with which we shelter the scales, that is at the entrance of the yard. Then we have got
1144 our alley-ways for driving the stock into the yards and putting them into the pens that they desire to put them in. Then, a great many of our yards are planked and in some cases paved.

Q. You mean the floor of them?

A. The floors, yes sir. The yards are equipped with water where we can get water from our water-tank or we take it in some cases where we pay the city for it. In other instances we sink a well and get a wind-mill pump for it.

Q. It differs with different yards?

A. It differs according to the quantity of business that would be handled there and the kind of business.

Q. Describe briefly the difference between the construction of live stock cars and box cars so as to make it a matter of record?

A. The live stock car is an open slatted car at the sides. The ends are usually closed to prevent cinders and sparks entering. The modern stock car has an overhead receptacle to store hay and feed for the cattle, racks in the roof where the cattle can feed. They have got troughs on the sides where you can water the stock in the car.

The box car, of course, the cars are closed, the box-car is a closed car.

The refrigerator is a well insulated car with door-paddings and hatches padded to retain the cold.

1145 Q. State the cost on your road of box cars in which ordinary dead freight is transported and the cost of live stock cars and state which depreciates the faster.

A. During the year 1903, up to date, we bought and built at our own shops 2691 box cars. They cost us $2,336,494.00, which is an average of about $868.00 per car. On refrigerators, since 1901 to date we have built 1300, that is bought and built, purchased from the car works and built some ourselves. They cost us $1,122,900.00 or an average of $864.00 per car. On the stock cars we built in 1903, 450 at an average cost of $824.00 per car.

Q. Are your refrigerator cars, I mean those owned by your company as expensive to build as the refrigerator cars used by these big establishments in which they have most of their packing house product moved?

A. Well, the cars used in taking care of packing house products—our car is, if anything a better car than the other. Our car is 38 feet long and most of their cars run 36 feet long.

Several years ago when the Illinois Central were handling a large portion of their strawberries and perishable fruits that require strong

refrigeration but not salt or freezing, we had all kinds of ordinary refrigerators; Armour's, C. F. P., C. F. X. cars. And we
1146 built a plain galvanized iron end box refrigerator the same as we now build in that same service, and 90 per cent. of the shippers preferred our car as a better refrigerator car.

But as I stated before, our car would not do for handling fresh beef. The fresh beef car must maintain a temperature below freezing in order to carry the meat in the same condition it is taken out of cold storage. To do that you must use salt with the ice and you must have the best hair-felt insulation in the car to retain the cold after you create it in the car and the best information I can get on the cost of a dressed beef car is from $1100.00 to $12-.00.

Q. What do you find to be the life, the average life of the live stock car?

A. About twelve years.

Q. And what is about the average life of the box car?

A. Abo-t 20 years.

Q. Are you able to state the difference in the annual cost of repairs upon stock cars and box cars?

A. That is a very difficult matter. Our books are not kept so far as repairs are concerned, by classes.

Q. State the aggregate amount paid by your company during the year ending June 30th, 1905, as rental for live stock cars?

A. $30,895.86.

Q. On what portion of your system was that?

1147 A. That is just the western lines.

Q. What do you mean by the western lines?

A. The lines between Missouri and Mississippi river. I have confined all of that data to that particular territory. It was $61,000.00, I think on the entire system.

Q. When live cattle and hogs arrive at the markets here in Chicago in less than train load quantities, are the cars containing them carried immediately to the stock yards or are they held until a full train load of cattle and hogs can be obtained?

A. They are invariably sent direct to the yards, but if by holding one train of five or six or eight cars, fifteen or twenty minutes to get another load, we would hold them provided we have got ample time to reach the market.

Q. Are cars containing live cattle and hogs started en route regardless of the number of cars offered, or are they held until full train loads of cattle and hogs can be obtained?

A. They are started on the regular schedule time regardless of the number of cars.

Q. Are any trains of cattle and hogs run special in order to make the markets or are they always run upon some fixed schedule?

A. We have a schedule but on these days when the heavy movements occur, they are run ahead of that schedule and run
1148 special ahead of the schedule in order to get the first train in two or three hours ahead of the schedule time, for the reason that the last train will be that much behind the first one and get it in on it's schedule.

If a stock train is delayed for any reason, our superintendents and

chief despatchers have written authority to run the trains up to a maximum speed of 35 miles per hour in order to make the market.

Q. Are there any other special expenses incident to the transportation of live cattle and hogs, that are not incident to the transportation of their products or even of ordinary dead freight? If so, please state what they are as fully as you can remember.

A. Well, the first proposition of course is the stock cars that are not used for any other purpose. That in handling the stock creates considerable more expense than any other commodity we handle, in the empty haul of the cars. We must clean the cars frequently and at considerable expense.

Q. Can you give us an estimate of what the expense of cleaning cars on your road is?

A. That varies. We can, on different divisions. We estimate that from one dollar, from about thirty cents in summer to about $1.50.

Q. $1.50 at what time of the year?

A. Depending on the season of the year. In winter-time
1149 it costs considerably more. We had an arrangement with the La Salle County Carbon Coal Company, a big coal mine operated at La Salle, Illinois, by Mr. Wyatt, whereby we asked him to load some of these stock cars with coal into Iowa as we were unable at times during the winter to get enough section men to keep our track clean of snow and ice, we ran some stock cars to him in a dirty condition and asked him to employ labor at his mine or put his on-top labor, common labor into cleaning the cars.

His bill for the year was four hundred and some dollars and some of those cars in summer he cleaned for 33 or 34 cents per car, and quite a large number of them that were cleaned in the winter months cost us $6.00 car.

Q. Have you got the voucher?

A. I have got the voucher and we paid it, for that service. His statement reads; "Illinois Central Railroad Company to La Salle Carbon Coal Company, Dr. For actual cost of cleaning stock cars, for shipment of coal." It starts with July 20th, 1903, He cleaned a Street's car and 7 I. C. at an expense of $3.00 for the eight cars or 37 cents per car. He has August, 1903, September, 1903, October, 1903, December 1903 and January, 1904. He cleaned one Canads and two I. C.'s at an expense of $8.00 for the three cars.

1150 Again, January 22nd, the same expense on three cars. On February 10th, he cleaned a Hick's and two Mather stock cars (they are private cars) at an expense of $4.00 per car each. In February, three at $10.00. It gets down to February, four cars for $20.00, all of them foreign cars. On February 21st, he cleaned two at an expense of $12.00, $6.00 per car. On February 23rd, he cleaned three at an expense of 18, or $6.00 per car. February 24th, two at an expense of $8.00. March 3rd, he cleaned two at an expense of $2.00 each. March 10th, he cleaned four at an expense of $10.00, so that it varies according to the season of the year. In winter, of course it is far in excess of the summer cleaning, the cost of the summer cleaning. This voucher is No. 55,504 paid March 5th.

The COURT:

Q. What year?
A. March 5th, 1905.

Mr. BAXTER:

Q. Now, under your contract with that company for the cleaning of those cars, what profit was allowed them over the actual cost of doing the work?

A. Why, it was for the actual cost. His profit is derived in getting the car to load his coal when we are short of coal cars or short of box cars to furnish him.

That mine supplied a considerable local trade in Iowa at
1151 one time and they preferred their coal to be shipped in box cars, or stock cars in order to prevent pilfering of the coal along the line, either by our employés or somebody else as was the case they claimed when it was loaded in the open coal car.

We asked those people and the other mines that had a box car loader and could load coal that way, to use the stock cars that they required and to clean them with their common labor and charge us the cost of it, it being mutual, we got the loading on the car west and made much more money out of it by paying the $6.00 than we would by hauling the car back empty and of course, they made the value of their profit on the coal that they sold and that they would not have sold if we could not have supplied them with cars. So we figured, it was a good bargain even at that cost.

Q. Well, now, proceed with the answer to the question I put to you.

A. Well, the fact that the stock cars moved back west empty to the per cent. that they do, creates nearly double the number of train miles expense that the dead freight creates and about half as much more than the packing house products create.

1152 The locating of stock yards, the cost incurred in building them and maintaining them, sending men to test the scales and adjust the scales, to look after the water supply, the troughs, the flooring and fencing, all that is a heavy expense.

Again, under the last agreement made with our agents and operators, where we call an agent after closing hours, say six or seven P. M., for any purpose, he is allowed 50 cents for that call. If we keep him out more than an hour he is entitled to 25 cents per hour in addition to that. We insist on our agents sealing the stock cars when loaded, and at stations where they load during the night and we do not have a night office, the day man must report and seal the cars.

The time under this United States law, the 28-hour law, is reckoned from the time they load, and we do not want them to load the stock until as near as possible to the train time. We want them to have it loaded before the train reaches there.

The fact that 128 per cent. of our stock moves in winter creates a greater expense than if the commodities moved regularly.

Mr. SEVERANCE:

Q. What per cent.?

A. A hundred and twenty-eight per cent. more move dur-
1153 ing the winter than the summer. That creates an additional expense for the reason that in winter there is a reduction from our rating, from the rating we can haul in summer is about 26 per cent. on our stock trains.

Frequently we run two engines with a snow plow ahead carrying half a train of stock on account of the snow and cold weather. The cold weather has a bad effect on our engines to start with. On stock, local stock picked up, the cars have been standing several days and the oil in the boxes becomes congealed and hard, and the car is still and it requires a five or ten mile good hard run before you get lubrication working freely on that journal and that car hauls much harder in winter than it would in summer.

Again, you have got to shovel snow off your leads to your stock yards in order to let the stock train get back in there to pick up the cars and prevent them running back bucking snow and mashing the end of a car.

Mr. BAXTER:

Q. What do you mean by leads?

A. The side track leading from where it leaves the main track to where the stock car is located. Frequently section men have been called at night to re-shovel the snow out when it has drifted, between five and six o'clock in the afternoon and the time the stock train reaches there.

Again, that Sunday movement of stock, that moves heavily on
Sunday, that is 70 per cent. of the entire movement creates
1154 an expense which I have already explained in reply to another question.

The speed of our stock trains is faster than our *stock* trains and we haul about 10 per cent. or a little more, less tonnage on the stock trains than we can handle on the packing house trains. This is more especially true since the adoption and enforcement of the 28-hour rule.

For example, our time on live stock from any point in that territory must not exceed 27 hours to Hawthorne, allowing them the Junction an hour to put them in. Our time on our trains handling packing house products from Sioux City is from 8 P. M. until 7 A. M., 35 hours, as against 27 hours on the stock. From Omaha it is from 10 P. M. until 7 A. M.

Mr. SEVERANCE:

Q. The second day?

A. The second day, yes, sir. In one instance it is 35 hours and in the other 33 hours as against a 27-hour schedule on the live stock.

Now, the fact again, and it is an important one, that the heavy movement of this stock on Monday has a tendency to reduce the average number of cars we haul in our trains on the other five days of the week and very frequently we are running stock trains on this fast schedule with ten cars and filling them to the maximum of that fast rating, namely, 780 tons, we are with dead freight.

1155 That results in our hauling a low grade commodity at a very expensive speed which that commodity does not pay for, simply because we must handle the ten cars of stock the same as though it were a full train, and on all of these trains handling live stock that are not full trains, the stock handled in them costs us more per ton than if the train was full.

For example, take 10 cars of stock, that is 280 tons on the 780 rating. That gives you 500 gross tons of other freight to put in. That would be about 12 or 13 cars. Now, if it were not for these ten cars of stock, instead of hauling 780 tons we would be hauling 1200 tons of the dead freight, or else not run the train. Consequently the stock handled in less than solid trains of stock is more expensive than when handling in solid trains.

The COURT:

Q. Whether you would be hauling other freight would have to depend upon whether you had it or not to haul?

A. Well, if we did not have the other freight we would not run the train. We would haul it for a solid train or fill in with empty cars.

Mr. BAXTER:

Q. You spoke about the expenses of cleaning your stock cars. What expense are you at in cleaning refrigerator cars?

A. There is no expense connected with that except occa-
1156 sionally on cars containing cabbage and in some instances bananas, the consignees or our agents do not shovel our the refuse in it, and it rots.

The COURT:

Q. Do you carry butter in those refrigerator cars?

A. Yes, sir.

Q. Don't you have to have it unusually clean for butter?

A. We use clean cars for that. When we get a bad car and it is in our business, handling fruits and vegetables, we must clean it ourselves but the packing house cars are cleaned by the packers themselves at their own expense.

Mr. BAXTER:

Q. The refrigerator cars that you speak of cleaning yourselves are cars that you use in transporting bananas and fruits and things of that sort?

A. That is our own traffic, yes, sir.

Q. But the packing house cars are cleaned by the packers?

A. Yes, sir.

The COURT:

Q. You mean cars of your own?

A. Yes, sir.

Q. You clean the cars that you own?

A. Yes, whenever there is a necessity for it. It is not a very frequent occurrence.

Q. You carry packing house products in your own cars?

A. Yes, sir.

1157 Mr. BAXTER:

Q. Well, who cleans them?

A. The packer would not take a car that was not in fit condition.

Q. Then you clean them yourselves?

A. We would have to clean that ourselves for our own fruit business.

Q. Well, now, how about the box car?

A. The shipper, as a rule, cleans them. He invariably cleans them.

Q. The live stock on your road, does it originate at divisional points or on branches or where?

A. Well, both. There is some little originates at the ends of the districts or divisional points, but we have had very little out of the Missouri River points, that is, Sioux City, Onawa or Omaha. We had 111 cars, I think, out of some 9900 from Omaha during the year of 1905. It mostly originates at local stations or junction points in competition with other roads, interior points.

Q. Do you ever at any time have to run light engines west to get your live stock?

A. We frequently do if on this particular day, Monday or Sunday, run trains west, for instance, on the Sioux Falls District. If we have a heavy train of live stock, exceptional cases that would originate at one or two points, we would run the engine half way from the division point to a turning point or "Y" turn the engine and come back and pick the stock up, but it is very seldom that we do

1158 that. We generally start from the ends of the districts.

There is another item in that expense, of course, the bunk cars. We use the same kind of caboose cars that the other roads do, but that is not much of an expense.

Q. Do you mean that they are ordinary cabooses?

A. No, they are drovers' caboose cars, blankets and mattresses and pillows.

Q. Do you furnish any free transportation on your road to the shippers of live stock?

A. Yes, we furnish return transportation under the rules agreed upon on their bills of lading. I think it is one man with two cars, but I am not positive on the amount. We furnished some 3500 of such transportation last year.

Q. Estimating them at your passenger fare rate back from Chicago to the points of origin, can you state what amount that would represent?

A. Take just the return passage of the men in charge whom we have furnished free transportation to from Chicago to their home or to the junction point where they leave our line—explaining that, we get some stock from the M. & St. L. and some from the Des

Moines, Iowa Falls & Northern, and of course we give free transportation back to those junction points and to our own local stations, where the stock originates, for the year ending June 30, 1903, it cost us $41,423.74.

1159 I was obliged to take the year 1903 for the reason that when these passes or tickets are returned by the conductors on our passenger trains that take them up, they go to the Auditor of passenger receipts and he transmits them to the Auditor of Freight Receipts in order that he may examine the billing from the station where the man was returned and verifies it, that that is the particular shipper who shipped the two or three or whatever cars were claimed for on this return pass. On the return ticket we show the initials and numbers of the cars of stock which the man came with and we have them verified with that and this transportation for the year 1905 is scattered throughout the office. Some is in the Traffic Manager's office and some in the Auditor of Freight Receipts' office, and we could not get it together and consequently I took 1903.

During the period, January 1st to about April 1st, 1904, we did not issue any return transportation to the stock men, and consequently that would not be a fair average year, but 1903 is a fair average year in the shipments.

Q. How much did you say you had paid in damages and for injuries to those persons who were travelling with the stock?

A. $9,974. That is per annum for five years. Some years you have very little and other years you have considerable misfortune.

1160 Q. Are any attendants allowed free transportation with your packing house trains or your ordinary dead freight trains?

A. Not that I know of, no, sir.

Q. Is the cost of bedding the live stock borne by your company or by the shipper?

A. We furnish the sand and the shippers do their own bedding, but we furnish it free.

The COURT:

Q. Furnish the sand?

A. Yes, sir.

Q. You don't furnish anything else?

A. No, sir. Well, there are some cinders, some of the stock men who now use cinders.

Q. You don't furnish straw or hay?

A. No, sir. Some of them use cinders in preference to sand. The hogs will eat the cinders so the train men tell me. It is to prevent the cattle from slipping with the motion of the train.

Q. They put straw on top over that, don't they?

A. No, a great many of them prefer to use the sand and some the cinders.

Mr. BAXTER:

Q. What does that sand cost?

A. We figure about 60 cents per car for loading and hauling it there and unloading it at the different yards.

Q. That is the cost to the company of furnishing the sand?

A. Yes, sir, about 60 cents per car.

1161 Q. Do you have to furnish anything of that sort with packing house products and ordinary dead freight?

A. No, sir.

Q. I believe none of your cars on your western lines have to be disinfected?

A. No, sir, very seldom that we have any disinfecting to do.

Q. What was the size and capacity of your tonnage in live stock cars in 1888, and what is the size and tonnage capacity of your present live stock cars?

A. In 1888 we had 840 fourteen-ton cars, 30 foot, I think they were. We had a total then of 1098, I think it is. Today we have got 1087 and 800 and some of those are six-foot cars, 30-ton capacity. Our total tonnage capacity of our present equipment is 30,000 tons as compared with 17,000 tons capaciy in 1888 or an increase of about 78 per cent. in the loading capacity of the cars today as against that time.

Q. You mean that is the aggregate?

A. Yes, sir.

Q. The difference in the aggregate tonnage capacity?

A. Yes. We have no 14-ton cars today at all. They are all out of existence.

Q. When your movement of live stock and hogs eastward is the heaviest, in what direction is the movement of your other freight heaviest?

A. East bound.

1162 Q. When the movement of your cattle and hogs eastward is the heaviest, do you handle them with your ordinary force or do you have to employ extra men, or how do you run that?

A. We handle them with the regularly assigned and employed force, but we frequently keep our day men, quite a number of them, up nights, such as travelling engineers and round-house foremen and men connected with the taking care of the machinery and motive power, and we will call an agent, of course, if we require him, or an operator, to stay on nights, in order to block the trains apart and pay him over time for it, but we don't hire any outside help.

Q. In your experience how does the cost of the transportation of live cattle and live hogs per revenue ton all conditions considered, compare with the cost of transportation of the dressed or prepared products of cattle or hogs, per revenue ton?

A. As far as I can figure it out, taking into consideration the light tonnage loaded in cars of live stock, and the heavier tonnage loaded in cars of packing house products; taking into consideration the use of the cars in both directions, largely, of the packing house products, as against one direction of the stock,—in other words, the one mile revenue received from handling the stock must be

considered in connection with a two-mile train service necessary in returning the stock cars.

1163 Q. You mean returning the stock cars?

A. Yes, sir, the stock cars empty. Whereas, with the packing house product it is one-half that amount. An engine can haul nearly as many cars loaded with 15 tons in the car as it can with 10 tons. The cost per ton is not gauged by the ton. It is by the quantity in the car and the best figures I can get show that the present rate of 20 cents on packing house product, as against 23½ on live stock, I would prefer the packing product by 30 per cent. under our present conditions.

The COURT:

Q. Thirty per cent. on what?

A. I think the packing house products give us 30 per cent. more revenue than the live stock, taking into consideration the switching charges that we pay to the packers at the Missouri River, Sioux City and Omaha; taking $10 cost on the refrigerator for mileage; take the $3 cost from here to the Junction railway, getting rid of the packing house stuff, and so forth; take the $1.16 claims for damages, average per car for damage to the packing house product, and deducting that from the amount received per car at the 20 cent rate. Then take the live stock, the cost of your yards and the cost of your facilities for taking care of it, the cost of returning the men both in coaches and sleeping cars, the claims and the fixed

1164 charges connected with it, and you have got more revenue to apply on the transporting of the product of packing houses than you have on the live stock, considerably more. I should say 30 per cent. more.

Q. You mean the rate on live stock ought to be about 30 cents instead of 23½?

A. I am figuring that way, yes, sir.

Q. And upon dressed beef 15 or 16?

A. Either one. Not dressed beef, though. I would put dressed beef with the stock. It loads light in the car. I base it entirely on what it costs to handle a ton, and that depends on how many tons you put in a car, and I think that dressed beef is not much better than the live stock.

Q. What are you comparing with, packing house products?

A. Packing house products with the dressed beef mixed in give us this profit, and it would be greater if we did not handle any dressed beef.

Q. In your experience how does the cost of the transportation of ordinary dead freight, all conditions considered, compare with the cost of transporting live cattle or hogs?

A. On these western lines we haul about 174 per cent. of dead freight per train mile more than we do revenue tons of live stock.

Q. How does the incidental expense compare?

A. Well, they are away less. We have what you might

1165 call no fixed charges such as facilities, in dead freight. In merchandise we have got to maintain freight houses at an

enormous expense, but as I understand it the rates on that are much higher; but grain and lumber and coal—of course we don't originate any coal out there—but grain and hay, the shipper owns the elevator and the facilities for loading the cars. The hay is loaded largely at hay houses or by teams at the track and there are no facilities there.

Q. Take some two months in the year ending June 20, 1905, during the heavy movement of cattle and hogs on your road, and another two months in the same year during the heavy movement of other commodities on your road, but when cattle and hogs were not moved heavily or not moved at all, and state the gross earnings and expense of conducting transportation on your road, and the percentage which the expenses bore to the earnings for each of said periods.

A. I have not got that data. I can get that. On one division, it was, I think, from Fort Dodge to Waterloo, was 41 per cent. in the summer and 46 per cent. in the winter. On the Freeport division I think it was something like 53 per cent. in summer and 60 per cent. in winter. I would prefer, though, to get the actual figures, if you will permit me on that. I don't wish to be quoted on that, but I think that is about the figures.

1166 The COURT:

Q. Do you think that the dressed meat and the live stock rate should be about the same?

A. I would figure nearly the same expense. One may be a little higher but it looks that way to me. It is from the transportation standpoint of hauling that we get about the same quantity in each car, and that is one large item in the transportation expense. I see, though, in that where the Operating Department would be called upon to increase our expense. I think it would be almost compulsory that we assign men at the packing houses to watch our freight to see whether it was dressed beef or packing house product or otherwise.

Q. The rates would be different?

A. The rates would be different, and then they would bill, possibly, dressed beef as packing house and get a lower rate on it unless we had inspectors to watch it.

Q. What do you understand packing house products to cover?

A. It covers lard and hair and all the commodities except practically fertilizer.

Q. Whether it comes from the live hog or the live steer?

A. Yes. They have some twenty items, I think, in the classification. I went through it to determine what that was. Lard is one that loads very bulky. We have got 40,000 pounds frequently in cars. In one instance, we had one instance where we found
1167 some 30 I. C. ventilated fruit cars loaded with lard from South Omaha, I think the billing showed "Cairo or south," in open ventilated fruit cars, that is like a stock car, not a refrigerator car at all. It loaded in a number of them as high as 37,000 pounds, 38,000

pounds at certain times. Other times they loaded down to 26,000 pounds and 22,500, and so on.

Mr. BAXTER:

Q. Are there any packing houses located at stations on your road between the Missouri River and Chicago?

A. We have the South Omaha and Sioux City packing houses, the Cedar Rapids packing house and a small one at Waterloo.

Q. Waterloo, Iowa?

A. Yes, sir.

Q. State the number of cars of dressed and prepared products of hogs received by your company during the year ending June 30, 1905, from packing houses located at those stations on your road, between St. Paul and the Missouri River on the one hand, and Chicago on the other?

A. The number of cars of packing house products?

Q. Yes.

A. About 3100.

Q. How many of those were destined to Chicago?

A. 336.

Q. Where did the remainder of them go?

A. They go south into Mississippi and Louisiana, and some of them for export by way of New Orleans. Quite a little of it
1168 goes southeast by the M. C. & St. L. at Martin. Some of it goes to Vicksburg, Memphis and local stations on our southern lines. Some little to Illinois points on our Amboy division.

Q. State what proportion of the live cattle and hogs carried by your road to Chicago is carried in through trains from St. Paul or Missouri River points, and what proportion is picked up at intermediate stations?

A. As I said, we had only 111 cars out of 9900, about 8/100 of one per cent. originating at the Missouri River points. The balance, 99/100 per cent. originates at local stations or comes from connecting lines in the State of Iowa.

Q. Have you any branch lines on your system?

A. Yes, we have got the Onawa branch, the Sioux Falls branch, the Albert Lea branch and the Cedar Rapids branch.

Q. How do you gather up the stock that originates on those branches?

A. We start independent trains out on the branches to come down to the main line and meet on about the time of our stock train schedule, and frequently that is during the night when, of course, our way-freight train cannot handle it. If the way-freight train can handle the business they would handle it, but invariably the
1169 schedule is such that it cannot be done that way.

Q. Do you mean the way-freight train would go up there on those branches?

A. No, no, the way-freight that operates on the branch. It must leave the ends of the districts at given times in the morning in order to peddle their merchandise out at these different stations, but if the

stock train passes the point along about midnight, the way-freight could not do the work. We have to run independent stock trains to meet our main line stock train at the junction.

Q. State the manner in which trains are handled that pick up the live stock at intermediate stations? State the time consumed by such trains and the average number of live cattle and hogs contained in such trains.

A. That depends entirely on the season. In summer time when conditions are all favorable, a train can drop into a station where the station is on the level grade and get out in ten or fifteen minutes and pick up a car or two of stock.

In winter time it will take a good deal longer, for the reason that the shipper cannot, as a rule, in winter pinch the loaded car by the chute when he loads it on account of the condition of the car being frozen and stiff.

Q. Explain what you mean by "pinching" the car.

A. Taking a pinch bar and putting it between the wheel
1170 and the rail and pinching it by, so as to pinch the car up in position and have them both ready when the train comes. So in the winter it takes longer, but I don't think that that of itself is a very important point. I have not gone into that very carefully at all.

Q. What is the average speed of the through train which carries the dressed or prepared products of cattle and hogs from St. Paul and Missouri River points to Chicago, and what is the average tonnage of the train which pick up live cattle and hogs between St. Paul and Missouri River points on the one hand and Chicago on the other?

A. The through speed of our through trains that handle packing house products, you say?

Q. Yes, sir.

A. That is about 16 miles per hour. That means through from the Missouri River to Chicago. It does not mean the time between stations. That will vary according to the physical condition of the property. For instance, on uphills, where there is a heavy grade, they may get down to six or eight miles an hour, and then, down hill, they may run 30 or 35 miles and at some times 40 miles per hour, but it is safe to say that the train schedule through from the Missouri River at 16 miles per hour, will run an average of 22 miles an hour between stations.

A stock train scheduled at 19 miles per hour stops to pick
1171 up stuff, that train would make over 30 miles per hour, for the reason that the through train of packing house or stock either would only stop for water probably three times, and the other train must make more stops, the same stops for water and in addition to that must stop several times to pick up stock. Consequently, they have more standing time, considerably with the stock train, the pick-up train, than the other.

Q. Have you prepared a statement showing the name of all your stations on that portion of your road which lies between St. Paul and

Missouri River points on the one hand, and Chicago on the other, at which stock yards or stock pens are located, showing also the cost of constructing such stock yards or pens, and the cost of the maintenance and operation of them? If so, file it as an exhibit to your testimony.

A. Yes, sir.

1172 Mr. BAXTER:

Q. Did I ask you what is the actual annual cost per car for keeping live stock cars in repair on your system?

A. You did, but I cannot answer on account of not keeping the account separate between the stock and the box cars.

Mr. COWAN: I did not understand that last question.

Mr. BAXTER: That was the number of stock yards, where located and what they cost.

The WITNESS: The exhibit referred to shows 125 stock yards, the cost of construction of each, the value of the ground, and the annual cost of maintenance of each yard.

(The document referred to by the witness was marked "Daly's Exhibit 1," and filed with the court as a part of his testimony.)

1172*a* DALY EXHIBIT NO. 1.

Illinois Central Railroad Company.

Statement Showing Location of Stock Pens at Stations on Illinois Central R. R. Between Dubuque, Iowa, and Missouri River, Cost of Construction, Value of the Grounds, and Annual Cost of Maintenance at Each Station.

Location.	Construction.	Value of ground.	Annual cost of maintenance.
Dubuque, Ia	$3000.00	$500.00	$150.00
Peosta	1125.00	150.00	65.00
Epworth	1110.00	150.00	75.00
Farley	1915.00	225.00	100.00
Dyersville	965.00	175.00	75.00
Manchester	2650.00	350.00	200.00
Masonville	1015.00	150.00	65.00
Winthrop	3025.00	225.00	125.00
Doris	1145.00	150.00	40.00
Carried forward	$15950.00	$2075.00	$895.00

1172b

Location.	Cost of construction.	Value of ground.	Annual cost of maintenance.
Brought forward....	$15950.00	$2075.00	$895.00
Independence, Ia.....	2476.00	300.00	170.00
Jesup.....	1850.00	200.00	150.00
Raymond.....	575.00	175.00	35.00
Waterloo.....	1875.00	1000.00	50.00
Ryan	1210.00	175.00	75.00
Ehler	1125.00	175.00	75.00
Coggon..	1155 00	225.00	100.00
Central City.....	1250.00	250.00	75.00
Alburnett	1110.00	200.00	75.00
Robins.....	572.00	175.00	56.00
Janesville	1767.00	225.00	75.00
Plainfield.	1765.00	250.00	100.00
Waverly.....	425.00	175.00	25.00
Nashua	1675.00	250.00	125.00
Carrville	425.00	100.00	25.00
Charles City.....	2750.00	500.00	150.00
Floyd	1700.00	200.00	100.00
Orchard.....	1830.00	250.00	100.00
Osage	3010.00	300.00	200.00
Mitchell	1965.00	225 00	100.00
St. Ansgar.....	2530.00	300.00	150.00
Lyle, Minn.....	915.00	200.00	75.00
London	2085.00	250.00	100.00
Myrtle	1785 00	200.00	100.00
Glenville.	1245.00	200.00	100.00
Toeterville, Ia.....	1245 00	200.00	75 00
Stacyville	2190.00	300.00	150.00
Cedar Falls.....	1280.00	1500.00	72.84
Benson.....	865.00	75.00	36.42
New Hartford.....	1415.00	500.00	48.56
Sinclair	885.00	60.00	36.42
Parkersburg	1565.00	700.00	84.98
Aplington.....	1335.00	500.00	60.70
Austinville	1190.00	400.00	60.70
Ackley.....	1050.00	2000.00	60.70
Macy.	585.00	50.00	24.28
Iowa Falls.....	2490.00	600.00	121.40
Sunnyside.....	150.00	30.00	12.14
Wilke.....	1200.00	60.00	60.70
Alden.....	1225.00	75.00	60.70
Williams.	1325.00	350.00	72.84
Blairsburg.....	1040.00	200.00	48.56
Reinicker..	40.00	5.00	4.00
Webster City...	1725.00	2200.00	84.98
Highview.	555.00	150.00	24.28
Duncombe.....	800.00	200.00	36.42
Judd..... ..	715.00	150.00	60.70
Ft. Dodge	740.00	1500.00	48.56

Location.	Cost of construction.	Value of ground.	Annual cost of maintenance.
Wadleigh	$575.00	$75.00	$36.42
Knierim	835.00	100.00	48.56
Richards	985.00	125.00	72.84
Rockwell City	1350.00	325.00	72.84
Sherwood	1085.00	200.00	72.84
Yetter	1180.00	150.00	97.12
Ulmer	1030.00	175.00	60.70
Wall Lake	1370.00	200.00	72.84
Brogan	725.00	125.00	48.56
Ells	1680.00	125.00	72.84
Deloit	1890.00	250.00	72.84
Denison	2225.00	600.00	97.12
Arion	1205.00	500.00	48.56
Dow City	1800.00	300.00	84.98
Dunlap	3935.00	400.00	157.82
Woodbine	1770.00	250.00	72.84
Logan	1550.00	200.00	60.70
Rode	1380.00	125.00	84.98
Grable	1025.00	100.00	49.56
Ascot	330.00	35.00	24.28
Clara	110.00	25.00	12.14
Carried forward	$108665.00	$24765.00	$6048.26

1172c

Brought forward	$108665.00	$24765.00	$6048.26
Tara, Ia	150.00	500.00	80.00
Barnum	450.00	700.00	120.00
Manson	600.00	1500.00	210.00
Pomeroy	750.00	2000.00	225.00
Fonda	865.00	2000.00	225.00
Cora	415.00	500.00	135.00
Newell	750.00	2500.00	225.00
Sulphur Springs	450.00	500.00	135.00
Storm Lake	865.00	2500.00	225.00
Alta	1015.00	2500.00	240.00
Aurelia	1050.00	2000.00	280.00
Cherokee	1015.00	2500.00	280.00
Meriden	450.00	2000.00	170.00
Cleghorn	565.00	1500.00	170.00
Marcus	1315.00	2500.00	320.00
Remsen	865.00	2500.00	250.00
Oyens	715.00	1200.00	185.00
Le Mars	1050.00	3500.00	305.00
Merrill	715.00	2000.00	310.00
Hinton	300.00	1500.00	130.00
James	150.00	1000.00	90.00
Leeds	300.00	600.00	105.00
Onawa	900.00	2500.00	190.00

Location.	Cost of construction.	Value of ground.	Annual cost of maintenance.
Kennebec	$300.00	$300.00	$90.00
Ticonic	415.00	300.00	110.00
Smithland	600.00	500.00	140.00
Oto	865.00	1500.00	250.00
Anthon	1165.00	2000.00	355.00
Correctionville	1015.00	2500.00	215.00
Washta	865.00	2500.00	275.00
Quimby	1015.00	2500.00	290.00
Larrabee	715.00	1500.00	185.00
Calumet	600.00	1000.00	185.00
Primghar	715.00	2500.00	210.00
Archer	450.00	1200.00	170.00
Sheldon	750 00	3000.00	250.00
Matlock	415.00	1000.00	155.00
George	600.00	3000.00	235.00
Edna	415.00	1000.00	155.00
Hunts Siding	300.00	500.00	55.00
Rock Rapids	450.00	3000.00	245.00
Steen, Minn.	300.00	1000.00	155.00
Hills	300.00	1000.00	130.00
Bruce	300.00	600.00	105.00
Ben Clare, S. D.	400.00	600.00	130.00
Rowena	450.00	1000.00	145.00
Sioux Falls	300.00	3000.00	180.00
Total	$138065.00	$102265.00	$15068.26

Mr. BAXTER:

Q. Mr. Daly, do you compile in your office the statistics which appear in the annual report of your Company to the Interstate Commerce Commission, showing the train mileage, and the number of loaded and empty cars hauled per train mile?

A. Yes sir, I do.

Q. Does your Company in said report furnish a statement showing the average number of loaded cars per train mile, average number of tons of freight per train mile for that portion of your
1173 Road known as your Northern and Western Lines?

A. To the Interstate Commerce Commission?

Q. Yes sir.

A. Yes sir, we do.

Q. In the printed form of annual report furnished your Company by the Interstate Commerce Commission to make up your reports upon, do they define what constitutes a freight train mile, if so, state what their definition is?

A. The Interstate Commerce Commission furnish the railroads with books, *rp*inted books, each question numbered and instructions as to how to answer the questions on the opposite pages, and with reference to question No. 37 "Average number of loaded cars per

train mile" they star it to refer to their definitions. Their definition reads as follows: "Freight train mileage embraces the mileage of trains run to transport revenue earnings freight which do not regularly include a car or cars devoted exclusively or principally to revenue passenger business, and also the mileage of trains consisting of empty cars, and of trains consisting of a locomotive and a caboose, running light between terminal stations, on account of the greater tonnage being in one direction." That constitutes what the railroads term and the Interstate Commerce Commission term a train mile.

Q. So that the train mile shown by a company in its annual report to the Commission would include the mileage made by a locomotive with an empty caboose?

1174 A. Just the same as though it had a train load of revenue paying freight.

Q. Would it appear the same as a train would if it had fifty cars?

A. Yes sir, an equal amount of train mileage to be divided into the loaded cars and into the loaded tonnage, revenue tonnage.

Q. Well, in counting up the train mileage, do you count up the miles made by empty cars going back?

A. No, the empty cars themselves cut no figure.

Q. Well, I mean a train of empty cars would show the same train mileage as a train of loaded cars?

A. Yes sir, the same train mileage.

The COURT: Regardless of how many cars there were to it?

A. Yes sir.

Q. On account of what the engine does?

A. The miles the engine makes is practically the train mileage.

Mr. BAXTER: Please refer to the report prepared by your company for the Interstate Commerce Commission, for the year ending June 30, 1905, and state the average number of loaded cars per ton mile of all revenue from freight, including packing house products, and live cattle and hogs carried over the Northern and Western Lines of your Road as shown by said report?

A. The number of tons was 334.98 per train mile. That

1175 is revenue tons hauled per train mile.

Mr COWAN: What year?

A. That is for the year ending June 30, 1905, as submitted to the Interstate Commerce Commission.

Mr. BAXTER:

Q. Has that report been sent on yet?

A. I think it has. I saw the controller Friday or Saturday, when I got the figures and it was all complete, had been approved and I think had gone to Washington. It will appear, at least the figures will appear in that report. There will be no change in it.

Q. State *what* the average number of loaded cars per train mile of packing house products, and the average number of loaded cars of cattle and hogs carried over your system between the Missouri River and Chicago during the same year?

A. The average number of loaded cars per train on live cattle was 15.

Q. Do you mean per train or per train mile?

A. Per train mile 15, and on packing house products was 16.20 loaded cars per train mile. The tonnage of the live stock, the average number of tons or revenue paying live cattle and hogs was 150 tons per train mile, the revenue paying tons per train mile of meat and packing house products was 227 revenue tons per train
1176 mile; but the figures showing the stock in the packing house do not appear se-rately in this Interstate Commerce report for the reason they do not ask for it. The figures are arrived at, however, the basis that we arrive at the average figures of all tonnage, and this 334.98 includes coal, lumber, merchandise, bananas, cattle and all revenue commodities handled.

Q. Refer to your said report and state the average number tons of freight per train mile of all revenue freight including all packing house products carried over the Northern and Western Lines of your Company as shown by that report?

A. 334.98.

Q. State *what* the average number of tons of freight per train mile of packing house products and live cattle and hogs carried over your system between Missouri River and Chicago, during the same year?

A. The fresh meat and packing house product 227 revenue tons per train mile, and on live stock, live cattle and hogs was 150 revenue tons per train mile.

Q. Explain what the figures you have just given indicate?

A. It, of course, indicates that the aver-ge ton per train mile on any system cannot be intelligently used in determining *what* one commodity as compared with another or the earnings of one
1177 commodity as compared with another. That can only be determined by taking that particular part of the line over which it moves and in the direction it moves, and take the commodities by themselves apart from all other commodities. For example, our annual report includes the entire system from Sioux Falls, and from Sioux City to New Orleans. South of the river we handle those carloads of big cotton.

Q. What river do you mean?

A. South of the Ohio River, what they term big cotton or unpressed cotton. It loads about 26 or 28 bales to the car, and 500 pounds to the bale, and 13 to 14 thousand pounds, that is revenue loaded car miles for every mile you move it. A car of compressed cotton will load 50 to 60 bales of cotton to the car and weigh*t* twice as much. A car of coal will run about 37½ tons per car. Now, if you handle enough coal you smother the low average of the cotton and show a big average. Now, if the cotton men undertake, cotton shippers undertake to claim that their rates are too high because you are hauling an average of 300 tons and your annual report shows it, then you would have to go to all the work of explaining to them that that includes lumber, coal and everything else; and the annual report as a basis of determining the cost of any one commodity is the most misleading article that could possibly be

taken. I don't know what our show, what our average earn-
1178 ings per train mile shows in it. It is entirely useless as determin-g the cost or earnings of any special commodity.

Q. Well, is there any other statistical facts contained in your annual report to the Interstate Commerce Commission that can be used for the purpose of ascertaining the reasonableness of a rate, and if so, what one is it?

A. I don't know of any, and there are so many conditions affecting the movement of traffic, winter and summer, and the value of your railroad for instance, moving freight through tunnels and over mountains is more expensive per ton mile to the railroad than to move it in Kansas or on a prairie road, in a prairie State. Again if you have got to contend with heavy water-sheds, if you are built crossing streams, instead of going with them, your cost of maintenance for washouts, the same as south of the river with us, is enormous. That all must enter into the question of determining what is reasonable for the cost of operation or handling a commodity. Therefore, the location in which the commodity is handled must be considered always, and the commodity can be considered one with the other in determining which is the best, which pays the most, the same as the truck man here in Chicago. If he gets a truck load of lard from Sout- Water Street to 12th Street freight house, and in return he gets a truck load of something else
1179 back, he can afford to handle*d* that cheaper per ton or per hundred, than if he was handling millinery goods or dry goods that load one-half or one-fourth as much per car and require only the same time of his driver and his team to transport it. It must be localized; you can compare one against the other, but the cost of any one is a difficult proposition, I don't want to try it.

The COURT: What do you think is the way of fixing the comparative rates of the finished products and the raw material under the Interstate Commerce Law which says you shall not discriminate against localities or different kinds of traffic?

A. I figure this, that all commodities so far as possible should bear their equal portion of expense of handling them plus the dividend on your investment. Take the United States mail. If you furnish them a mail car for post office, they ought to pay for it, pay their portion of what it costs to handle it, plus enough to create a sinking fund or dividend on an investment the same as any dealer would. For instance a wholesaler gets in a carload of sugar. He figures the cost of teaming that sugar from the freight house to his store and the cost of teaming it back first as a fixed item, then a ligitimate profit on that. Now, his same per cent. of profit should exist on every commodity, and a greater per
1180 cent. of profit on his perishable stuff that is liable to decay on his hands and be a loss, he has got to figure that up, and every item should be brought in so as to as nearly as possible bring all on an equality, that would be the idea of it.

The COURT: Do you think that railroads ought to consider the desire to build up business in certain sections at the expense of another section?

A. Not unless they have endeavored to build a section and find it impossible and that by starting another one they would benefit a greater number of people, and a greater community than by trying to continue to build up something that appears impossible or impracticable?

Q. You think then with Mr. Stickney, it is a proper way to figure this out mathematically at what it would cost, and charge a fair profit on what it would cost?

A. I candidly believe that it is fair to charge the stock men sufficient to make twenty per cent. profit on their cattle, and let the packing house men get off with five per cent., or charge the packing house people enough to make twenty per cent. profit, and let the stock men get off with a loss to us, or five cent. It ought to be the same as any ligitimate, fair business, to equalize as far as possible. That is a problem I have heard traffic men talk
1181 a great many times, of arriving at that ideal system, and how to do it.

Q. The difficulty, I suppose, Mr. Daly, is that nobody has ever been able yet to ascertain the cost of transporting any particular commodity between any two points?

A. I thought I did at one time, but Mr. E. T. Jeffery showed me in about thirty minutes that I didn't know where I was at, and I have not tried it since.

Q. Do you know of anybody else who has done it?

A. I have heard it discussed in meetings, and at that time I took up my correspondence with several general superintendents and managers and I saw from their replies that they did not consider my request seriously at all.

The COURT: Well, if you cannot do that, how are you going to fix the rate then?

A. Well, it is more than I can tell.

Q. Let the railroads under this law change the rate whenever they want to?

A. I think that the competition, that is the traffic people and their operating departments, each watching the direction of their empty mileage and gathering up traffic to load them back and make it pay creates a reduction in the rates. One road that is favorably situated creates a condition that forces the other to come to it, and in the end they get within a reasonable extent of basing their rate, of getting the rates on that basis of equity.

1182 Q. In other words, how are you going to determine what is discrimination between localities and traffic if you do not fix it upon what it costs to the carriers?

A. I could not state on that.

Cross-examination by Mr. COWAN:

Q. Mr. Daly, what is a standard of reasonableness in a rate used by the rate making representatives of railroads if you know?

A. I don't know, I have not been connected with that except in frequent conferences with our traffic managers in connection with our empty mileage, which direction our coal cars are moving, our box

cars or other traffic, and he of his own accord fixes the rates. I have never had anything to do with it, and don't know now how they base it.

The COURT: Who do you say settles the rate for your Road?

A. The traffic manager.

Q. What is his name?

A. T. J. Hudson. For instance if a large shipment of granite block, I remember one case of that that came up from Sioux Falls, and we handled it in coal cars, and he asked in what direction we were moving coal cars. Well, we were moving them east. That
1183 permitted us to name them a favorable rate on it, a much more favorable, I presume, than if we had had to haul the coal cars back. It is circumstances of that kind that they use in connection with it.

Mr. COWAN: You say that you think they reach in making tariffs, about a proper basis?

A. I think one forces the other down to that, yes sir. If any one sees anything—I would consider that the competition between railroads and the alertness of the traffic people of the different railroads to distribute one traffic against another encourages them to reduce the higher earning commodities a little in order to get an advantage from it and in that way they bring them all to a reasonable basis.

Q. Where a rate is charged on one commodity by a system of giving rebates to a rate below the rate on another commodity, do you think that is one of the means of reaching a proper basis or not?

A. No, I don't know anything in connection with that feature. The only point I am testifying to is that as affecting all other classes of business as well as the railroad business, and I am not an expert on traffic. I know very little about the rates on any commodity except what I have heard, and what I had to pick out on these two commodities, and some on other commodities that I am now
1184 investigating on a similar line.

Q. You would have an opportunity to get hold of the annual report, a copy of it that you made to the Commission in your office, to bring down, would you not?

A. Do you mean a copy of this?

Q. No, I mean the full report?

A. For the entire Road?

Q. Yes.

A. You see we report for the Interstate Commerce Commission dividing our system into divisions. We also report to every State Commission by District. Now, we have a full report, the report I furnished you yesterday is our annual report for 1902, 1903, and 1904. 1905 is not out yet, and that is the report that we base from.

Q. That is the whole Road?

A. That is the whole Road, yes sir.

Q. Now, you have a separate report on this division from Chicago west?

A. Not an annual report, nor our own annual report, we make a separate report to the Interstate Commerce Commission covering it.

Q. Your auditor has a copy of that?

A. I think he has, yes.
Q. I wish you would bring that particular one down, please?
A. Yes sir.

Q. Now, Mr. Daly, you say that in determining what the
1185 revenue is per train mile what the earnings are you want to take divisions or should take divisions of the Road instead of taking the whole system?

A. In determining the cost or the earnings of a commodity, the line over which it moves, and which is in controver-y is the only correct basis of determining.
Q. Yes sir.
A. If it is possible to get that information.
Q. But isn't it a fact that in most cases the reports are not made by divisions, but are made for the whole Road so that the public does not have the advantage of those reports, except for the whole system?
A. Yes sir, that is a fact too that the annual report includes the entire system.
Q. How much is the average earning per ton per mile on your revenue freight moving on this western division, do you recall?
A. I can't tell. That would include both east and west bound and I have not got the figures at all on that.
Q. Now, isn't it a fact that the rate of freight that produces the earnings so far as profits is concerned will depend as much on the west bound business as it does the east bound business?
A. The rate of freight you say?

Q. Yes sir, the profit that the rate of freight will produce
1186 depends as much upon the west bound business as it does the east bound.

A. Well, if you get a loaded movement on your car in both directions, your profits are much greater than if you got it in one direction. Your profits are much greater than if you got it only in one direction, certainly.
Q. And if you get a load for engines and cars in both directions whether it was the same cars or not, you get the revenue?
A. You get a loaded revenue movement.
Q. That is what I am talking about.
A. Yes sir, it is more profitable, certainly.
Q. The greater the density of traffic on the line the greater profit in the particular units of that traffic, is not that true?
A. The greater the density of traffic in each direction equalizing it, the greater the profit would be.
Q. And the greater the density of traffic whether it was in each direction or not?
A. No, I didn't say that.
Q. That would be the case, would it not?
A. No, I don't agree with you on that. If your traffic moves all in one direction on one part of your system, and is equalized moving in both directions on another, the grades being the same and your ability to haul the same number of tons on each, give me the
1187 one that you have the loaded mileage in both directions as the most profitable.

Q. No doubt. But suppose you have 500,000 tons per mile moving in one direction on one division of road, and you have got twice that much——

A. A million tons.

Q. A million tons per mile of road, moving the same direction, the road that has got the greatest density of traffic will carry that at a less cost per unit of traffic that is per car or per ton, will it not?

A. The same commodities?

Q. Yes.

A. That would depend on whether he filled out all your trains or not. If you had that 500,000 pounds, enough traffic to keep all your trains filled out to the maximum rating, and the same empty return mileage, then on the million tons division you had enough to keep all your trains filled out, then it would be about the same.

Q. There are certain expenses that must go on, that is keeping station agents and so forth?

A. There are certain fixed charges for general supervision, general office work but they are increased in proportion—not in proportion as traffic increases, but to an extent they increase with it.

Q. Isn't it a fact that the maintenance of way and structures, general expenses, and practically all of the items of both are
1188 not so much dependent upon the amount of tonnage you haul, whether you have three or four trains over the road a day, or haul six or eight trains, the difference in cost of maintaining your structures, and maintaining your agents and telegraph operations will not be materially different, will it?

A. The more trains you operate, Mr. Cowan, the more agents and operators you must keep on night and day to move these trains with dispatch on single track roads.

Q. But in proportion to the number of trains?

A. I don't think it would after you reach a certain number of trains. Then it does not increase, of course, to any extent at all. If for instance, you are running twenty trains, and it requires an agent at every station and a night operator at every other station, and then you increase to thirty, you can handle them just the same as twenty.

Q. The general office expenses are the same whether you are handling a greater or less tonnage?

A. Oh, no, no. With us we move, say, 40,000 cars a day. Those 40,000 entries must be made. If we increase it to sixty thousand we have got to hire enough help to enter the additional twenty thousand movement. The same is true of the auditor of freight receipts.

Q. Do they increase in proportion?

A. Practically, so far as our departments are concerned, the number of men increases.

1189 Q. Mr. Daly, you have furnished three printed annual reports of the Illinois Central. They contain correct tabulated data with respect to the operating department, traffic departments, and other departments so far as it contains it at all, does it not?

A. In what, in dollars and cents?
Q. Whatever the report contains is correct, is it not?
A. Well, it is correct as showing an average.
Q. Well, whatever the figures show, it is not a false statement, it is deemed a correct statement?
A. No, the figures show what they state, the average for instance, in loaded cars moved, it shows the average on the entire system.
Q. Well, what I want to get at, is whether this annual report of your Road is regarded as a correct statement?
A. Yes sir, it is.
Q. As to whatever matters are therein contained?
A. Yes sir.

1189*a* TOMLINSON'S EX. No. 19.

Illinois Central Railroad Company.

Fifty-second Annual Report of the Directors to the Stockholders for the Year Ended June 30, 1902.

The number of miles of railroad operated by the Illinois Central Railroad Company on June 30, 1901, was.....	4,265.50
On December 1, 1901, there was added The Kentucky Western Railway.....	18.40
Making the number of miles of railroad in operation on June 30, 1902.....	4,283.90

The average number of miles of railroad operated during the year ended June 30, 1902, has been 4,276.23, against an average of 4,214.92 operated in the preceding year.

The following is a summary of the Company's business for the year ended June 30, 1902:

Gross Receipts from Traffic.....		$40,821,030 00
Expenses of operation.....	$26,248,122 86	
Taxes	1,766,217 22	
		28,014,340 08
Income from Traffic, being the excess of Receipts over Expenses of Operation and Taxes		$12,806,690 04
Net Receipts from Sale of Lands.....		16,697 24
Income from Investments, and Miscellaneous Profits		3,535,108 66
Excess of Income over Expenses of Operation and Taxes.....		$16,358,495 94

From this there have been paid:		
Interest on Funded Debt, and Bonds Drawn under Sinking Fund	$3,065,365 00	
Rent of Subsidiary Railroads	3,502,669 06	
Total Fixed Charges		6,568,034 06
Net Income for the year ended June 30, 1902		$9,790,461 88
Surplus Dividend Fund brought forward June 30, 1901, as shown in last Report		1,088,486 92
Amount Available		$10,878,948 80
This has been disposed of as follows:		
94th Semi-Annual Cash Dividend, paid March 1, 1902	$2,376,000 00	
95th Semi-Annual Cash Dividend, payable August 30, 1902	2,376,000 00	
		$4,752,000 00
Set apart, as explained below, to provide at maturity for accrued interest not yet payable:		
On bonds of Illinois Central R. R. Co.	$593,291 68	
On bonds of Chicago, St. Louis & New Orleans R. R. Co.	61,038 12	
	$654,329 80	
For Betterments	4,340,172 08	
		4,994,501 88
Carried forward to Surplus Dividend Fund, as of June 30, 1902, and set apart as applicable to future Dividends		1,132,446 92
		$10,878,948 80

1189*b*–1189*d* As compared with the preceding year:

The average number of miles of railroad operated increased	61.31	or	1.45 per cent.
Gross Receipts from Traffic increased	$3,920,569 65	"	10.62 "
Expenses of Operation increased	1,996,445 30	"	8.23 "
Taxes increased	176,102 35	"	11.07 "
Income from Traffic increased	1,748,022 00	"	15.81 "

Net Receipts from Sale of Lands decreased.....	11,910 35	"	41.63	"
Income from Investments, and Miscellaneous Profits increased	1,058,533 96	"	42.74	"
Excess of Income over Expenses of Operation and Taxes increased	2,794,645 61	"	20.60	"
Total Fixed Charges decreased	28,156 52	"	.43	"
Net Income for the fiscal year increased	2,822,802 13	"	40.51	"
The amount available after deducting Fixed Charges increased	2,865,062 13	"	35.75	"
The sum appropriated from Income for Betterments increased	1,444,772 33	"	49.89	"
Surplus Dividend Fund has been augmented by.....	43,960 00	"	4.04	"

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1189*e* Standards of Maintenance.

The policy of improving the standards of maintenance has been strictly adhered to. The average weight of rail in main track is 70.56 pounds to the yard, as against 63.83 pounds last year. The average tractive capacity of locomotives on level track has increased from 3,294 tons to 3,448 tons. The average capacity of revenue freight cars from 29.43 tons to 30.86. The passenger train equipment has been improved by the purchase of 28 new cars to replace old ones.

All of the 947 engines, the 728 passenger, mail and express cars, the 42,419 freight cars and the 469 work cars, shown on the inventory, are in existence, excepting 10 passenger cars and 135 freight cars. Orders have been given for replacing these cars with new ones, and their cost has been provided through charges already made to "Maintenance of Equipment."

During the year 66 new locomotives were bought, of which 11 replaced old ones disposed of and 55 constitute additions to the equipment. One old engine was received with the Kentucky Western Railway.

Five thousand one hundred and thirty-four new freight cars were bought, or built in the Company's shops. Ten old freight cars were received with the Kentucky Western Railway. Seven old freight cars were transformed into work cars. Of the new freight cars 1,216 replaced old cars destroyed, or disposed of, and 3,918 were added to the equipment.

Air brakes are attached to 79.31 per cent. of the freight car equipment.

Additional Second Track.

During the year, 197.75 miles of additional second main track were put in service. At its close there were in service 452.79 miles of second track and 82.46 miles of third and other additional main tracks, making together 535.25 miles. In order to complete the double track between Chicago and Fulton Ky., for a distance of 406 miles, there are yet to be put in service 80 miles, for which the grading is nearly completed. To complete the double track between Jackson, Miss., and New Orleans, for a distance of 185 miles, there are yet to be put in service 139 miles. While much of the grading there required has been done, this work is not so far advanced as that between Chicago and Fulton.

Permanent Improvements.

In the betterment of the property, there have been spent during the year $8,097,646.59. Of this sum $268,412.19 were charged to Betterment Funds previously provided and $4,340,172.08 were defrayed from Current Income, the remaining $3,489,062.32 being charged to Capital. Table No. 1 submitted herewith, sets forth these permanent improvements in detail and shows that the cost of the 55 new locomotives, of the 3,918 new freight cars and of the Lidgerwood ballast unloaders added to the equipment was $3,682,146.30, which of itself largely exceeded the sum charged to capital.

Increased Public Service.

The attention of the proprietors is especially invited to a new Table, No. 8, submitted herewith, in which the number of Passengers carried one mile and the number of tons of Revenue Freight carried one mile have been added together, so as to show the number of Units of Service which have been annually rendered by the Railroad Company to the Public. It will be seen that in each of the thirteen years last past there has been an increase not only in the units of service rendered but also in the units of service rendered per mile of railroad operated. The service so rendered in the year under report (4,853,383,352 units) was more than four-fold what it had been in the year ended June 30, 1889 (1,203,982,725 units), and the service so rendered per mile of railroad operated was more than two and a half times as great as it had been thirteen years before.

But this table fails to show the full measure of the increased service rendered, as it takes no account of the transportation of Company Freight, of which 810,734,752 tons were this year carried one mile, as against 680,095,348 tons carried one mile in the year preceding. This year's increase in the volume of Company Freight therefore was 19.21 per cent. in contrast with an increase of only 10.86 per cent. in the number of tons of Revenue Freight carried one mile. (See Table No. 5.) While it is not now possible to state the volume of Company Freight which was carried one mile in the earlier years, it is certain that as a necessary incident of the business there were carried one mile, during the year under report, in addition to the

4,452,073,927 tons of Revenue Freight, 810,734,752 tons of Company Freight; that is to say, the total service rendered in the carriage of freight of all kinds exceeded that shown in Table No. 8 by 6.21 per cent.

Increase of Capital Stock.

An appreciation of this constant growth in the volume of the service demanded of the Company, induced the Directors, on June 18, 1902, to call a special meeting of the Stockholders, to be held August 29, 1902, for the purpose of taking action on the Directors' recommendation that the Capital Stock be further increased from $79,200,000 to $95,040,000 by an issue of 158,400 new shares. Since the close of the fiscal year this recommendation has met with the approval of the Stockholders, and the privilege has been given to each stockholder of record on September 19, 1902, to subscribe at par for one share of new stock in respect to every five shares then registered in his name.

The attention of the Stockholders is invited to the accompanying Balance Sheet and to the Abstracts explanatory thereof, as well as to the various Tables showing, in detail, the workings of the Company's business.

By order of the Board of Directors,

ALEXANDER G. HACKSTAFF, *Secretary.*

New York, September 17, 1902.

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TABLE No. 5.

Comparative Statement of General Operations for the Years Ended June 30, 1902 and 1901.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1902.	1901.			
Miles of Road Operated	4,276.23	4,214.92	61.31	1.45	
Miles run by Freight Trains	15,689,534	17,076,817		8.12	1,387,283
Miles run by Passenger Trains	10,449,394	10,824,720		3.47	375,326
Miles run by Mixed Trains	514,895		514,895		
Total Revenue Train Mileage	26,653,823	27,901,537		4.47	1,247,714
Miles run by Construction Trains	1,040,084	1,689,891		38.45	649,807
Miles run by Switching Engines	6,778,757	7,578,856		10.56	800,099
Other Engine Mileage	820,626		820,626		
Total Engine Miles	35,293,290	37,170,284		5.05	1,876,994
Mileage of Loaded Freight Cars	299,243,202	278,103,314	21,139,888	7.60	
Mileage of Empty Freight Cars	95,460,268	107,873,135		11.51	12,412,867
Total Mileage of Freight Cars	394,703,470	385,976,449	8,727,021	2..	
Mileage of Passenger Cars	52,146,209	50,751,379	1,394,830	2.75	
Number of Tons of Revenue Freight Carried One Mile	4,452,073,927	4,016,085,602	435,988,325	10.86	
Number of Tons of Company Freight Carried One Mile	810,734,752	680,095,348	130,639,404	19.21	
Total Number of Tons of Freight Carried One Mile	5,262,808,679	4,696,180,950	566,627,729	12.07	
Number of Passengers Carried One Mile	401,309,425	373,919,236	27,390,189	7.33	

Gross Receipts	$40,821,030.12	$36,900,460.47	$3,920,569.65	10.62	
Operation Expenses	26,248,122.86	24,251,677.56	1,996,445.30	8.23	
Excess of Receipts over Operation Expenses, exclusive of Taxes	14,572,907.26	12,648,782.91	1,924,124.35	15.21	
Gross Receipts per Mile of Road	$9,546.03	$8,754.72	$791.31	9.04	
Operation Expenses per Mile of Road	6,138.15	5,753.77	384.38	6.68	
Excess of Receipts over Operation Expenses, per Mile of Road, exclusive of Taxes	3,407.88	3,000.95	406.93	13.56	
Gross Receipts per Revenue Train Mile	$1.53 15-100	$1.32 25-100	$0.20 90-100	15.80	
Operation Expenses per Revenue Train Mile	.98 48-100	.86 92-100	.11 56-100	13.30	
Excess of Receipts over Operation Expenses, per Revenue Train Mile, exclusive of Taxes	.54 67-100	.45 33-100	.09 34-100	20.60	
Tons of Revenue Freight Carried One Mile per Mile of Road Operated	1,041,121	952,826	88,295	9.27	
Passengers Carried One Mile per Mile of Road Operated	93,847	88,713	5,134	5.79	
Average Number of Loaded Freight Cars in Train	18.47	16.28	2.19	13.45	
Average Number of Empty Freight Cars in Train	5.89	6.32	.....	6.80	.43
Average Number of Total Freight Cars in Train	24.36	22.60	1.76	7.79	

TABLE No. 5—Continued.

Comparative Statement of General Operations for the Years Ended June 30, 1902 and 1901.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1902.	1901.			
Average Number of Tons of Revenue Freight in Train.....	274.75	235.18	39.57	16.83	
Average Number of Tons of Company Freight in Train..	50.03	39.82	10.21	25.64	
Average Number of Tons of All Freight in Train	324.78	275.00	49.78	18.10	
Average Number of Tons of Revenue Freight in each Loaded Car.	14.88	14.44	.44	3.05	
Average Number of Tons of All Freight in each Loaded Car....	17.59	16.89	.70	4.14	
Average Number of Passengers in Train	36.60	34.54	2.06	5.96	

TABLE No. 6.

Receipts and Expenses per Mile of Road, Showing Amount, per Cent. of Gross Receipts, and per Cent. of Operation Expenses for the Years Ended June 30, 1902 and 1901.

	Amount.					Per cent. of gross receipts.		Per cent. of operation expenses.	
	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.	Year ended June 30th—		Year ended June 30th—	
	1902.	1901.				1902.	1901.	1902.	1901.
Gross Receipts:									
Freight	$6,480 19	$5,901 97	$578 22	9 80	.....	67.9	67.4		
Passenger	1,875 63	1,738 52	137 11	7.89	.....	19.6	19.9		
Miscellaneous	1,190 21	1,114 23	75 98	6.82	.....	12.5	12 7		
Total	$9,546 03	$8,754 72	$791 31	9.04	.....	100	100		
Operation Expenses:									
Maintenance of Way and Structures	$1,321 17	$1,390 49	.....	4.99	$69 32	13.8	15.9	21.5	24.2
Maintenance of Equipment	1,241 70	1,037 09	$204 61	19.73	.....	13.0	11.8	20.3	18 0
Conducting Transportation	3,377 34	3,137 26	240 08	7.65	.....	35.4	35.8	55.0	54.5
General Expenses	197 94	188 93	9 01	4 77	.....	2.1	2.2	3.2	3.3
Total	$6,138 15	$5,753 77	$384 38	6.68	.....	64.3	65.7	100	100
Taxes	$413 03	$377 25	$35 78	9.48	.....	4.3	4.3		
Net receipts	$2,994 85	$2,623 70	$371 15	14.15	.....	31.4	30.0		

TABLE No. 7.

Comparative Statement of Traffic for the Years Ended June 30, 1902 and 1901.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1902.	1901.			
Tons of Revenue Freight Carried	19,096,441	17,735,749	1,360,692	7.67	
Tons of Revenue Freight Carried One Mile	4,452,073,927	4,016,085,602	435,988,325	10.86	
Average Distance Haul of One Ton	233.14 miles	226.44 miles	6.70 miles	2.96	
Freight Receipts	$27,710,782.42	$24,876,338.77	$2,834,443 65	11.39	
Average Receipts per Ton	$1.45	$1.40	$0.05	3.57	
Average Receipts per Ton per Mile	622-1000c	619-1000c	3-1000c	.48	
Freight Receipts per Mile of Road	$6,480 19	$5,901.97	$578.22	9.80	
*Miles Run by Freight Trains	16,204,429	17,076,817		5.11	872,388
Freight Receipts per Train Mile	$1.71 1-100c	$1.45 67-100c	$0.25 34-100c	17.40	
Number of Passengers Carried	19,006,204	17,865,439	1,140,765	6.39	
Number Carried One Mile	401,309,425	373,919,236	27,390,189	7.33	
Average Number of Miles Traveled by each Passenger	21.11 miles	20.93 miles	18-100 mile	.86	
Passenger Receipts	$8,020,648.67	$7,327,742.36	$692,906.31	9.46	
Average Fare of each Passenger	42 20-100c	41 2-100c	1 18-100c	2.88	
Average Receipts per Passenger per Mile	1 999-1000c	1 960-1000c	39-1000c	1.99	
Passenger Receipts per Mile of Road	$1,875 64	$1,738.52	$137.12	7.89	
Gross Receipts of Passenger Trains	$10,014,309.24	$9,164,037.50	$850,271.74	9.28	
Gross Receipts of Passenger Trains per Mile of Road	$2,341.85	$2,174.19	$167.66	7.71	
*Miles Run by Passenger Trains	10,964,289	10,824,720	139,569	1.29	
Receipts of Passenger Trains per Train Mile	91 34-100c	84 66-100c	6 68-100c	7.89	

*NOTE.—This year, in order to conform to the methods adopted by the Interstate Commerce Commission and the Association of American Railway Accounting Officers, the freight and passenger train mileage each includes the total miles run by mixed trains, with double heading and light engine mileage excluded. Last year the latter class of mileage was included, and the mileage of mixed trains divided, 75% to freight and 25% to passenger service.

TABLE No. 8.

Statement of Service Rendered to the Public by the Railroad Company in the Transportation of Passengers and of Revenue Freight and of Such Service per Mile of Railroad Operated in each Year from July 1, 1888, to June 30, 1902.

Years ended June 30th—	Service rendered to the public.				Miles of railroad operated.	Service rendered per mile operated.	
	Number of passengers carried one mile.	Number of tons of revenue freight carried one mile.	Units of service rendered (being the sum of the figures given in the two preceding columns).	Increase over preceding year in units of service rendered.		Units of service rendered per mile of railroad operated.	Increase over preceding year in units of service rendered per mile of railroad operated.
1889	150,688,320	1,053,294,405	1,203,982,725	.....	2,713.62	443,681	
1890	158,167,606	1,189,282,889	1,347,450,495	143,467,770	2,875.18	468,649	24,968
1891	183,875,079	1,302,002,213	1,485,877,292	138,426,797	2,875.18	516,795	48,146
1892	208,836,686	1,411,375,499	1,620,212,185	134,334,893	2,883.44	561,903	45,108
1893	257,744,648	1,512,542,558	1,770,287,206	150,075,021	2,888.30	612,917	51,014
1894	317,711,176	1,460,551,031	1,778,262,207	7,975,001	2,888.30	615,678	2,761
1895	195,924,818	1,586,080,584	1,782,005,402	3,743,195	2,888.30	616,974	1,296
1896	222,034,712	2,018,129,060	2,240,163,772	458,158,370	3,067.58	730,271	113,297
1897	212,985,073	2,258,388,132	2,471,373,205	231,209,433	3,130.21	789,523	59,252
1898	263,336,693	2,722,540,585	2,985,877,278	514,504,073	3,774.85	790,992	1,469
1899	268,589,994	2,799,941,184	3,068,531,178	82,653,900	3,670.80	835,930	44,938
1900	305,643,549	3,425,794,698	3,731,438,247	662,907,069	3,845.43	970,357	134,427
1901	373,919,236	4,016,085,602	4,390,004,838	658,566,591	4,214.92	1,041,539	71,182
1902	401,309,425	4,452,073,927	4,853,383,352	463,378,514	4,276.23	1,134,968	93,429
Increase in 1902 over 1889	250,621,105	3,398,779,522	3,649,400,627	.....	1,562.61	691,287	
Ratio of the service rendered in 1902 to that rendered in 1889	2.6632	4.2268	4.0311	.....	1.5758	2.5581	

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1189s & 1189t TOMLINSON'S EX. No. 18.

Illinois Central Railroad Company.

Fifty-fourth Annual Report of the Directors to the Stockholders for the Year Ended June 30, 1904.

The number of miles of railroad operated by the Illinois Central Railroad Company on June 30, 1903, was	4,301.10

* * * * * * *

The average number of miles of railroad operated during the year ended June 30, 1904, has been 4,340.35, against an average of 4,292.98 operated in the preceding year.

The following is a summary of the Company's business for the year ended June 30, 1904:

Gross Receipts from Traffic		$46,831,135 90
Expenses of Operation	$32,793,251 31	
Taxes	1,942,430 86	
		34,735,682 17
Income from Traffic, being the excess of Receipts over Expenses of Operation and Taxes		$12,095,453 73
Net Receipts from Sale of Lands		41,053 42
Income from Investments and Miscellaneous Profits		2,675,495 72
Excess of Income over Expenses of Operation and Taxes		$14,812,002 87
From this there have been paid:		
Interest on Funded Debt, and on St. Louis Division Prior Lien Bonds	$3,481,824 91	
Rent of Subsidiary Railroads	2,464,250 45	
Total Fixed Charges		5,946,075 36
Net Income for the year ended June 30, 1904		$8,865,927 51
Surplus Dividend Fund brought forward June 30, 1903, as shown in last Report		1,178,186 92
Amount Available		$10,044,114 43

This has been disposed of as follows:

98th Semi-Annual Cash Dividend, paid March 1, 1904.....	$2,851,200 00	
99th Semi-Annual Cash Dividend, payable September 1, 1904....	2,851,200 00	
		$5,702,400 00
Advanced to the Dubuque & Sioux City R. R. Co., as explained below	$536,618 76	
Set apart for Betterments.....	2,579,328 75	
		3,115,947 51
Carried forward to Surplus Dividend Fund, as of June 30, 1904, and set apart as applicable to future Dividends		1,225,766 92
		$10,044,114 43

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1189*u*–1189*ee* Permanent Improvements.

In the betterment of the property, there have been spent during the year $9,745,118.43 as set forth in detail in "Table No. 1." Under a contract made November 1, 1872, the Michigan Central R. R. Co. had the option of paying to the Illinois Central R. R. Co. $272,987.50 in lieu of future rent for the use of certain lands in Chicago, which option was exercised during the year and the amount so received applied toward expenditures for betterments. Of the remainder, $2,579,328.75 were paid from current income and $6,892,802.18 were charged to Capital.

Railroads and Equipment.

During the year the amount charged to "Railroads and Equipment" has been increased by $9,415,460.82. Of this sum $6,892,802.18 *was* charged as above stated to Capital, and the remainder represents the book value of the railroads to which title has been taken, a like sum being deducted from the item in the Balance Sheet which is known as "Advances on Account of Other Railroads."

Standards of Maintenance.

The policy of improving the standards of maintenance has been strictly adhered to. The average weight of rail in main track is 72.78 pounds to the yard, as against 71.96 pounds last year. The average tractive capacity of locomotives on level track has increased from 3,573 tons to 3,734 tons. The average capacity of revenue freight cars from 32.87 tons to 33.77. The passenger train equipment has been improved by the purchase of 34 new cars, including the 8 steel cars referred to in last report as being under construction for the suburban service at Chicago

All of the 1,086 engines, the 787 passenger, mail and express cars, the 53,576 freight cars and the 1,446 work cars, shown on the inventory, are in existence, excepting 2 passenger cars, 348 freight cars, and 13 work cars. Orders have been given for replacing these cars with new ones, and their cost has been provided through charges already made to "Maintenance of Equipment."

During the year 84 new locomotives were bought, of which 1 replaced an old engine disposed of and 83 constitute additions to the equipment.

Three thousand six hundred and thirteen new freight cars and one work car were bought or built in the Company's shops. Of these new freight cars, 1,148 replaced old cars destroyed, or disposed of, and 2,466 were added to the equipment.

Air brakes are attached to 88.31 per cent. of the freight car equipment.

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TABLE No. 5.

Comparative Statement of General Operations for the Years Ended June 30, 1904 and 1903.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1904.	1903.			
Miles of Road Operated.....	4,340 35	4,292.98	47.37	1.10	
Miles run by Freight Trains.....	18,320,526	17,483,072	837,454	4.79	
Miles run by Passenger Trains...	10,827,134	10,794,544	32,590	.30	
Miles run by Mixed Trains.....	476,506	479,438	....	.61	2,932
Total Revenue Train Mileage	29,624,166	28,757,054	867,112	3.02	
Miles run by Construction Trains.	811,522	902,745	.....	10.11	91,223
Miles run by Switching Engines..	7,289,159	7,086,736	202,423	2.85	
Other Engine Mileage.....	1,519,414	1,245,403	274,011	22.00	
Total Engine Miles.....	39,254,261	38,001,938	1,252,323	3.30	
Mileage of Loaded Freight Cars..	333,645,198	327,589,428	6,055,770	1.85	
Mileage of Empty Freight Cars..	125,700,922	114,718,427	10,982,495	9.57	
Total Mileage of Freight Cars....	459,346,120	442,307,855	17,038,265	3.85	
Mileage of Passenger Cars.....	56,153,080	54,690,538	1,462,542	2.67	
Number of Tons of Revenue Freight Carried One Mile.....	5,221,132,514	5,176,543,778	44,588,736	.86	
Number of Tons of Company Freight Carried One Mile.....	1,023,811,034	841,619,476	182,191,558	21.65	
Total Number of Tons of Freight Carried One Mile	6,244,943,548	6,018,163,254	226,780,294	3.77	
Number of Passengers Carried One Mile.....	485,092.114	455,432,129	29,659,985	6.51	

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TABLE No. 5—Continued.

Comparative Statement of General Operations for the Years Ended June 30, 1904 and 1903.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1904.	1903.			
Gross Receipts	$46,831,135.90	$45,186,076.86	$1,645,059 04	3.64	
Operation Expenses	32,793,251.31	29,835,883.35	2,957,367.96	9.91	
Excess of Receipts over Operation Expenses, exclusive of Taxes	14,037,884.59	15,350,193.51		8.55	$1,312,308.92
Gross Receipts per Mile of Road	$10,789.72	$10,525.57	$264.15	2.51	
Operation Expenses per Mile of Road	7,555.44	6,949.92	605.52	8.71	
Excess of Receipts over Operation Expenses, per Mile of Road, exclusive of Taxes	3,234.28	3,575.65		9.55	$341.37
Gross Receipts per Revenue Train Mile	$1.58 08-100	$1.57 13-100	$0.00 95-100	.60	
Operation Expenses per Revenue Train Mile	1.10 69-100	1.03 75-100	.06 94-100	6.69	
Excess of Receipts over Operation Expenses, per Revenue Train Mile, exclusive of Taxes	.47 39-100	.53 38-100		11.22	$0.05 99-100
Tons of Revenue Freight Carried One Mile per Mile of Road Operated	1,202,929	1,205,816		.24	2,887
Passengers Carried One Mile per Mile of Road Operated	111,763	106,088	5,675	5.35	

Average Number of Loaded Freight Cars in Train	17.75	18.24		2.69	.49
Average Number of Empty Freight Cars in Train	6.69	6.38	.31	4.86	
Average Number of Total Freight Cars in Train	24.44	24.62		.73	.18
Average number of Tons of Revenue Freight in Train	277.76	288.19		3.62	10.43
Average Number of Tons of Company Freight in Train	54.47	46.85	7.62	16.36	
Average Number of Tons of All Freight in Train	332.23	335.04		.84	2.81
Average Number of Tons of Revenue Freight in each Loaded Car	15.65	15.80		.95	.15
Average Number of Tons of All Freight in each Loaded Car	18.72	18.37	.35	1.91	
Average Number of Passengers in Train	42.91	40.40	2.51	6.21	

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TABLE No. 6.

Receipts and Expenses per Mile of Road, Showing Amount, per Cent. of Gross Receipts, and per Cent. of Operation Expenses for the Years Ended June 30, 1904 and 1903.

	Amount.					Per cent. of gross receipts.		Per cent. of operation expenses.	
	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.	Year ended June 30th—		Year ended June 30th—	
	1904.	1903.				1904.	1903.	1904.	1903.
Gross Receipts:									
Freight	$7,301 85	$7,126 07	$175 78	2.47		67.7	67.7		
Passenger	2,201 38	2,091 14	110 24	5.27		20.4	19.9		
Miscellaneous	1,286 49	1,308 36		1.67	$21 87	11.9	12.4		
Total	$10,789 72	$10,525 57	$264 15	2.51		100	100		
Operation Expenses:									
Maintenance of Way and Structures	$1,308 49	$1,376 48		4.94	$67 99	12.1	13.1	17.3	19.8
Maintenance of Equipment	1,687 27	1,461 59	$225 68	15.44		15.6	13.9	22.3	21.0
Conducting Transportation	4,328 21	3,884 56	443 65	11.42		40.1	36.9	57.3	55.9
General Expenses	231 47	227 29	4 18	1.84		2.2	2.1	3.1	3.3
Total	$7,555 44	$6,949 92	$605 52	8.71		70.0	66.0	100	100
Taxes	$447 53	$433 75	$13 78	3.18		4.2	4.1		
Net Receipts	$2,786 75	$3,141 90		11.30	$355 15	25.8	29.9		

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TABLE No. 7.

Comparative Statement of Traffic for the Years Ended June 30, 1904 and 1903.

	Year ended June 30th—		Increase.	Per cent. of increase or decrease.	Decrease.
	1904.	1903.			
Tons of Revenue Freight Carried	22,420,814	21,881,870	538,944	2.46	
Tons of Revenue Freight Carried One Mile	5,221,132,514	5,176,543,778	44,588,736	.86	
Average Distance Haul of One Ton	232.87 miles	236.57 miles		1.56	3.70 miles
Freight Receipts	$31,692,575.33	$30,592,094.32	$1,100,481.01	3.60	
Average Receipts per Ton	$1.41	$1.40	$0.01	.71	
Average Receipts per Ton per Mile	607-1000c	591-1000c	16-1000c	2.71	
Freight Receipts per Mile of Road	$7,301.35	$7,126.07	$175.78	2.47	
* Miles Run By Freight Trains	18,797,032	17,962,510	834,522	4.65	
Freight Receipts per Train Mile	$1.68 60-100c	$1.70 31-100c		1.00	1 71-100c
Number of Passengers Carried	22,563,613	21,231,607	1,332,006	6.27	
Number Carried One Mile	485,092,114	455,432,129	29,659,985	6.51	
Average Distance Traveled by each Passenger	21.50 miles	21.45 miles	0.05 miles	.23	
Passenger Receipts	$9,554,743.16	$8,977,228.09	$577,515.07	6.43	
Average Fare of each Passenger	$0.42 35-100c	$0.42 28-100c	7-100c	.17	
Passenger Receipts per Passenger per Mile	$0.01 970-1000c	$0 01 971-1000c		.05	1-1000c
Passenger Receipts per Mile of Road	$2,201.38	$2,091.14	$110.24	5.27	
Gross Receipts of Passenger Trains	$11,593,094.17	$11,044,333.23	$548,760.94	4.97	
Gross Receipts of Passenger Trains per Mile of Road	$2,671.00	$2,572.65	$98.35	3.82	
* Miles Run by Passenger Trains	$11,303,640	11,273,982	29,658	.26	
Receipts of Passenger Trains per Train Mile	$1.02 56-100c	$0.97 96-100c	$0.04 60-100c	4.70	

* Includes Mileage of Mixed Trains.

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TABLE No. 8.

Statement of Service Rendered to the Public by the Railroad Company in the Transportation of Passengers and of Revenue Freight and of Such Service per Mile of Railroad Operated in Each Year from July 1, 1894, to June 30, 1904.

Years ended June 30th—	Service rendered to the public.				Miles of railroad operated.	Service rendered per mile operated.	
	Number of passengers carried one mile.	Number of tons of revenue freight carried one mile.	Units of service rendered (being the sum of the figures given in the two preceding columns).	Increase over preceding year in units of service rendered.		Units of service rendered per mile of railroad operated.	Increase over preceding year in units of service rendered per mile of railroad operated.
1895	195,924,818	1,586,080,584	1,782,005,402	.....	2,888.30	616,974	
1896	222,034,712	2,018,129,060	2,240,163,772	458,158,370	3,067.58	730,271	113,297
1897	212,985,073	2,258,388,132	2,471,373,205	231,209,433	3,130.21	789,523	59,252
1898	263,336,693	2,722,540,585	2,985,877,278	514,504,073	3,774.85	790,992	1,469
1899	268,589,994	2,799,941,184	3,068,531,178	82,653,900	3,670.80	835,930	44,938
1900	305,643,549	3,425,794,698	3,731,438,247	662,907,069	3,845.43	970,357	134,427
1901	373,919,236	4,016,085,602	4,390,004,838	658,566,591	4,214.92	1,041,539	71,182
1902	401,309,425	4,452,073,927	4,853,383,352	463,378,514	4,276.23	1,134,968	93,429
1903	455,432,129	5,176,543,778	5,631,975,907	778,592,555	4,292.98	1,311,904	176,936
1904	485,092,114	5,221,132,514	5,706,224,628	74,248,721	4,340.35	1,314,692	2,788
Increase in 1904 over 1895.	289,167,296	3,635,051,930	3,924,219,226	.....	1,452.05	697,718	
Ratio of the service rendered in 1904 to that rendered in 1895...	2.4759	3.2918	3.2021	.....	1.5027	2.1309	

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1190 Q. You made some mention of the 28 hour law, that does not affect the shipments from Western Iowa in here and on your road, does it?

A. Yes, sir, prior to three or four months or six months ago we were not running our stock trains at as high a rate of speed as we are today, from Western Iowa points, and the higher the rate of speed, the more expense of that service is going to be on us, consequently a year ago if we were handling stock in 32 or 33 hours it cost us less than it is costing us today in handling it at 27 hours, because we have got to reduce our trains in proportion as we increase that speed.

Q. Wherein does that extra cost apply. You would run a train through from out at Fort Dodge here, we will say, in 25 hours, and you run another one in 22 hours, wherein consists the difference in cost that amounts to anything in running those two trains?

A. There is about ten per cent. additional cost for this reason: You take a train and give it four hours to go over a division of a hundred miles, that is 25 miles an hour, and you rate them 400 gross tons. If you want to run that in three hours you have got to reduce your tonnage down to probably less than three hundred tons.

Q. Well, I will waive that question I asked you, I will ask it in a different form. We will take a train of 25 cars of cattle, now pass out the tonnage, and take two trains of 25 cars of cattle and you run one train over here in 25 hours from Fort Dodge and

1191 you run another in 20 hours, we will put it that way, from Fort Dodge to Chicago. Now, point out the items that would make the one more expensive than the other?

A. You say take one train of twenty five cars——

Q. Both trains 25 cars, and one runs in 25 hours and the other one 20?

A. I think the tonnage clerk would bring those reports into me and we would have an investigation as to why they did not put 25 cars on both.

Q. I didn't ask that.

A. That is not a condition, Mr. Cowan, that exists with us; we don't run them that way.

The COURT: He said if both were 25 cars.

A. If we could run one in 20 hours of 25 cars we should naturally haul more than 25 cars in another at 25 miles an hour, and that is not the way we load our engines.

Mr. COWAN:

Q. I know, I was trying to get at the difference in items of cost, if you will just answer the question?

A. Yes, sir.

Mr. LYNDE: Wait a moment, just get his answer

Mr. COWAN: He was not answering my question.

The COURT: Repeat the question and see if he can answer it.

Mr. COWAN:

Q. The question is to name the difference in the items of cost in

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running two trains, both *of* from Fort Dodge to Chicago.
1192 Now, I am asking for the difference in the items of cost.

Mr. SEVERANCE: By reason of the speed?

Mr. COWAN: I do not care what it is by reason of, I just asked what the items of difference of cost would be in the two?

A. It is conceded the train running in 20 hours would use more coal than the train running in 25.

Q. Let us stick at that point and get at the amount?

A. I don't know the amount.

Q. Well, in your judgment?

A. Oh, it is conceded the item would not amount to very much.

Q. That is just what I know, I want to get the items.

A. The second item entering into that is your liability of accidents in running at the higher speed, more liable to accidents.

The COURT: Does that amount to very much where there is a good road?

A. Well, it did during the period that we were running these trains at the high speed, we had most of our bad accidents; when the high speed was taken off these stock trains and they were reduced down four or five hours we have had no wrecks practically in a year. We paid $35 last year in personal injuries for the reason that our schedules were longer, the men were not keyed to a high tension and running at a high speed in order to make a market, they had their train in better control.

1193 The COURT: That is two items, now go on.

Mr. COWAN: I want to get at the amount of that one. You seem to be so well informed on these things.

A. It won't amount to very much, I should think one ton would be about it.

Q. How much does the coal cost you?

A. It costs $1.05, *a* $1.05 to $1.15 at the mines. In Iowa it is plus $1.25 a ton freight on it, it would be probably $2.40 for the ton of coal.

Q. What are the other items?

A. For the whole trip?

Q. As to the accident, that is purely speculative as to what would happen to the one and what would happen to the other?

A. No, we had a stock accident last Monday morning here in Illinois, on a down grade. The first section—it was two stock trains; the first section had cleared the station and was on a down grade at a pretty high speed, and either the air brake hose burst, or the train uncoupled and stopped, and before the flagman could get back, and flag the second section running down this hill at an excessive speed to make the markets, found itself in a position that it could not stop and control within that distance that the flagman got back, and they went into the caboose and killed one stockman, badly injured, very seriously injured another, and injured two or three others and a cost estimated to us of $30 to $40,000.

1194 Q. Do you know which train was running the faster?

A. Well, the one was stopped, the other one was running; the one that broke stopped.

Q. Do you know which train was running faster before the accident?

A. No, I have not seen the details of the investigation of the accident, but it occurred by reason of the fast speed and the necessity for fast speed.

Q. Now, are you able to say that if the one train was making it to Chicago in 25 hours and the other in 20 hours, which the accident would have happened to of that character?

A. Well, when you get trains up to a certain speed and give them reasonable tonnage, they delay somewhat in ascending the grade and try to make up in going down the hill; there isn't a stock man or any man who rides on a freight train but knows that that is a fact.

Q. And they do that on slow trains as well as the fast trains?

A. Not to the same extent, because their schedules are much slower and the dispatchers have got a check on all trains, they know what a stock train makes and they know what the other man makes.

Q. Now, let us go to the other items, you have named those two?

A. The wages of all crews are the same. I don't know that
1195 there is any more wear and tear to the equipment, not any perceptible, there is no way of getting a check on it. As far as the track is concerned, if your joints are out of condition, it is conceded that the faster an engine, by all experts, the faster an engine is going, the harder your driver will strike the tracks, the more tonnage of force there is to it.

Q. Undoubtedly?

A. But that is also a small item on the railroads today because there are very few low joints.

Q. It is a very insignificant item?

A. The whole proposition does not amount to much provided your trains are handled safely at the high speed.

Q. What other items?

A. That is about all; I don't know of any other material items in it.

Q. Now, it is 372 miles from Fort Dodge to Chicago, isn't it?

A. Yes, sir.

Q. What are the items of expense, the outlay which you can name in one of these 25 car trains that it cost your company to carry that train to Chicago?

A. How do you mean? The charges or cost of that?

Q. The cost to your company?

A. Well, I think your coal expense is nearly as heavy as any. Then you have your wages of train men.

Q. What is the wages of your train men?

A. Well, $4.25, I think—$4.30 for enginemen, firemen
1196 is 65 per cent. of that; conductors about $3.25 a hundred miles, brakemen I think is $2.40 cents per hundred miles—$2.30 on the brakemen.

Q. Now, you start the train out from Fort Dodge, what expense are you out for that train at the depot where it does not stop?

A. It is a train of stock that came into Fort Dodge?

Q. I am taking a train of stock of 25 cars from Fort Dodge to Chicago?

A. Well, you have got to build your train up at Fort Dodge.

Q. Do the billing at Fort Dodge?

A. Yes, sir, build it up and fix the trains when they come in so you will get each stock man's stock in the same train, they won't permit us to send it in different trains.

Q. That is the billing and the fixing up of the train?

A. Yes, sir, building up the train.

Q. How much do you consider that to be?

A. Fifty cents a car for switching, I think, at a point like that is a reasonable charge.

Q. And what charge for your billing, do you count that?

A. No, the freight is billed before it gets to Fort Dodge.

Mr. LYNDE: "Build" he said.

The WITNESS: Shaping it up, getting the different consignments for the different men in charge in one train to go into the yards together.

1197 Mr. COWAN: What expenses are you at for your station agent after you have got your train built up, say at Fort Dodge?

A. Very little, if any; I would not count it.

Q. That would not be counted from there to Chicago?

A. No.

Q. Now, what are your terminal charges when you reach Chicago?

A. On stock?

Q. Yes.

A. Well, it costs us about on stock from the West, I should say, it cost us about a dollar a car over the $2. which we claim for terminal charges for moving it into the yards. Our average on the stock from the South and the stock from the west a year ago or so, when the terminal case was up, it figured out $2.72 per car of stock. A car of stock from the South comes in on a trackage charge of fifty cents per car each way as against 75 on the Western stock, making it about $1. a car that we lose over and above the terminal charge of getting to and from the yards.

Q. Now, how would you divide the expense of mainte-ance of your way and structures, as between dead freight and live stock, how would you divide it if you were dividing by the train?

A. If I was dividing it I would take all the trains as a whole and divide one against the other.

—. You would waste more trying to figure it out than it
1198 would amount to, take it all together, train mileage?

A. Yes, sir.

Q. Freight train mileage?

A. Yes, sir, freight train mileage.

Q. So both trains are about the same so far as expenses of maintenance and way are concerned?

A. Almost, yes, sir.

Q. Now, as to the maintenance of your locomotives, you have a statement, I don't know whether it is in this printed annual state-

ment or not, but you have a statement showing the cost of maintenance per mile run of your locomotive, to the Commission?

A. I have seen those figures.

Q. That will be in the report you bring down this afternoon?

A. I presume that is in the Interstate report.

Q. Annual report?

A. I don't know.

Q. There is also the cost of maintenance or rather repairs and renewals of freight cars?

A. Yes, sir.

Q. Now, you say your road has not divided it between stock cars and other cars?

A. No, and the only figures we could get would be estimates from the men in charge as to the best of their knowledge.

Q. In other words you would take the total car mileage, and divide it into the total item of repairs and renewals of cars?

1199 A. Freight cars separate from passenger cars, yes, sir.

Q. That will be contained in the annual report?

A. I don't know.

Q. It is in this printed annual?

A. Then it will be, yes.

Q. Now, the cost of your general expenses, the only way to divide that would be to divide the total number of car miles or train miles into the total general expenses, items of general expenses?

A. To get the item of what proportion of the general expenses applies to freight?

Q. Yes.

A. Why I don't know how they would.

Q. Divide it per car mile or per train mile?

A. I don't know how you would discriminate between passengers and the freight expenses. For instance, passenger department earnings on some roads are very low in proportion to their expenses. I don't know how they would arrive at that.

Q. At all events, about the only way you could arrive at what comes under the items of general expenses, general office expenses, would be to divide, either on the basis of tonnage, car miles or train miles?

A. Yes, that would appear to me to be fair.

Q. One or the other?

A. Yes.

Q. And those figures are contained in the annual report.

A. Yes, sir.

1200 Q. Now, all the items of operating expenses, those which are under the head of conducting transportation are the longest items, I mean to say the total of conducting transportation?

A. I have not gone into that any and so I do not know what they are.

Q. Well, whatever is shown in the annual report would be correct as a general proposition?

A. Yes, sir.

Q. In conducting the transportation the following are the items:

Passenger train expenses; freight train expenses; station expenses; telegraph expenses; claims for damages; outside agencies; advertising; transportation and traffic superintendence; mileage on ——; café cars; clearing wrecks; operating marine equipment—of course that would not come in there?

A. That is transportation.

Q. But it would not come in in this controversy here?

A. No, we have no boats in that section.

Q. Rent of tracks, yards and terminals, rent of buildings and other property, and miscellaneous expenses.

(Under the general heading of conducting transportation.)

Q. Now, what of those items, except those we have mentioned, would be included, aside from telegraph expenses and claims for damages, as applied to this other traffic?

A. What other expenses?

Q. Yes.

A. Oh, you haven't got in the cost of your property,
1201 bridges and buildings.

Q. I am talking about cost of conducting transportation?

A. Well, I don't know that; I think you have got nearly possibly all of the items, all that I can think of right at the present time in there. It should be, all of them in there.

Q. Now, I will ask you, freight train expenses we have already stated the principal items of expense. The hire of the men and the fuel and the switching in making up of the train, and the terminal expense at Chicago?

A. And the cost of maintenance.

Q. I am not speaking of that now. This is in conducting transportation. The station expenses you say would amount to practically nothing except at the ends where you make up trains and bill out the freight, and that would be included in the estimated cost of loading the cars and receiving the freight at the stations, would it not?

A. Not on live stock.

Q. What other expenses of the stations are there on live stock out there except the ones I have mentioned?

A. Well, the cost of the yards, cost of maintaining the yards, cleaning them out every week or two when the town board orders you to do it, shovel out the manure and stuff.

Q. Well, that is one item, station expenses, that you have already gone over in your previous testimony?

1202 Q. Now, the claims for damages you have stated?

A. Yes, sir.

Q. This live stock in Iowa does not require the maintenance of any outside agencies?

A. We maintain division agents, and traveling freight agents to look after all commodities and they appear to devote the bulk of their attention to looking after live stock and watching what the other fellow is doing with live stock, how many cars he gets, they keep their books in the office.

Q. But that is not outside agencies, that is agents on your own lines?

A. No, it is traveling and division freight agents. We have got

division agents, and traveling agents who go from one station to the other and confers with our agent as to what the other road is getting.

Q. Do you know that is what the term "outside agencies" means in this report?

A. It would be on our own line, interior, but outside agents might be live stock agents, but we have none of that class.

Q. Probably your auditor would have to state what that is in this account. Is it not a fact that a train from Fort Dodge of 25 cars at 23½ cents for 372 miles will produce in revenue $56.40 per car of 24,000 pounds?

A. If they load 24,000 it would, I presume, if the figuring is right, ours do not load that heavy.

Q. That train will yield $1579.20 as a gross revenue,
1203 which is 4.24 cents per mile?

Mr. SEVERANCE: What are you reading from?

Mr. COWAN: I am reading from figures based upon the evidence that is already in as a basis for a question.

Q. Now, do you have any other freight that moves in train load lots that pays you anything approaching that sort of a revenue per car mile; if so, what is it?

A. Packing house products move——

The COURT: First, answer your first question yes or no. Have you any other freight of that kind?

A. Yes, sir.

Q. What is it?

A. Packing house products, a full train of 24 cars which we haul based on 29,000 pounds to the car, which they average, based on the return of 50 per cent., say, of the cars empty.

Q. I am not talking about the return; I am talking about the revenue that pays you?

Mr. LYNDE: I submit the witness has got a right to answer.

The COURT: Yes, let him go on.

A. I base it on a train mile as it governs our annual reports and as called for by the Interstate Commerce Commission, that the train mile means an engine and caboose or engine and empty cars, consequently the return by them of stock and the packing house cars, when you get down to the train mile, must be included in the average earning per train mile, consequently by reason of haul-
1204 ing more tons of freight in the packing house cars and nearly as many cars and having less empty haul on the packing house cars than the others, we create a less number of train miles, consequently our earnings per train mile is far greater on the packing house than on the live cattle.

The COURT: Which pays the most money?

A. The packing house.

Q Well, I mean gross?

A. Packing house, your Honor. Take, for instance, a car of packing house products from Missouri River at 15 tons.

The COURT: I am not talking about a car, I am talking about trains, what he is asking about?

A. I will bring it to trains. There is 24 cars with an average of 15 tons per car; that is, 360 tons at 20 cents a ton is $72. A train of stock of 28 cars at 10 tons per car is 280 tons, at 23½ cents is $65.80, as against $72. Our train miles——

Mr. COWAN:

Q. What is $65.80?

A. The train of—no, taking one car——

Q. You better multiply that by 20?

A. 28 cars——

Q. It would be $58. at 20 cents a hundred?

A. That is what I am getting at, $58 as against $72. Now, that is per train mile coming this way.

Q. 24 cars makes how much a train?

Mr. SEVERANCE: I submit that it is only fair that the
1205 witness be permitted to answer the question.

The COURT: Yes, let him answer the question before you ask another.

A recess was here taken until 2 o'clock of the same day, September 27th, 1905.

1206 JOHN M. DALY resumed the stand for further direct examination by Mr. Baxter, and testified as follows:

Q. Mr. Daly, you said upon your original examination the value of the transportation issued by your company to attendants of live stock for the year ending June 30th, 1903, amounted to $41,423.74. If you have a detailed statement showing the amount, file it as an exhibit to your testimony.

A. I have a detailed statement which shows the number of passengers carried from Chicago to each individual station; the rate of our standard rate of fare for passengers that was in effect at that time and the total amount that they would have paid had they purchased tickets the same as any other passengers. It shows 3719 passengers carried and $41,423.74 expense or revenue that we would have received. That is taken from the individual tickets used in returning.

(The statement produced by the witness is marked Daly Exhibit X, and is attached hereto.)

1206*a* DALY EXHIBIT "X."

Illinois Central Railroad Company.

Statement showing return transportation from Chicago to destination, furnished to attendants of live stock from stations located between the Missouri river and Mississippi river, for the year ended June 30th, 1903, showing the total number of passengers carried to each station, and the value of their transportation (one way from Chicago to destination) based on our tariff rates in effect at that time.

1206*b*–1206*f* Illinois Central Railroad Company.

	From Chicago, Ill.	Number of passes.	Rate.	Amount.
	* * *	* * *	*	*
1206*g*	Grand total.....	3,719	....	$11423.74

1207 Cross-examination by Mr. COWAN:

Q. How many carloads did you ship in from out there?

A. 9976, I think.

Q. From Iowa points?

A. From points in Iowa, southern Minnesota, and South Dakota; points between the Mississippi river and the Missouri river.

Q. Do you keep a statement showing the loaded freight cars east and north and south and west, separately?

A. No, they go together. North and east are all included in one way and the south and west are included in the other, that being the directions that we keep. We keep only the two directions and we dovetail for our branches. They usually run in north or east directions.

Q. Do you keep that by the month?

A. The loaded mileage?

Q. Yes?

A. Yes sir.

Q. Do you keep that separately for divisions west of Chicago?

A. It is, it is taken as the western lines, it will include about from here to those points, including the state of Illinois.

Q. Does that also include from here to Cairo?

A. No sir, that part would not.

Q. It includes the lines over which this live stock moves?

A. Yes, I am pretty sure that is one of our statements.

1208 Q. Will you be kind enough to furnish a statement sh[owing] ing your east and north bound loaded freight cars and y[our] south and west bound loaded freight cars and the same as to empties as provided in items 32, 33, 34 and 35 of the sample of the Commission report that I have in my hand. I will mark it with a pencil on the left hand margin?

A. All right.

Q. From what division point or at what division point does the live stock concentrate which moves from the Missouri river or points in western Iowa?

A. Fort Dodge is our principal consolidating point.

Q. Do you move empties on your through live stock trains as such from Fort Dodge to Chicago?

A. Yes sir.

Q. You have made out a statement once to show what the consists of each train was out of Fort Dodge east bound for the first fifteen days in February, if I recollect correctly and the first fifteen days in October of the year 1904. Have you been able to find a copy of that statement?

A. No sir, if that is the one that was on the terminal charge case, the last session?

Q. Yes?

A. I made four copies of that statement and mailed one to Judge Baxter and one to yourself and one to the Honorable Judge Prouty of the Commission and I think Judge Dickinson of the legal
1209 department in order to complete their files. It left me no office copy. I remember in fact notifying the legal department that that was the only copy we had of the statement.

Q. If you can find that statement I would like for you to furnish it. If you cannot, I would like for you to make a statement again from the same records?

A. The testimony I gave this morning is based on the present conditions, and it would not be fair to use that statement for the reason that last year on that same district that you are speaking of, from Fort Dodge to Waterloo, we spent over half a million dollars in reducing the grades so that at the present time we are hauling from 12 to 20 per cent. more tonnage east bound in our trains than we hauled during the period that that report covers. The present figures given you are much better. We are hauling that much more.

Q. Well, you have not made up a statement, though of that sort, have you?

A. We have taken the performance of the train for the year, winter and summer and in testifying to 780 gross tons of live stock and 867 gross tons of packing house product and 1204 gross tons of dead freight, that covers the entire lines from the Missouri river to Chicago.

Q. Yes, but I would like to have what is an actual move-
1210 ment as it appears out of a prominent division point like Fort Dodge, and if you cannot make the statement, possibly I can get it from Washington. I have sent for it and it may come. Do you recollect whether or not it was shown by this statement, Mr. Daly, that in a train in which you carried live stock for the time mentioned, there were a greater number of loaded cars than in the trains in which live stock were not carried?

A. In a solid train of live stock?

Q. No, just taking all the trains.

A. Oh, I don't think so. No. I think it would run somewhat less than the straight dead freight trains.

Q. You have these train conductors reports which show exactly what it is.

A. Yes sir.

Q. Isn't it a fact that in each particular, the trains which carry dead freight of all sorts and empties, that you also carry live stock practically almost every day?

A. That is true on the branch lines nearly every day. It is true on our main lines nearly every day except Monday or Sunday, the day of the heavy live stock movement. In fact about the only time we get a solid train of stock is on the Sunday movement when the movement is very heavy. Other times there are mostly all stock mixed in with packing house products and oranges or wool or Asiatic freight or dead freight or empties.

1211 Q. When you are moving that stuff out of the Missouri river to the eastward, is that not mainly on schedule trains that leave there? Don't that suffice to carry all that traffic?

A. No. In the winter time when the oranges are moving heavily, the terminal people know about how many cars of packing house products they are going to get and how many cars of Asiatic freight and mixed freight and if they have got enough for two sections, they start one in the afternoon as an extra and then the regular schedule merchandise train known as 52 will start out with the balance, and if there is only a few cars of stock that train will lift the stock and carry it to Fort Dodge where it is consolidated into the solid stock train with the live stock coming from Sioux Falls, Sioux City and Onawa.

Q. Have you a statement showing the number of your cars of the refrigerator type in which fruits and vegetables an- other refrigerator stuff is carried that you move westward loaded into the Missouri river market during the year?

A. We would have no special reports on any of that except that it is called for and we go through the records and the conductors wheelage reports and pick it out, so that on the oranges and the other stuff that went west we have no record of it. I don't know
85 what the cars contained going west. We would not know
1212 except—we would have no way of determining that correctly in my office.

Q. Have you a way of determining how many of those cars you sent out loaded with something?

A. Yes, we could tell the total number of refrigerator cars that went west loaded by taking the conductors' wheelage reports. Every train that has been run west for a year, we would have to go through them and pick them out. They are lettered, Armour or Swift or Cudahy and the Omaha Packing Company and our own.

Q. What percentage of the freight paid to you by the packing houses was freight carried in their cars of their dressed meat and packing house product and what percentage in your cars?

A. Well, that would be somewhat of an average, but still a close average. Our total packing house and fresh meat products average

about 29,000 pounds. Now, then we have had from Missouri river during the year ending June 30th, 1905 288 I. C. refrigerator cars from Sioux City—No, they had 1368 private refrigerator cars. From Sioux City, 412 cars of packing house products in I. C. cars and 437 in private cars. From Cedar Rapids they loaded 507 I. C. cars and only 17 private refrigerator cars. From Waterloo, Iowa, 52 I. C. cars and no private cars. The total is 1259 I. C. cars shipped as against 1822 private refrigerator cars, or 41 per cent. in I. C.

1213 Cars.

Q. Is that I. C. refrigerator cars?

A. I. C. refrigerator cars with the exception of 30 cars in February handled during the emergency in the storm and bad weather when there were no refrigerators there.

Q. Did you take those refrigerator cars from Chicago west?

A. Some of them went from Chicago west and some came to us at Omaha, some were sent by other roads, and some were packing house cars *on* which we did not haul*y* empty to Omaha.

Q. Do you know what percentage of those cars which they loaded out there were cars which you carried westward loaded?

A. The percentage is about, as near as we can get an estimate, taking lots of 500 cars at a time in summer and winter, it is about 48 per cent., that went west empty and 52 per cent. went west loaded.

Q. I am talking though about your own cars that went west.

A. There would be a greater percentage of I. C. cars than therwould be of foreign cars loaded west.

Q. I want to know if you know. If you don't you can say so.

A. I don't know positively but it stands to reason and I am satisfied from looking over the lists of the cars that there were more of the I. C. Cars went west loaded than the foreign cars.

Q. You have not a statement though that you can furnish

1214 t*p* show definitely how many refrigerators you loaded west?

A. The aggregate of all the refrigerators shipped in taking care of dairy and other freight would be considerable of a job to find that out. On the other hand, if you want a statement of the cars shipped for packing house shipments only, I can go up to Sioux City or Omaha and get it from the packing house books or our agent's billing.

Q. Mr. Daly; any further questions, if you will be kind enough just to answer the question we will get along so much faster and get through quicker. I don't say that offensively.

Q. Do you let the packers have any of those cars belonging

1215 to the Illinois Central sent west empty, or send them yourself, west, empty, and get the packing house product and refrigerator stuff?

A. We furnish some cars to them to load east that are hauled west empty, yes, sir.

Q. What proportion of the number which they load, what does that amount to?

A. I cannot tell you.

Q. We were speaking about the coal and the difference in the two

sorts of trains. Are you able to state how much coal an engine consumes in hauling the average stock train from Fort Dodge, Iowa, to Chicago?

A. No, sir, I have not gone into that feature of it.

Q. Are you able to state how much coal would be consumed in hauling a train in which packing house products are carried from Fort Dodge, Iowa, to Chicago?

A. No, sir, we don't charge the coal out that way.

Q. Are you able to state how much coal an engine would consume, starting out from either Sioux City or Omaha and picking up a train of stock by the time it reaches Fort Dodge?

A. No, sir.

Q. Will an engine going out light with a caboose, picking up ten cars at one station and two at another, and so on until it assembles a train load by the time it reaches Fort Dodge, consume the same or more or less coal than if a full train were carried from the

1216 Missouri River to Fort Dodge?

A. I don't know that it would. I have not made any estimates on it and I have not heard of any being made.

Q. What proportion of the live stock carried by you was that which was moved on the 18½ cent rate to Chicago or on the proportional rate to the Mississippi River, east bound?

A. Well, I don't know where that proportional rate takes effect or on what stock it takes effect. Where would the stock originate?

Q. I intended to say packing house product.

A. I have lost your question there, will you please repeat it:

Q. Which is the most expensive part of your road over which to operate a train east bound, the division from the Missouri River to Fort Dodge or from Fort Dodge eastward?

A. That is a rather hard question to answer. There is, on the one hand, where we have to haul 600 tons, and it would cost as much to haul that from Sioux City to Fort Dodge and from Fort Dodge we haul 950 tons and that costs us about as much as 650 on train hire and coal. They are about the same and I would figure one division as against the other, that is, for the physical operation and the coal the same.

Q. The grades are more coming to Fort Dodge than coming from it?

A. Yes, they are, and we have reduced our grades this side of Fort Dodge.

1217 Q. Which is the more expensive over which to operate, the line between Chicago and Sioux City and Omaha or St. Paul?

A. I don't know about the St. Paul grades or the conditions up there or where they get their coal supply.

Q. Your live stock cars rentals were stated at $30,895 on the western lines. How much of that was for loaded mileage and how much for empty mileage?

A. Well, we don't keep the loaded and empty hire mileage separate. It is all lumped in one because we settle at six mills per mile on both. We don't keep it separate.

Q. What is the terminal expense to your road of receiving packing house products or dressed meats out there at the Missouri River points?

A. Omaha we pay the Stock Yards company two dollars per car. We pay the Belt a dollar, making a total of three dollars per car on packing house products there. At Sioux City we pay the Stock Yards company or switching company $1.50 per car.

Q. Do you pay any bridge charge or any bridge rental at Omaha?

A. Not that I have ever seen included in the accounts.

Q. Do you own your own bridge there?

A. We are interested in it.

Q. When you stated that your stock yards depreciated 10 per cent. per annum, did you mean that that 10 per cent. is embraced
1218 in the repairs to the stock yards, or did you mean that the stock yards will play out in ten years?

A. That is the basis, that the stock yards will give out in ten years.

Q. If you keep making repairs, putting on a board or putting in a post, and putting in paving, in the way of repairs, won't you still have about as good a yard at the end of ten years as you did when you started in?

A. I don't know about that. Those figures were furnished by our chief engineer through our superintendent of each division. The Master Bridge Builder, the superintendent of buildings and bridges and the road master on each division. We took it up individually with each of those officers and the figures are derived from the figures furnished by them.

Q. Yourself, you are not acquainted with either the value of the stock yards or the cost of their maintenance?

A. No, sir, I could not testify to that. That is why I explained where I got the figures.

Q. Was the damage claims paid on live stock greater or less last year and the year before than for the year you gave?

A. I did not look into what it was the year before but I don't know of any reason why it should be or why it should be less. I assume it would be about the average. That was furnished by our Freight Claim Agent.

1219 Q. Do you always have freight to fill up your trains, or do you have frequently to run trains with less than their rates tonnage capacity?

A. Frequently trains are run lighter than their assigned rating in both directions, but not to any great extent in the direction of the heavy traffic.

Q. Do you know for certain, and are you able, therefore, to testify that you know——

A. Yes, we keep separate the mileage of trains moving in the direction of the heavy traffic and the percentage of what the engine should haul that it hauled in that direction. Then we keep the mileage in the light direction and what they are hauling and what they should haul, so that we can tell what they haul in each direction.

Q. I was predicating a question. Do you know, yourself, that

you have run engines and cabooses light west bound out of Chicago for the purpose of hauling live stock?

A. Yes, we do, to haul back live stock and other traffic.

Q. The monthly statement which you are going to furnish of the east and west bound traffic, will be a definite statement of what the direction of the volume of the traffic is?

A. Yes, sir.

Q. 70 per cent. of your live stock you state reaches Chicago on Sunday?

A. 70 per cent. of the live stock from Iowa fields.

1220 Q. Isn't it a fact that on Sunday you do not operate your local trains or your through trains that leave either Chicago or the Missouri River? Those trains don't run on Sunday,—I mean to say that they don't leave on Sunday?

A. Sunday, in winter is one of our busiest days. They run as extras and every engine we have got, way-freight engines and everything else. On every division where we don't handle stock it is the same as on the Iowa lines.

Q. Many of the roads don't run their local roads on Sunday, do they?

A. Oh, your way-freight trains don't run on Sunday anywhere. Your merchandise pick-up trains don't run.

Q. How many of them have you in operation on the line between Chicago and the Missouri River?

A. We have got 14 or 16.

Q. You are enabled to use your engines that would run those trains, for the purpose of carrying live stock?

A. Not to any extent. The engines on the branch lines are too small and too light.

Q. I am not speaking of the branch lines.

A. I include those in my answer. The main line engines—we always assign our smallest engines for way-freight service for the reason that they only handle a few cars and it would not pay us to put a big engine in, and, in addition to that, a heavy engine

1221 should not be passing back and forth on side tracks so they are not suitable engines for live stock.

Q. Isn't it a fact that the live stock traffic coming in volumes that furnishes you train loads makes it especially desirable traffic to handle?

A. In train loads I assume—I don't know about the desirability of it, personally. I would not testify to that. I don't think so.

Q. You don't think that the live stock furnishes you a desirable traffic?

A. No, sir, I don't, personally. Our people may, some of them may think otherwise, but I do not.

Q. There would be little reason, then, to have your solicitors and agents out engaged in the business of trying to get the traffic if they entertained your views?

A. No, they may think differently. Evidently they do.

Q. Did you state the total receipts from the total live stock traffic of your road.

A. No, sir, I don't know what that is.
Q. Or from the western lines?
A. Just the western lines.
Q. Did you state that?
A. Yes, sir, $433,000.
Q. How is that?
A. $433,000 for the points covered between the Missouri and the Mississippi river to Chicago.

Q. You gave a statement of one voucher that you selected
1222 with reference to cleaning cars. Was that paid?
A. Yes, sir.

Q. Do you clean your cars, to any extent, in the winter?
A. Well, we aim to clean cars—we do clean cars about every fourth trip.
Q. How often does that make it?
A. About every fourth trip out of Chicago, every fourth load they get.
Q. About how often, then, is a car cleaned in point of time, once a week or once a month?
A. No, it would not be once in probably two months. Six weeks to two months.
Q. Have you a contract for cleaning cars?
A. No, sir, our section foreman cleans them and the cleaning is distributed over two or three divisions.
Q. You do not clean them where they are frozen, do you?
A. I don't know. I only *only* from hearsay from the superintendents speaking of the trouble that they have had with them.
Q. Are cattle bedded, to your knowledge, in sand, in shipments from Iowa over your line?
A. Some of them. That is my understanding from the investigation made.
Q. Is it not a fact that the great percentage of them are bedded with straw or hay?
A. Well, there is straw and hay bedding there, and I assume that there is a certain number of them that are bedded with that.

1223 Q. What estimate did you put upon the weight of a live stock car and bedding?
A. Eighteen tons, gross.
Q. Is that correct?
A. Well, our stock cars average in light weight about 33,000 pounds.
Q. Which cars are those which average that? Is that the stencil weight on the car?
A. That is the stencil weight as it appears in the historical record as it is in the office of our superintendent of motive power, and I went and examined them personally. Car No. 32,507 is 33,100 pounds. 32,508 is 33,000 pounds. 32,509 is 32,800 pounds; the next is 33,000; the next 33,000 pounds; 32,800, 32,700, 32,800, 32,600, 32,600, 33,000 and 32,600 pounds. Those are cars numbered from 32,507 to 32,519 inclusive. That is the light weight as they come from the manufacturer.

Q. Those are the new cars that you are having built?
A. No, we have not built any stock cars for some time.
Q. Well, that you bought, then?
A. Bought, yes, sir.
Q. Is it not a fact that those are very much heavier cars than the average 36-foot cars that are in use?
A. I don't think so. They may be. I am not saying they are not, but those cars have no overhead hay storage; they have no racks in them for the hay and they have no troughs in them,
1224 all of which must weigh something in addition to this car that is 36-foot long.
Q. How much do you count the bedding to weigh?
A. Take it on the average, it is estimated by our superintendents from here west, at about a ton and a half or two tons. Two tons, as a rule, they say, is a fair estimate for the year round.
Q. Have you examined, yourself, to find out the weight and determine whether that is true or not?
A. No, sir, I did not.
Q. That is what you have understood it was, but you don't pretend yourself to know?
A. Well, those are the figures given to me on the direct inquiry made to the officers as to the weight of those cars.
Q. Do you mean that is the weight of the bedding when they have been cleaned out and bedded fresh, or after a shipment comes in?
A. No, sir, it is taking it on the average after accumulating and after being cleaned and the sand put in the car.
Q. Does that apply to hay bedding as well — to sand?
A. It applies to the whole thing, according to the inquiry and their replies.
Q. Is it not a fact that with the great majority of your cars, the stenciled weight ranges around 31,500 and the like?
A. Nearly all of our cars are 36-foot 30-ton cars. 840
1225 of them out of the 900. Smaller cars are assigned to brick and such stuff, and very seldom get into Iowa, because we put our best cars into that territory.
Q. I am talking about the 36-foot cars, if they are not stenciled 31,500, a great many of them?
A. There may be some few of the first cars built, but not the standard cars. Our next cars will be much heavier than these.
Q. Why do you have them made 30 tons when the live stock never runs over 13 tons or 14 tons at the outside?
A. For two or three reasons. The first is that the small 14-ton car, if you put it into a heavy train of grain, coal or lumber, with the heavy trains that we are pulling now, you tear it to pieces. Again, no car should be built with journals that will not carry 30,000 pounds, for the reason that we use these stock cars frequently in hauling steel rails west from the rolling mills. We want to use them in the lumber business, and I assume that one reason why our cars are much heavier than those for the Northwestern, is that we have got to have a stronger car than they for the reason

that we handle considerable lumber shipments. Our new specifications being drawn now provide for steel plates in the end of the car, and consequently they are no doubt a heavier car and a more expensive car.

Q. In the packing house products and dressed meat trains
1226 that you mention, how many of the cars were fresh meat and how many packing house product?

A. I think about 500 cars out of the 3100 that contained fresh meat, mixed fresh meat and packing house products. On the other 2600, I think that would run straight packing house product.

Q. Somebody else was getting fresh meat, then?

A. We don't get much of it.

Q. The fresh meat furnishes a larger proportion of the traffic in carloads, furnishes a much larger number of cars?

A. I don't know on that. I don't know what the other roads are hauling of it. We have a fresh meat train but we have not run it more than two or three times this year.

Q. You could not handle fresh meat, anyway, from these competing points running on the schedule that you do?

A. No, sir.

Q. Your statements have been based practically on the packing house products?

A. No, I take the total, fresh meat and packing house product and lump them al- together; about 16 per cent. is fresh meat and 84 per cent. is packing house product.

Q. Your opinion is that the dressed meat ought to take as high a rate as the live stock?

A. Based on the cost of handling it, I don't see much difference in it.

1227 Q. What do you pay for the dressed meat and packing house product deliveries at Chicago?

A. It costs us $3.00 a car. We give it to the Chicago Junction, the Stock Yards company at Hawthorne.

Q. Three dollars a car to what point?

A. That is to the connecting lines to the east. Now and then we get some little for South Chicago or Kensington, and that is on our own line, and they give us that to avoid a switching charge here. That is a very small item, however.

Q. There is not much of the product that you carry that stops for local consumption in Chicago, is there?

A. No, sir, very little.

Q. That that you bring to Chicago goes to some eastern line, more than is stopped here?

A. Yes, and it will go to Hammond. I don't know whether it is Union Stock Yards or not but I assume a good portion of it goes east.

Q. Who keeps for the packers here a record which will show absolutely the movements, the portion thereof which was going to eastern lines and the portion which stops in Chicago?

A. I think Mr. Richard Fitzgerald, superintendent of the Chi-

cago Junction, would have that. He has got car records on that and he may be able to determine which is which.

Q. Which is more profitable for you to handle, is it more profitable for you to handle your business in the cars which you
1228 get from the private car lines at six mills per mile, or to handle it in the cars which you buy or build?

A. On the stock business I never recommended building any additional stock cars. I think I would rather pay six mills for the use of private stock cars than to build our own cars.

Q. Does the Stock Car company make the repairs incident to ordinary wear and tear?

A. For making repairs under the Master Car Builders rules, which means all due to age or natural wear and tear, they are responsible for. Anything that is not sue to natural wear and tear, such as a wrecked car, or a slid wheel, that the road would have to make good themselves.

Q. Whatever is properly due to negligence they don't have to repair, and what is due to ordinary care in the use of it, they do have to repair that?

A. That is right.

Q. And they have to repair for ordinary depreciation?

A. Yes, sir.

Q. Six mills is supposed to cover that, at least, so far as the railroad is concerned, it does cover it?

A. Yes, that is what we pay for.

Q. Do you know how it came that the Coal Company charged you so much for cleaning those two cars down there?

A. Why, I don't know. I have no idea, but I am satisfied that the charge is legitimate. I vouchered them for several years before that. I know Mr. Wyatt would not tolerate anything but
1229 what is fair.

Q. What was in the car?

A. Manure and bedding and stuff frozen in.

Q. Oh, frozen in?

A. Why, yes; I don't want to misrepresent anything. I showed you some that he cleaned for 37 cents in summer, and others in the winter time that got away up, and I think, consequently, it was due to the frozen condition of the cars.

Q. Have you a statement that shows absolutely what it cost you in gross for the cleaning of stock cars during the year?

A. No, sir, that I got from our superintendent at Chicago that watches out for the cleaning of the cars and about how often they clean them.

Q. Unless you had a statement showing the total cost to your company of cleaning, the total cost of cleaning your company's cars for a year in order that you might divide the total number of cars into that, you could not tell what it costs per car?

A. Nothing but an estimate. It don't cost us, though, that high.

Q. Oh, I know it don't cost you that.

A. It don't cost us $6.00 a car; it does not cost the company,

when they clean them, $6.00 a car. We might take and put a car that is frozen, we would take a steam pipe and run it in underneath that and then take a live engine and steam it out, but of
1230 course in that we would only count the section man's time and not the cost of the engine, while that is being done, but it would still reduce that cost if we had enough cars. You had that statement this noon in regard to which we were figuring on, if you want that.

Q. How is that?

A. This morning, about the revenue from a car or train of packing house product against a train of stock, and I stated that I thought the packing house was better than the stock, and that was not completed at the time of adjournment.

Q. Well, I don't care to take up the time of the court in figuring. I was asking for some certain points in regard to relative cost which can be figured in argument or at any other time. That is all.

The COURT: Call the next witness.

Mr. SEVERANCE: I want to ask him some questions.

Q. Did you make that computation this noon?

A. Yes, sir.

Q. Well, just give it.

A. The average number of cars of live stock hauled per train from Missouri River points to Chicago is 28 cents. The average number of tons per car is 20, hence the total tons hauled per train is 560. At 23½ that equals $1316 for the train of stock from Missouri River points to Chicago. The distance is quoted at 500
1231 miles this way, and as 86 per cent. of the cars move back empty, 86 per cent. of 500 miles returned is 430, added to the 500 miles gives you 900 train miles to earn $1316, or $1.41 per train mile.

On the packing house products we have 24 cars, 4 less than the stock, with an average of 29,000 pounds per car, at 20 cents per hundred equals $1392. The distance is 550 miles for the packing house this way, loaded, is about 50 per cent.—as about 50 per cent. of the cars go back empty, it creates 250 miles additional in the opposite direction, or a total of 750 train miles. That divided into $1392, gross receipts, gives an average of $1.85 per train mile.

Q. As against how much for the live stock?

A. As against $1.41.

The COURT:

Q. How is it if you leave out the return cars?

A. I have included them.

Q. What were your figures before you dealt with that feature of it?

A. On the live stock there was 86 per cent. that went back empty.

Q. What is the amount of the figures of the two trains?

A. $1316 on the live stock, and $1392 on the packing house.

Mr. SEVERANCE:

Q. Now, this morning Mr. Cowan started in with a list
1232 of questions on the comparative cost of hauling two trains of equal size 20 or 25 miles an hour, as bearing upon the comparative profit, I assume, the comparative profit of stock trains run at a high rate of speed, and the packing house train run at a lower rate of speed. Now, he eliminated from that proposition the question as to the amount of tonnage that can be hauled at these varying rates of speed, did *you* not?

A. They were both to haul the same number of tons.

Q. As a matter of fact you cannot haul the same tonnage at 25 miles an hour that you can at 20 miles an hour?

A. It is conceded that we cannot. We make a reduction which we have clearly defined in our time cards.

The COURT:

Q. Well, is that actually true? If the loads weighed a little heavier, it would take more coal, wouldn't it, up to a certain limit of speed?

A. No, the gross, with the same gross weight in each car. The train run at 25 miles per hour cannot haul as great a tonnage as the train run at 20 miles an hour, of the same cars, and the question this morning was: "Take a train of 25 loaded cars of stock, and *load* it at 25 miles per hour, and take another train of 25 cars loaded with stock, and run them at 20 miles per hour. What
1233 difference would there be in that case?" It would cost more to run the fast train if we undertook to haul the same tonnage on both, for the reason that on our schedules here where we run any number of that kind of trains, it states, "Rating A is for manifest and stock, perishable freight. B. is for dead freight. Trains required to make schedule as shown below will have special rating as follows: On a five-hour schedule, 720 tons; on a four-hour schedule, 600 tons; 400-class engines on a five-hour schedule, 800 tons; on a four-hour schedule, 700 tons," and different ones. On the Champaign district, that is, our schedule is 620 on a four-hour schedule.

Mr. SEVERANCE:

Q. Then, as a practical question, these comparisons that Mr. Cowan was asking you were absolutely worthless for any purpose where you eliminate this question of additional load that can be carried at the lower rate of speed?

A. No, I think he has asked some very intelligent questions.

Q. No, I mean on that particular question. He asks a great many intelligent questions, of course, he is an intelligent man. I mean on that one proposition. You don't haul the same load 25 miles an hour that you do at 20 miles an hour?

A. We could not. Our ratings would not be correct if we did that. It is invariably understood when we run a train special, we
1234 reduce its rating.

The COURT:

Q. Suppose you put a smaller load on both of them?

A. You reduce them both below what they should haul and then there would be no profit in the case either way.

Mr. SEVERANCE:

Q. That would not be an economical operation of a railroad, would it?

A. No, there would be no additional cost on either one, I suppose.

Q. That is, you could run an engine without any train behind it 25 miles an hour as cheap as you could 20?

A. Yes, or we could pick up 10 or 15 cars of stock and run 25 miles an hour, and another train at 20, and I don't think it would be possible to determine any increase of expenses.

Q. In the economical operation of a railroad, it requires you to haul all that you can with the power at the rate of speed which is required?

A. We have got to do that.

Q. That varies, as you increase the speed you lower the rating?

A. Yes, sir.

The COURT: The very fact that they run cars back empty shows that they don't always run them up to their rating.

Mr. SEVERANCE: I am not claiming that they do.

The COURT: Well, you do the business as best you can do it. If you get a full load you haul it.

1235 Mr. SEVERANCE: I understand that we are trying a specific question here.

The COURT: You take a great deal of time with the witnesses proving things which will cut no figure whatever when you come to the argument of that question.

Mr. SEVERANCE: That is what I had in mind when I heard Mr. Cowan's questions.

The COURT: There is another thing, if he saves five hours on the road to Chicago, don't that make the wages a good deal less?

A. The same wages?

Q. Well, you save five hours?

A. A train running a hundred miles, if they make that hundred miles in ten hours, they get a hundred miles for it, and if it takes them ten hours and 35 minutes, they get a hundred and ten miles for it. In other words, we guarantee that for every hour they are in service we will pay them equal to ten miles.

Q. Is that economical?

A. That is what the brotherhood demands. They insist on that themselves and we haven't anything to do with it.

Mr. SEVERANCE: I suppose it is just the same as Judges and District Attorneys, and everybody, that they are paid so much a day whether they hold court or not.

Mr. COWAN:

Q. Is it not a fact that in the 25-car comparison that I make,
1236 that I came below the rating of your engines in the number of cars per train by three cars?

A. Yes, sir.

Q. Isn't it a fact that in both cases I named a lower rate of speed than your schedule, Fort Dodge to Chicago, 25 hours and 20 hours? Didn't I name a less mileage per hour than your schedule?

A. Yes, you took from Ft. Dodge here as against from the Missouri River, 137 miles less.

Q. When you consider that, then, is not your answer to the Judge, that if you ran less than your capacity of your engine, that it won't make any difference in the cost whether you run one fast and the other slow? Don't that apply in the very case that I have put?

A. I think I made a wrong statement there. I thought your question was one at the rate of 20 miles an hour and the other at the rate of 25.

Q. No, one in 25 hours and the other in 20?

Mr. SEVERANCE: No, it was 25 miles an hour and 20 miles an hour.

The COURT: A twenty-hour trip and a twenty-five-hour trip?

A. There would not be any difference in that cost, if I understood you that way.

Mr. SEVERANCE: I did not understand the question that way.

The WITNESS: I was figuring the rate of speed instead of the hours. I would not make any difference in the cost.

1237 Mr. COWAN:

Q. In the case where you make your figures, what is the difference in the total amount of tonnage on which you figure in the one train, and the total amount of tonnage in the other, where you figure the earnings of the packing house train and the live stock train? What is the difference in the gross tonnage?

A. 44,000 pounds for the car, for refrigerators, and 29,000 pounds of contents. 73,000 pounds per car. The live stock, the gross weight, 1,792,000 pounds, and the packing house product would be, 2,752,000 pounds.

Q. A million pounds more in one case than in the other?

A. The car and contents.

Q. If you take just the going from the Missouri River to Chicago, in one case you carry 700 tons gross, and in the other case, 1,752,000 tons?

A. 1,750,000 tons?

Q. Yes.

A. No, we could not haul that, not gross tons.

Q. You have got 73 tons to the car?

A. No, no 73,000 pounds. Not 73 tons.

1237*a* (DALY, COMPL'TS' GEN'L EX. 2.)

I. C. R. R.

Loaded and Empty Mileage on Cherokee Division for the Fiscal Year Ended June 30th, 1905.

North and east.	Loaded miles.	Empty miles.
July, 1904	151,281	59,299
August	220,292	94,768
September	266,935	77,133
October	207,703	63,542
November	137,259	73,834
December	192,846	53,960
January, 1905	190,421	40,281
February	187,325	34,854
March	235,578	34,715
April	159,831	67,701
May	167,318	72,934
June	175,505	64,245
Total	2,292,294	737,266
South and west.		
July, 1904	171,560	58,720
August	199,320	99,440
September	216,305	95,645
October	198,902	72,937
November	176,035	28,156
December	174,144	58,245
January, 1905	150,645	82,427
February	136,342	96,289
March	194,774	115,912
April	153,881	53,236
May	177,372	55,461
June	175,518	55,276
Total	2,124,798	871,744

Chicago, September 29th, 1905.

J. M. DALEY.

1237*b* I. C. R. R.

Loaded and Empty Mileage on Omaha Division for the Fiscal Year Ended June 30th, 1905.

North and east.	Loaded miles.	Empty miles.
July, 1904	331,400	207,673
August	330,679	368,634
September	428,529	207,702
October	497,693	188,931
November	459,238	243,959
December	643,286	159,069
January, 1905	559,878	108,607
February	432,649	96,162
March	638,031	113,851
April	493,991	242,977
May	353,599	290,106
June	390,084	202,253
Total	5,559,057	2,429,924
South and west.		
July, 1904	377,503	147,254
August	438,679	190,400
September	438,265	226,030
October	504,760	261,448
November	455,338	146,524
December	389,440	147,417
January, 1905	369,515	226,701
February	336,834	179,425
March	478,633	287,169
April	384,468	133,053
May	424,103	160,483
June	422,136	156,760
Total	5,019,674	2,262,664

Chicago, September 29th, 1905.

1237c I. C. R. R.

Loaded and Empty Mileage on Dubuque Division for the Fiscal Year Ended June 30th, 1905.

North and east.	Loaded miles.	Empty miles.
July, 1904	658,542	389,167
August	640,441	615,145
September	813,242	354,030
October	905,898	344,334
November	851,001	429,017
December	1,070,307	294,598
January, 1905	1,104,452	244,651
February	846,588	206,237
March	1,128,630	271,675
April	871,543	312,140
May	726,219	440,280
June	693,815	292,259
Total	10,310,678	4,193,533
South and west.		
July, 1904	804,208	236,184
August	766,839	218,400
September	864,463	264,834
October	1,002,294	286,981
November	865,805	237,732
December	767,884	282,853
January, 1905	748,842	585,320
February	673,638	319,021
March	852,167	578,995
April	772,132	271,927
May	794,203	268,516
June	772,303	254,862
Total	9,684,778	3,805,625

Chicago, September 29th, 1905.

1237*d* I. C. R. R.

Loaded and Empty Mileage on Freeport Division for the Fiscal Year Ended June 30th, 1905.

North and east.	Loaded miles.	Empty miles.
July, 1904	333,635	59,397
August	378,396	78,743
September	394,390	55,093
October	450,656	50,946
November	499,563	66,890
December	593,730	50,151
January, 1905	600,182	51,125
February	468,545	57,129
March	615,873	96,573
April	476,878	93,397
May	398,481	92,532
June	408,854	83,299
Total	5,619,183	835,275
South and west.		
July, 1904	351,793	98,845
August	398,568	124,885
September	360,569	141,901
October	389,869	150,756
November	361,871	203,792
December	340,292	267,810
January, 1905	317,003	379,376
February	306,401	256,730
March	389,094	321,997
April	371,049	161,073
May	372,474	167,200
June	548,385	183,497
Total	4,507,368	2,457,862

Chicago, September 29th, 1905.

1238 SEPTEMBER 27, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon F. L. EATON, called as a witness on behalf of the Sioux City Stock Yards Company, being first duly sworn, testified as follows:

Direct examination by Mr. MILCHRIST:

Q. State your name and the position you occupy in the Sioux City Stock Yards Company?

A. My name is F. L. Eaton, and I am president and General Manager of the Sioux City Stock Yards Company.

Q. How long have you been connected with said company?

A. About ten years.

Q. What is the nature of your duties in your present position?

A. I have general charge of the business of the company.

Q. Have you prepared a statement of the rates from a number of important shipping points in western Iowa to Sioux City and to Chicago, Illinois, and the distance.

A. I have prepared a table showing the number of statio- in northwestern Iowa to Sioux City and Chicago. Those stations
1239 are selected with the idea of showing one or more stations on each of the railroads and the different divisions of the railroad. The same facts which are shown by these stations would be shown by the complete tariff of the whole country further east. On the margin of each sheet I have noted the railroad tariffs from which the figures are taken.

(The said statement so produced by the witness is in the words and figures following, to wit, and is marked "Eaton Exhibit A."

C. M. & St. P. Railway, —— Division.

From	To	Rates. In cents per 100 pounds. Miles.	Cattle.	Hogs.
Hornick, Iowa (S. C. & D. Div.).	Sioux City	26	7.11	7.33
	Omaha			
	St. Paul			
	Chicago	491	23.5	23.5
Mapleton, Iowa (S. C. & D. Div.)	Sioux City	48	8.68	8.67
	Omaha			
	St. Paul			
	Chicago	469	23.5	23.5
Manilla, Iowa (Ch'go & Co. B. Div.)	Sioux City	90	10.79	10.64
	Omaha			
	St. Paul			
1240	Chicago	427	23.5	23.5
Coon Rapids, Iowa (Ch'go & Co. B. Div.)	Sioux City	122	12.37	11.8
	Omaha			
	St. Paul			
	Chicago	395	23.5	23.5
Inwood, Iowa (I. & D. Div.).	Sioux City	75	10	10.16
	Omaha			
	St. Paul			
	Chicago	541	25	26
Sanborn, Iowa (I. & D. Div.)	Sioux City	98	11.32	10.96
	Omaha			
	St. Paul			
	Chicago	498	24	24
Spencer, Iowa (I. & D. Div.).	Sioux City	123	12.37	11.8
	Omaha			
	St. Paul			
	Chicago	473	23.5	23.5

1241 Chicago & Northwestern Railway, —— Division.

From	To	Miles.	Rates. In cents per 100 pounds. Cattle.	Hogs.
Correctionville, Iowa	Sioux City	49	8.68	8.67
	Omaha			
	St. Paul			
	Chicago	473	23.5	23.5
Shaller, Iowa	Sioux City	78	10.26	10.32
	Omaha			
	St. Paul			
	Chicago	444	23.5	23.5
Lake View, Iowa (S. C. Div.)	Sioux City	103	11.53	11.12
	Omaha			
	St. Paul			
	Chicago	419	23.5	23.5
Castana, Iowa (S. C. Div.)	Sioux City	49	8.68	8.67
	Omaha			
	St. Paul	469	23.5	23.5
	Chicago			
Battle Creek, Iowa (S. C. Div.)	Sioux City	73	10	10.16
	Omaha			
	St. Paul			
	Chicago	445	23.5	23.5
Wall Lake, Iowa (S. C. Div.)	Sioux City	101	11.53	11.12
	Omaha			
	St. Paul			
	Chicago	416	23.5	23.5
Dayton, Iowa (S. C. Div.)	Sioux City	154	13.63	13
	Omaha			
	St. Paul			
	St. Paul			
	Chicago	363	23.5	23.5
Laurens, Iowa (S. C. Div.)	Sioux City	107	11.74	11.28
	Omaha			
	St. Paul			
1242	Chicago	420	23.5	23.5
Onawa, Iowa (S. C. Div.)	Sioux City	37	7.89	8
	Omaha			
	St. Paul			
	Chicago	480	23.5	23.5
Mondamin, Iowa (S. C. Div.)	Sioux City	59	9.21	9.33
	Omaha			
	St. Paul			
	Chicago	484	23.5	23.5
Missouri Valley, Iowa, (S. C. Div.)	Sioux City	76	10.26	10.32
	Omaha			
	St. Paul			
	Chicago	467	23.5	23.5

1243 Illinois Central Railroad, Cherokee Division.

From	To	Miles.	Rates. In cents per 100 pounds. Cattle.	Hogs.
Le Mars, Iowa	Sioux City	25	6.71	7
	Omaha			
	St Paul			
	Chicago	485	25	25.3
Cherokee, Iowa	Sioux City	59	9.21	9.33
	Omaha			
	St. Paul			
	Chicago	451	23.5	23.5
Fonda, Iowa	Sioux City	100	11.32	10.96
	Omaha			
	St. Paul			
	Chicago	410	23.5	23.5
Ft. Dodge, Iowa	Sioux City	135	12.79	12.2
	Omaha			
	St. Paul			
	Chicago	375	23.5	23.5
Smithland, Iowa	Sioux City	103	11.83	11.12
	Omaha			
	St. Paul			
	Chicago	495	23.5	23.5
Washta, Iowa	Sioux City	75	10	10.16
	Omaha			
	St. Paul			
	Chicago	467	23.5	23.5

1244 Mr. MILCHRIST: I offer that in evidence.

Q. Have you prepared a statement of the rates on live stock from the number of shipping points north and west of Sioux City, showing the rates to Sioux City and *Chica* Chicago, and also the distances? If so, please produce the statement?

A. I have prepared a list of the stations, north, north-west and west of Sioux City, which is prepared the same as the other list and with the same idea with notations on the margin in the same way.

(The statement so produced by the witness is mar-ed Eaton Exhibit B, and is in the words and figures following, to wit.)

881

1245

RATES EXHIBIT "D".

C. M. & ST. P. RAILWAY

_____DIVISION

FROM	TO		RATES In cents per 100 pounds	
		MILES	CATTLE	HOGS
Hawarden, Ia.	Sioux City	46	8.68	8.67
(S.C & D.Div)	Omaha			
	St.Paul			
	Chicago	563	25	24
Canton, S. D.	Sioux City	71	11	11.5
(I & D.Div)	Omaha			
	St.Paul			
	Chicago	560	28	28
Egan, S.D.	Sioux City	125	14.5	15
(S.M.Div)	Omaha			
	St.Paul			
	Chicago	550	30	32
Madison, S.D.	Sioux City	130	18	21
(S.M.Div)	Omaha			
	St.Paul			
	Chicago	565	31	32
Oldham, S.D.	Sioux City	179	20	22.5
(S.M.Div)	Omaha			
	St.Paul			
	Chicago	602	35	36
Bristol, S.D.	Sioux City	250	24	27
(H & D.Div)	Omaha			
	St.Paul			
	Chicago	563	35	36
Harlem, N.D.	Sioux City	319	27.5	30.5
(H & D.Div)	Omaha			
	StPaul			
	Chicago	729	37	40
Lennox, S.D.	Sioux City	87	13.5	15.25
(I & D.Div)	Omaha			
	St.Paul			
	Chicago	576	27	30

1246.

Menno, S. D.	Sioux City	100	16	17.5
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	616	29	32
Alexandria, S.D.	Sioux City	137	17.5	19.5
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	626	30	32.5
Elk Point, S.D.	Sioux City	21	7.11	7.33
	Omaha			
(S.C & D.Div)	St.Paul			
	Chicago	536	23	24
Yankton, S.D.	Sioux City	61	11	14.5
	Omaha			
(S.C & D.Div)	St.Paul			
	Chicago	578	29	31
Tyndall, S.D.	Sioux City	101	15.5	17.5
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	606	31	36
Scotland, S.D.	Sioux City	90	15.5	17.5
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	607	30	34
Mitchell, S.D.	Sioux City	138	18	21
	Omaha			
(I & D.Div)	St.Paul			
	Chicago	639	32	34
Aberdeen, S.D.	Sioux City	336	25	28
	Omaha			
(J.R.Div)	St.Paul			
	Chicago	702	38	42.5
Orient, S.D.	Sioux City	349	26	29
	Omaha			
(J.R.Div)	St.Paul			
	Chicago	775	39	44
Eureka, S.D.	Sioux City	334	27	32
	Omaha			
(J. R. Div)	St.Paul			
	Chicago	766	42	44

Evarts, S. D.	Sioux City	363	28	33.5
	Omaha			
(J, R. Div)	St.Paul			
	Chicago	789	43.5	48
Edgeley, N.D.	Sioux City	330	28	31.5
	Omaha			
(J. R. Div)	St.Paul			
	Chicago	766	39.5	42.5

CHICAGO & NORTHWESTERN RAILWAY

DIVISION.

FROM	TO	MILES	RATES In cents per 100 pounds CATTLE	HOGS
Pierre, S. D.	Sioux City	329	26	26	32
	Omaha			
(D. Div)	St.Paul			
	Chicago	760	43.5	48
Huron, S. D.	Sioux City	210	21.5	24
	Omaha			
(D. Div)	St.Paul			
	Chicago	645	34	40
Volga, S.D.	Sioux City	239	20	24
	Omaha			
(D.Div)	St.Paul			
	Chicago	560	32.5	36
Brookings,S.D.	Sioux City	246	20	23
	Omaha			
(D.Div)	St.Paul			
	Chicago	574	32	35.5
Gettysburg, S.D	Sioux City	326	26	30
	Omaha			
(D. Div)	St.Paul			
	Chicago	739	42	45
Redfield, S.D.	Sioux City	251	23	26
	Omaha			
(D. Div)	St.Paul			
	Chicago			
Watertown, S.D.	Sioux City	287	22.5	25.3
	Omaha			
(H. Div)	St.Paul			
	Chicago	502	32.5	36.5
Oaks, N.D.	Sioux City	346	27	32.6
	Omaha			
	St.Paul			
	Chicago	789	39	42.5

Geneva, S.D.	Sioux City	155	18	21
	Omaha St.Paul Chicago	601	30	3 2
Alcester, S.D.	Sioux City	76	11	11.0
	Omaha St.Paul Chicago	522	28	26

1250

CHICAGO & NORTHWESTERN RAILWAY

NEBRASKA & WYOMING DIVISION.

FROM	TO	MILES	RATES In cents per 100 pounds CATTLE	HOGS
Pierce, Neb.	Sioux City Omaha St.Paul	88	13.5	17.5
	Chicago	600	31	37
Winnetoon, Neb.	Sioux City Omaha St.Paul	120	15	19
	Chicago	632	31	37
Spencer, Neb.	Sioux City Omaha St.Paul	174	22	25
	Chicago	686	37	41
Bonesteel, S.D.	Sioux City Omaha St.Paul	194	22	25
	Chicago	706	40	44
Oakdale, Neb.	Sioux City Omaha St.Paul	106	15	20
	Chicago	618	31.5	37
O'Neil, Neb.	Sioux City Omaha St.Paul	151	16.5	22
	Chicago	660	33	37

1251

C. ST. P. M & O RAILWAY

DIVISION.

FROM	TO	MILES	RATES In cents, per 100 pounds CATTLE	HOGS
Salem, S.D.	Sioux City	193	16	18
	Omaha			
(M & I.Div)	St.Paul			
	Chicago	639	29	32
Luverne, Minn.	Sioux City	124	12 1/2	15
	Omaha			
(M & I.Div)	St.Paul			
	Chicago	570	25	26
	Via Alton			
Worthington, Minn.	Sioux City	91	12 1/2	14 1/2
	Omaha			
(M & I.Div)	St.Paul			
	Chicago	537	25	26
Sibley, Iowa	Sioux City	74	10	10.16
	Omaha			
(M & I.Div)	St.Paul			
	Chicago	520	25	25
Alton, Iowa	Sioux City	41	8.29	8.33
	Omaha			
(M & I. Div)	St.Paul			
	Chicago	487	24 1/2	23 1/2
Emerson, Neb.	Sioux City	29	9.5	11
	Omaha			
(N Div)	St.Paul			
	Chicago	541	29	33
Wayne, Neb.	Sioux City	48	11.4	14
	Omaha			
(N. Div)	St.Paul			
	Chicago	560	29.5	34.5
Norfolk, Neb.	Sioux City	76	13.30	17.5
	Omaha			
	St.Paul			
	Chicago	588	30.5	37

1253

Hartington,Neb. (N. Div)	Sioux City	72	12.4	14
	Omaha			
	St.Paul			
	Chicago	584	29	36
Bloomfield, Neb. (N. Div)	Sioux City	91	13.3	16
	Omaha			
	St.Paul			
	Chicago	603	31.5	37
Pender,Neb. (N. Div)	Sioux City	41	11.9	13
	Omaha			
	St.Paul			
	Chicago	541	30	34

1259.

GREAT NORTHERN RAILWAY

WILLMAR & SIOUX FALLS DIVISION.

FROM	TO	MILES	RATES In cents, per 100 pounds CATTLE	HOGS
Sioux Center, Iowa	Sioux City Omaha St.Paul Chicago, via Soo City	44 554	8.29 25	8.33 24
Garretson,S.D.	Sioux City Omaha St.Paul Chicago,via S.C. "Mills	97 607 544	12.5 25	15 30
Savage, Neb.	Sioux City Omaha St.Paul Chicago	101 611	15 31	20 37
O'Neill,Neb.	Sioux City Omaha St.Paul Chicago	150 640	16.5 33	22 37

1254 Mr. MILCHRIST: We offer this as Exhibit B in evidence.

Q. State whether the rates shown in Exhibit A introduced in evidence are favorable or unfavorable to Sioux City market as compared with Chicago?

A. We think they are unfavorable to Sioux City markets because the rates for the distance into Sioux City is so much more in comparison than the rates from the same stations to Chicago.

Q. State what effect if any the rates shown in your exhibit B, would have upon the Sioux City market?

A. The second exhibit for territory north and west of Sioux City shows that the rates from stations in that territory to Chicago are much less proportionately than the rates to Sioux City.

Q. The stations shown on Exhibit B are confined largely to South Dakota, Minnesota, and northern Iowa?

A. And Nebraska.

Q. Have you any knowledge of the relative service rendered by the railroads from the territory in western Iowa, to Sioux City and to Chicago on live stock? If so, please state what the character of the service is which is usually rendered to each point?

A. In the portion of the territory, in one portion of the territory the service is about equal to one point or to the other. In a portion particularly north of Sioux City, the service is much better
1255 to Chicago than it is to Sioux City. The main lines of the roads run east and west and the trains start out to reach Chicago in time for the Chicago market without reference to intermediate markets.

Then for a part of northwestern Iowa trains coming to Sioux City must move a little west and south and we have very poor service all through that section.

Q. State whether or not in your opinion as the manager of the stock yards, the question of service rendered on live stock is of importance in determining the market which the owner of the live stock may choose in which to sell his products?

A. In my opinion it is of a great deal of importance. The shipper wants a train that keeps going. The question of shrinkage is a question that enters largely with the shipper in determining the market he is going to and he figures that a train that is constantly moving makes less shrinkage in the same number of hours than a train that is moving perhaps half of the time and the rest of the time stand on a side track.

Q. What is the rate on packing house products and on dressed beef from Sioux City to Chicago?

A. 20 cents per hundred.

Q. State what is the meaning of the expression "testing the market" used with reference to the intermediate live stock markets like Sioux City?

1256 A. In the case of Sioux City it would mean that shippers to the north and west who can ship to Chicago by the way of Sioux City, would have the right to stop off at Sioux City and offer their stock on the market.

If, for any reason they decided not to sell there, they would go on

to Chicago and the rate would be the same if they go on to Chicago, the original rate from the point of origin of their shipment, to Chicago.

Q. The effect then of this practice is to make the additional cost to the South Dakota shipper of the rate to Chicago, the difference between the rate from his shipping point in South Dakota to Sioux City and the rate from the same point to Chicago, is it not?

A. Yes sir.

Q. Name stations in South Dakota or a station in South Dakota where the difference in the cattle rate to Sioux City and Chicago is about the average difference of all the stations in South Dakota?

A. Mitchell, South Dakota would be about the average.

Q. State the distance and the rate on cattle from Mitchell, South Dakota to Sioux City and Chicago?

A. Mitchell is 138 miles from Sioux City and the cattle rate is 18 cents. It is 639 miles from Chicago and the rate is 32 cents.

1257 Q. In the case of Mitchell, how does the combination of the cattle rate to Sioux City plus the dressed beef rate from Sioux City to Chicago compare with the through rate on cattle from Mitchell to Chicago?

A. The rate is 18 cents on the cattle from Mitchell to Chicago and 20 cents on the product from Sioux City to Chicago, making 38 cents as against the through cattle rate from Mitchell to Chicago of 32 cents, or a difference of 6 cents in favor of Chicago.

Q. So far as you have examined the tariffs showing the local rates to Sioux City from the surrounding territory, is it or is it not true generally that the combination of the local rate to Sioux City plus the product rate of 20 cents are higher than the live stock rates direct from the same territory to Chicago?

A. With the exception of a few stations in Nebraska, just across the river from Sioux City there is not a place beginning with the station closest to Sioux City on all the lines, but what the rate to Sioux City plus the 20 cent rate to Chicago is greater than the rate from the same point to Chicago, with the solitary exception on cattle of Chamberlain, South Dakota, where the combination is one cent in favor of Sioux City.

1258 Q. In your opinion is the present adjustment of live stock rates on the one hand and to Chicago on the other from the territory immediately surrounding Sioux City favorable or unfavorable to Chicago?

A. I think it is favorable to Chicago for the reasons that I have given here.

Q. State what the effect would be upon the interests of the Sioux City market if the rate on live stock to Chicago should be reduced to the present rate on packing house products?

A. The rate through all that country now, the difference between the rates to Sioux City and Chicago is less than the packing house rate from Chicago to Sioux City.

If the rate from the territory in western Iowa is still further reduced to Chicago, it widens the difference and it will take more stock to Chicago and less to Sioux City or compel the purchasers at Sioux

City to pay a higher rate proportionately in order to get the stuff to Sioux City.

Q. Would it be possible for the Sioux City interests to obtain similar reductions in the rates from western Iowa to Sioux City?

A. Those rates are the Iowa distance tariff rates and it has always been maintained that those rates are low. We should try hard to get them adjusted, but I have not much hope of success.

Q. What were the total receipts of cattle and hogs at the Sioux City stock yards for the year 1904?

A. The receipts of cattle and calves were 331,293 head
1259 and of hogs, 1,113,177.

Q. What were the average receipts of cattle and hogs at the Sioux City stock yards for the past five years?

A. For the five years ending December 31st, 1904, the average of cattle and calves was $344,708 and of hogs 984,388.

Q. What packing plants are in operation at Sioux City?

A. Armour & Company and Cudahy Packing Company have large plants there and there are a couple of smaller concerns.

Q. State the daily killing capacity of cattle and hogs of those plants?

A. About 800 cattle and 6,000 hogs.

Mr. SEVERANCE:

Q. From what parts of the country do you get your supplies shipped in, to the packing houses there at Sioux City?

A. We get more from South Dakota than from any other state.

Q. I don't mean the live stock, I mean the salt and lumber and that sort of thing.

A. Why, salt, as I understand it comes largely from the south or from Kansas, and the lumber, the cooperage comes from that direction, also.

Q. Cooperage comes from the south?

A. Why, I have been told so, I am not personally familiar with that.

1260 Q. I did not know whether you knew about that?

A. No, I am not positive, it is simply hearsay. The lumber used in building comes more from the north than it does from the south.

Mr. LYNDE:

Q. You were asked about the shrinkage and I did not hear what you stated abou- that.

A. I stated that the question of shrinkage was always a question which the shipper took into consideration, and that he preferred to ship on a train that was constantly moving, rather than on a train that stopped at Junction points because he figures there is less shrinkage in a moving train than on a standing train.

Q. How is it in a nearby market or a market several hundred miles distant?

A. I have tried for three years to find out and shippers vary in their opinion. Some shippers will say that the great shrinkage

occurs in the first 100 or 150 miles and other shippers will claim that stock will shrink the entire distance.

Q. Is shrinkage the same in cattle as in hogs?

A. Why, I think the shrinkage is considerably greater in cattle, because in the Western Weighing Association they allow a larger shrinkage on it but it all depends on the condition of the cattle. Grass fed cattle will shrink more than corn fed cattle.

1261 Q. How about the weather, how does that affect them?

A. In hot weather or in extreme cold weather the shrinkage is greater than in moderate weather, in both cattle and hogs.

Cross-examination by Mr. COWAN:

Q. What is done with the product of the packeries at Sioux City?

A. It is shipped away. Do you mean in what direction?

Q. Yes.

A. I am unable to state the proportion in which they go. Some goes east, some goes north and some south, but I am unable to state in what proportion it is distributed.

Q. Do you know anything about the volume of shipments or number of carloads that are shipped out?

A. No, I have not the figures on that.

Q. You spoke of the capacity of the plant. Do you know the amount they actually kill per day?

A. Why, they killed last year, 1904, there was killed in Sioux City something over 70,000 cattle and 500,000 hogs, but the Armour Packing plant was burned two years ago and rebuilt and put in operation again last December, so that the killing this year is somewhat more than double what it was last year.

1262 Q. What proportion of your live stock received and what amount in point of numbers are shipped eastward?

A. Shipped east alive? At the present time there is only a small amount. I have not the figures, but I should think not ten per cent.

Q. Do live stock move through Sioux City from the ranges in the north-west, from Montana and South Dakota to Chicago?

A. You can do that but nearly all—there is very little from Montana that comes through there. That goes further north. From South Dakota considerable number of cattle are received but thus far and especially, say this year a very small amount goes forward.

Q. Do you know what number of head pass through the yards there that are en route to Chicago from the ranges or from sources west of the Missouri river, do your stock yards report show that?

A. The published report does not show that.

Q. And you do not know independently?

A. No, not definitely. Not definitely enough to put a figure on it.

Q. Well, approximately, what would you think?

A. Why, as an opinion, offhand, I should not think there was over 20 per cent. of the receipts that come through from there to Chicago, and it may be much less than that.

1263 Q. Do any of the receipts which come from the east go to Chicago?

A. Not very often. Once in a great while there may be a car.

Q. Are people engaged in the business of feeding cattle and hogs in the vicinity of Sioux City, along the Missouri river?

A. Yes sir.

Q. Do they ship in when they are close by or drive in or haul in or how do they get in?

A. Most everything is shipped in. There are some cattle and hogs that are driven in and some hogs hauled in by teams.

Q. How many?

A. In 1904 there were 9776 cattle and calves driven in and 13,053 hogs driven in.

Q. You don't know what became of those particular animals or do you?

A. No, not definitely. The hogs were sold there.

Q. Are there any hogs there which are shipped east?

A. Yes sir.

Q. Well, now, in a case of that kind what would the rate of freight be on the hogs?

A. The most of the hogs that are sold there and shipped east are shipped to Boston. There are some of them shipped to Cudahy, Wisconsin. Once in a while some packer from Des Moines or Indianapolis or Chicago has an order on the market that is filled,

1264 but that is a small proportion.

Q. Suppose it is shipped to Chicago, what would be the rate?

A. Why, the rate is 23½ cents.

Q. What would it be on the cattle that are driven in and shipped out?

A. 25 cents.

Q. Who are the principal buyers of this live stock at the Sioux City yards for consumption?

A. The packers that are there.

Q. Armour & Company and Cudahy?

A. Armour & Company and Cudahy.

Q. Do you know what proportion of the total sales of Sioux City are to Armour & Company and the Cudahy Packing Company?

A. In hogs, I should think from 80 to 90 per cent. and of killing cattle at least as much as that and possibly more.

Q. At least how much?

A. At least 80 or 90 per cent. I make a distinction of killing cattle because there are a large number of stocker and feeder cattle handled in the Sioux City market which, of course, don't have any reference to the packers.

Q. Where are they shipped to when bought?

A. If they are stockers they ship them generally northwest on the pastures. The feeder cattle are cattle that are not fit for the market and are sent in there to be sold to the farmers and taken out and made fit for the market.

1265 Q. They are shipped out or driven out?

A. Both, but generally shipped.

Q. When they are shipped out, they may be shipped to Chicago or some other place?

A. Any place. It does not have any reference to where they will be shipped afterwards because they were bought there.

Q. Do you know whether the dressed meat of cattle which are killed there and the packing house products and dressed meat from the hogs are shipped to Chicago from Sioux City.

A. I know a considerable amount of it is but I don't know what proportion.

Q. Who owns or controls the stock yards Company at Sioux City?

Mr. MILCHRIST: That is objected to as incompetent and not proper cross-examination.

The COURT: How is that material?

Mr. COWAN: I have been informed—I don't know whether it is correct or not, but I want to show that the Stock Yards Company is in the control of the packers or some representative of the packers or member of the firm.

The COURT: I will sustain the objection.

Mr. COWAN: Is that on the theory that it is not proper cross examination?

The COURT: It is on the theory that it will save time also.
1266 I think it would be better if you would confine the evidence to the issue as near as you can, if we can find out what the issue is.

Mr. COWAN:

Q. Have you the stock yards' report with you?

A. I have the reports of receipts and shipments for 1904 and that contains a summary for all the preceding years. I have it also for 1903 and 1902 but it is all combined in the last report.

Q. The last one will have all the data we want.

A. Practically that, yes sir. Each year is shown and what each road brings in.

Q. Could you leave that with us for our use?

A. Yes sir.

Q. The figures are regarded as correct that are in that report?

A. We suppose they are, they are intended to be.

Q. Do the prices on live stock at Sioux City, paid there are they more or less dependent on how much freight was paid into Sioux City?

A. No sir.

Q. Is there a regular market there with a commission company who receive consignments of cattle and hogs and sell on the market to buyers and packers?

A. Yes sir.

Q. In the same manner that it is done at other markets in the country?

A. Yes sir.

Q. The difference in the method there and here, the way
1267 it is done here in Chicago is in the relative size of the two markets?

A. I suppose that is the difference almost entirely.

Mr. BAXTER:

Q. Do any of the individuals or firms who own packing houses at Sioux City also own packing houses at Chicago?
A. Yes sir, Armour & Company.
Q. Does Cudahy?
A. I think Cudahy has no packing house at Chicago.

Mr. BAXTER: That is all.

The COURT:

Q. What effect would it have on your market if the packing house rates were raised up to where they were before?
A. That would make it cost the packer there that much more to ship his product east and it would make a great difference in the other rates.
Q. Have you seen any difference since those rates were put where they are, in regard to the shipments to your market?
A. We think we have seen some little difference but not very much.
Q. It would not make much difference if it was put back, would it?
A. Except this thing, Judge, that during the time these rates have been in effect our market has been crippled because a packing house burned and we have only had half the capacity for
1268 slaughtering there, and now the burned house has been rebuilt and the market is coming back to its original position and is growing so we were not in a position to be able to make a good estimate as to the condition of this rate.

Mr. COWAN:

Q. What determines the price paid at Sioux City for live stock? Do you gauge the price, do the buyers or is it the market price paid at any other place or places, and if so, where?
A. As I understand it there is no market in the west that the market opens until they hear reports from all over the country as to the r-ceipts and the Chicago market is the earliest market in the day and we get the prices at Chicago and the receipts at all other markets. We get reports of the run of the stock not merely at Sioux City, but the runs at all markets have some factor in determining the price.
Q. The market at Chicago is the principal one that is looked to for setting the pace?
A. The market at Chicago is the largest market in the United States.

1269 E. J. BAIRD, called as a witness in behalf of the defendants, having been first duly sworn testified as follows:

Direct examination by Mr. BAXTER:

Q. What is your full name?
A. E. J. Baird.
Q. Where do you reside?
A. Iowa County, Iowa.
Q. How long have you lived there?
A. Since 1854.
Q. Were you engaged in the cattle and hog business along in 1866, 1867, 1868 and 1871?
A. Yes sir.
Q. Were you engaged in the shipping of hogs and cattle to Chicago?
A. Yes sir.
Q. What was the name of your shipping station?
A. Well, I shipped from Victor, Ladora, and Marengo.
Q. I hand you a live stock contract, issued by the Mississippi & Missouri and Chicago & Rock Island Railroads dated Marengo Station, December 17, 1866 for two cars, Nos. 2412 and 2424 of hogs shipped from that point to Chicago at the rate expressed in the contract of $82. per car. Look at that, and see whether that is correct, sir, if you please, and file it as an exhibit to your testimony?
A. Yes sir, that is correct.

(The document here identified by the witness was filed with
1270 the court as a part of his testimony marked "Baird Exhibit No. 1.")

Mr. COWAN: I rather think we object to that, that is war prices.
Mr. BAXTER: We will argue that afterwards, let us get in the facts first.
The COURT: Before that time, they used to drive hogs from Iowa to Galena to the packing house.

Mr. BAXTER:

Q. Now, I hand you another live stock contract, issued by the same company to you, dated November 1, 1867 for three carloads of hogs at a rate of $78. per carload. Please identify that and see if it is genuine?
A. Yes sir.

(The document so identified by the witness was marked "Baird's Exhibit No. 2," and was filed with the court as a part of his testimony.)

Q. I hand you another contract issued by the same company to you, dated November 1, 1867, for four carloads of hogs shipped to Chicago at a rate of $78. per carload. I wish you would see if that is genuine, and file it as an exhibit to your testimony?
A. Yes sir, that is correct.

(The document here identified by the witness was marked "Baird's Exhibit 3" and was filed with the court as a part of his testimony.)

Q. I hand you another contract issued by the same com-
1271 pany to you dated October 23, 1868 for one carload of hogs with a rate of $75. per car. Is that correct?
A. Yes, that is correct.

(The document here identified by the witness was marked "Baird's Exhibit 4" and was filed with the court as a part of his testimony.)

Q. I now hand you another contract issued by the same company to you dated November 26, 1868 for one carload of hogs at the rate of $75. per car. See if that is right?
A. Yes sir, that is right.
Q. File that as an exhibit to your evidence.

(The document here identified by the witness was marked "Baird's Exhibit No. 5," and was filed with the court as a part of his testimony.)

Q. I hand you another contract*ed,* dated Victor, Iowa, dated, April 1, 1871, on some cars—what does that memorandum mean on the end?
A. 3374 is the number of the car.
Q. Just one car?
A. Yes sir.
Q. For one carload of cattle?
A. Yes sir, from Victor.

Mr. COWAN: I could not understand you quite.
Mr. BAXTER: I could not know myself what those figures were, and he says it was the number of the car, and there was but one car shipped.

1272 Q. That is for one carload of cattle with a rate of $72. per car, is that correct?
A. Yes sir.
Q. File that as an exhibit, if you please.

(The document here identified by the witness was marked "Baird's Exhibit No. 6" — was filed with the court as a part of his testimony.)

Q. Now, I wish you would state what the sizes of those cars were that were in use when those contracts were issued, were they larger or smaller than these cars now in use?
A. I don't remember exactly. Somewheres around 28 or 30 feet. We would get in some 12,500, to about 16,000 pounds, is about what we loaded then.
Q. Of hogs or cattle?
A. Live hogs. That is owing to the weather. You know in the winter we could do that, and in the summer it run around as nearly as I can remember, about 14 or 15 thousand pounds.

Q. Did you pay the rates specified in those contracts?
A. Oh, yes sir, yes, sir.
Q. Was there any rebate or reduction from that in any way?
A. Not any whatever.
Q. Your cars, I understand, were not as large as the present cars?
A. Oh, no, no sir.

1273 Cross-examination by Mr. COWAN:

Q. Did you go with the shipments, Mr. Baird, did you accompany the shipments?
A. Most always, yes, sir.
Q. You looked after the hogs and cattle en route?
A. Yes sir.
Q. Did they give you return transportation back?
A. Well, sir, I don't know.
Q. Did the billing call for it?

Mr. BAXTER: The billing in some of it says "no return transportation furnished," but Mr. Baird says they passed him back.

A. I am not positive. I kind of think they did on some of them, but I am not positive about that.
Q. They issued, you know, no separate slips for transportation?
A. Well, it has been a good while ago, I would not say.

Mr. COWAN:

Q. Now, the rate was coming down then, beginning in 1866, it was higher, and it came down?
A. Yes sir.
Q. And were there many railroads in Iowa at that time?
A. Well, I shipped over the C. B. & Q., and the Rock Island—no, not many.
Q. *H*as more railroads built into the country, and the country settled up and developed and increased its business, the
1274 rates came down?
A. Well, the rates, yes, were lower, lots lower.
Q. Isn't it a fact that for a good many years the rates were a good deal lower in the actual cost per carload than they are to-day, or do you ship now?
A. You mean lower than they are to-day?
Q. Yes sir.
A. Not that I know of.
Q. Where do you ship from?
A. Oh, I ship from Ladora, and Marengo and Victor and Sigourney and Guthrie and North English.
Q. What was the rate fifteen years ago from there to Chicago?
A. I could not tell you.
Q. Has the rate been advanced on hogs out there along about ten years ago, an increase in the hog rate?
A. I can't tell you?
Q. Well, there was all over the western half of Iowa—how far are you from Chicago?

A. Well, I can't tell you that.
Q. What?
A. I can't tell you. I am forty miles west of Iowa City.
Q. Do you ship now?
A. Yes sir, I have cattle in this week.
Q. Who loads the cattle out where you ship?
A. How?
Q. Do you load the cattle?
A. I load some of them. I do not load all of them, because
1275 I have got two sons that help load.
Q. Well, I mean does the shipper load, the railroad doesn't do the loading?
A. Yes sir, the shippers load.
Q. Who furnishes the bedding that goes in the car?
A. Well, we do not use bedding, that is not to amount to anything, use a little sand—it lays there side of the track. All we have got to do is to shovel it in.
Q. How much do you put in a car?
A. Oh, we put in two inches, two and a half to three inches deep.
Q. For hogs or cattle?
A. Cattle—well, hogs or cattle either.
Q. Do the- bed with hay or straw any other places in the country?
A. Not that I know of now.
Q. Is anything charged you for the bedding when you use it?
A. No sir.
Q. These hogs, did you former- ship in double decked cars?
A. No sir, I never shipped in a double deck.
Q. How much do your cattle amount to per car now when you ship in, do you recall how much it is per car about?
A. Do you mean the amount or what I have to pay the railroad?
Q. What you have to pay to the railroad?
A. Well, about $45. or $46., 22,000 pounds at 22 cents a
1276 hundred. You can figure it yourself, I suppose?
Q. You always ship a small shipment, just one or two cars, do you?
A. Oh, I have shipped, my partner and me shipped 22 cars at one time, 20 at another time, and most generally from one to eight, most generally.
Q. Did you ever come in on the meat trains?
A. No sir.
Q. What sort of a train do you come in on when you ship just a few cars?
A. Why a stock train, all stock, hogs and cattle.
Q. All stock?
A. Yes sir, after we get on the main line.
Q. You are off the main line?
A. Yes sir.
Q. And how do they carry your stock down to the main line?
A. Well, it is a stock train, but it is mixed, there is freight cars in with them.

Q. Do they run an engine and caboose up there for one or two cars?
A. No, it goes on south, it goes on, you can go to Kansas City.
Q. A regular train?
A. Oh, yes sir, a regular train.
Q. And stops you off at the main line, if you come to Chicago?
A. Yes sir, we are switched there on through trains, you know.
Q. After you get on a through train, you come on through?
A. Yes sir.
Q. How many cars do they haul in those through trains?
1277 A. Well, I don't believe that I could tell you.
Q. You have no idea?
A. I don't know.

R. M. CALKINS, recalled as a witness on behalf of the defendants, having been previously sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. You have already been sworn?
A. Yes sir.
Q. You have heard Mr. Baird's testimony giving these rates per carload on hogs and cattle, have you not?
A. Yes sir.
Q. I wish you would state now what the present rates are, which are expressed now in cents per hundred pounds, what they would be in carloads?
A. The present rate on hogs.
Q. That is from Marengo?
A. From Marengo, Iowa, to Chicago, in a 31 foot car would be $31.50; on cattle from Victor, Iowa, to Chicago, in 31 foot cars $41.80.
Q. Have you what the present rates would be on cars of lengths other than those you gave, 31 feet?
A. The present rate on a 36 foot car from Marengo, Iowa, on hogs would be $35.70; on cattle from Victor, Iowa, in a 36 foot car to Chicago, $48.40.
Q. Have you got what the present rates would be on any
1278 other cars than you mentioned, 31 and 36?
A. I have it on a 33 foot car.
Q. Let us have it?
A. On a 33 foot car the rate on hogs from Marengo to Chicago is $33.60; on a 33 foot car from Victor, Iowa, cattle to Chicago $45.10.
Q. In other words the rates you have quoted would be the rate per carload if the rate was expressed as it was at that time in dollars per car?
A. Based on the present minimum weight.

Cross-examination by Mr. COWAN:

Q. Mr. Calkins, I believe you testified the other day in regard to the reasonableness of these rates. One question I overlooked asking you, which I intended to ask you, and that is, if you do not par-

ticipate in the hauling of stock cattle from Kansas City or Council Bluffs to Evarts to be carried out on to the ranges in South Dakota?

A. From Council Bluffs, yes sir.

Q. How far do you take them?

A. In the *en*ighborhood of five hundred miles.

Q. How much do you actually get, Mr. Calkins, for that service?

A. It varies according to the point of origin.

Q. Well between what figures as a rule?

1279 A. That is a division with our connecting lines, I would prefer not to answer.

Q. Well, it is very much less than the rates that you have stated were unreasonable, isn't it, the divisions you get?

A. Those rates are made to stimulate the movement of cattle from the southern ranges to the north in anticipation that they will return when fitted for the market moved to Chicago at a local rate, therefore, they must necessarily be considerably lower than the ordinary local rate, it is a proportion of a through rate on business that is moving a great distance, I think something in the neighborhood of from 14 to 17 hundred miles.

Q. And what is the total rate from Amarillo to Evarts?

A. One hundred dollars for a 36 foot car, which I consider an exceedingly low rate.

Q. Oh, yes, but that is done in order to stimulate the movement into the ranges in South Dakota?

A. Yes sir.

Q. In order that you may get the haul back to Chicago?

A. That is taken into consideration, yes sir.

Q. Now, isn't it a fact that you have given the opinion that these rates are too low even in other cases where you have testified, where you accept this low division in order to stimulate a traffic to

1280 get it, still you claim the rate is too low?

A. The conditions are not at all similar in my opinion, there is an absolute difference. In the first place I believe that the movement from Texas to North Dakota or Montana is an unnatural one, I don't think that the margins of profit to-day will permit of the cattle men handling cattle that distance and return to Chicago and leave a reasonable margin of profit either for the cattle man or for the railroad.

Q. But you do not understand my question. Your rate from Evarts to Chicago is 38 cents. You move those cattle up there on a- extremely low division of rates in order to stimulate a traffic, which when you came to testify as to whether that traffic was reasonable, whether the rate was reasonable from Evarts to Chicago, did you not express the opinion that it was too low?

A. The rate north too low?

Q. No, no, the rate from Evarts to Chicago, you have given a 38 cent rate for some 800 odd miles.

A. I don't think the rate from Evarts to Chicago was in question at all.

Q. I am getting at the value of your opinion about the others

being too low, and do it by that method to see if you do not hold that opinion with respect to practically all the rates?

A. As a general proposition, yes sir.

Q. Now, Mr. Calkins, you have had made up the statement
1281 which I asked you for the other day in regard to the consist of trains moving east bound out of Savanna for the first fifteen days in February and October. I will ask you to kindly identify the statements and state whether they are correct statements from your reports in the St. Paul office?

A. They are.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY. 12.799

OFFICE OF CAR ACCOUNTANT.

12

EXHIBIT OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND FOR THE FIRST 15 DAYS OF OCTOBER, 1904.

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
				-CARS-			
1st	Extra	9		15	6	1	29
"	"				25	2	27
"	"	3		19	1		23
"	"	4		15	14		33
"	"			6	27	17	51
"	"			2		11	13
"	No.94			2	11	10	23
2nd	Extra			2	14	55	71
"	"	10	3	6		26	45
"	"	12		1	18	5	34
"	"	29			3	2	34
"	"			19	26		45
"	"			2		31	33
"	"	40					40
"	"	29		1	13	1	44
"	"	19		7	6	-	32
"	"	38		3	3		44
"	No.82	12		1	11	4	28
3rd	Extra	1	11	4	13	1	30
"	"	30		1		1	32
"	"	10		1	13		24
"	"			3	22	24	49
"	"	3			3	6	12
"	"			1	18	12	31
"	"					6	6
"	Ex.& 98						
"	No.94			2	5	2	9
4th	Extra	2			21	5	28
"	"	5	2	3	23	3	36
"	"	36					36
"	"	42					42
"	"	29	1	4	1		35
"	"	11			2	11	24
"	Ex.East				3	1	4
"	No.82			1	9	4	14
"	No.94			1	32	15	51
5th	Extra	3	1	16	11		31
"	"	32		3			35
"	"	16			9	4	29
"	"		4	16	6	5	31
"	"		5	3	24		32
"	"	6			22	5	33
"	No.82	32			8		40
"	No.94			1	10	12	23
6th	Extra	10		20	1		31
"	"	6		8	10		24
"	"	6	4	17	3		30
"	"				1	23	24
"	"			3	9	17	29
"	"	16	1	11	5		33
"	"	11		1	22		34
"	"	9		10	10	1	30
"	"	29		1	1		31
"	No.82				28	7	35

906

12798

No. 2.

CONSIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND FOR THE FIRST 15 DAYS OF OCTOBER, 1904.

-CARS-

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
7th	Extra	2		17	13		32
"	"			8	28	4	40
"	"			20	16		36
"	"				6	2	8
"	"				29	3	32
"	"	23		3	19		45
"	"	20		1			21
"	"				23	1	24
"	No.94			1	14		15
8th	Extra	1		17	9		27
"	"	9	4	8	14	1	36
"	"	8		12	20		40
"	"	4	1	8	15		28
"	"				38	4	42
"	No.62			1	30	1	32
"	No.94		"	1	10	11	22
9th	Extra	2		8	21	1	32
"	"	14			18	4	36
"	"	31			4		35
"	"	6		21	7	3	37
"	"	40					40
"	"	33			5		38
"	"	34		6	2		42
"	"		22	3	6		31
"	"				33	2	35
"	"	40					40
"	No.62				30	8	38
10th	Extra	7	1	12	13		33
"	"	11		7	14		32
"	"	28		1	7		36
"	"	17		1	18		36
"	No.62	21	1	2	9		33
"	No.94	"		3	12	12	27
11th	Extra	17			18	8	43
"	"	32					32
"	"	8		3	17	2	30
"	"	21		1			22
"	"			4	27	3	34
"	"	25		5	3		33
"	"	13	3	9	4		29
"	No.62				30	5	35
"	94 Ex.			6		4	10
12th	Extra			6	25	7	38
"	"	28			6		34
"	"	34					34
"	"			16	10	5	32
"	"		26	3			29
"	"			7	22	2	31
"	No.62			1	25	3	29
"	No.94				6	11	17
13th	Extra	24		5	6		35
"	"		18	6	5		29
"	"	32		1	1		34
"	"	9	17	2	9		37
"	"		17		12	2	31
"	"	7		4	19	2	32
"	"	28	2		10		40
"	"	34					34

No. 3.

1279 2

CONSIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND
FOR THE FIRST 15 DAYS OF OCTOBER, 1904.

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
					-CARS-		
13th	No.62				21	7	28
"	No.94				9	5	14
14th	Extra	23	1		9		33
"	"					7	7
"	"	5		6	21		32
"	"	16		12	6		33
"	"	2		12	20	3	37
"	"	24		12	1		37
"	"			17	13	3	33
"	No.62			3	16	6	25
"	No.94			2	4		6
15th	Extra		19		14		33
"	"			6	23	1	30
"	"	3		9	23		35
"	"	16	4		18	1	39
"	"	17			20	1	38
"	No.62		1		20		21
"	Extra				11	3	14
"	No.94			1	11	8	20

1279d.

S U M M A R Y

Live Stock	1333
Fruit	169
Perishable Freight	532
Dead Freight	1522
Empty Cars	485
Total	4041.

909

1279e

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

OFFICE OF CAR ACCOUNTANT.

CONSIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND FOR THE FIRST 15 DAYS OF FEBRUARY, 1904.

Date	Train No.	-CARS- Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
1st	Extra			8	15	1	24
"	Ex.& 92				5		5
"	Extra	1	22	5	2	1	31
"	1/62				12	8	20
"	2/62	29		2	1		32
"	No.94			1	8	1	10
2nd	Ex.East					2	2
"	Extra				24	2	26
"	"			1	20	7	28
"	"	2			24	2	28
"	"		2	9	16	3	30
"	1/62 & 62				9	2	11
"	2/62-Ex.	28			1		29
"	3 & 2/62.	29				2	31
"	3/62	30			2		32
"	4/62	32					32
"	No.94				6	3	9
3rd	Extra	4		24	1		29
"	"	2		16	3		21
"	"			5	19	11	35
"	"	10		2	18	1	31
"	"	24		1	5	2	32
"	"	21		2	8		31
"	"				2		2
"	"					1	1
"	1/62			1	10	3	14
"	2/62	29		1	3		33
"	3/62	18		5	5		28
"	No.94				10	4	14
4th	Extra				12	3	15
"	"	1		1	24	7	33
"	"	25		1	8	4	38
"	"	7		20	7		34
"	"			14	13	1	28
"	"	18			12	2	32
"	"	27			3	1	31
"	1/62				3	3	6
"	2/62	16		1	11		28
"	No.94				5		5
5th	Extra				6		6
"	"		1	18	12		31
"	"			2	29	2	33
"	"			9	14	23	46
"	"	3		2	17	9	31
"	"	21		7	1	1	30
"	"	2		23		4	29
"	1/62				19	12	31
"	2/62	23		6			29
"	3/62	18		10	7		35
"	No.94				15	8	23
6th	Extra				28	6	34
"	"			1	2	1	4
"	"			14	13	4	31

910

No. 2.

1279f.

CONLIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND FOR THE FIRST 15 DAYS OF FEBRUARY, 1904.

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
				-CARS-			
6th	Extra			8	19		27
"	"	7		8	7	25	47
"	"				25	11	36
"	"			4	21	12	37
"	"				1	9	10
"	No.62	7		1	19	8	35
"	Extra	8			20	5	33
"	"				3	3	6
"	Ex.East	4			16	10	31
"	No.94				8	12	20
7th	Extra	10		7	12	10	39
"	"	2		4	14	19	39
"	"		4	10		15	29
"	"	32					32
"	"			1	15	27	43
"	"	30					30
"	"	3	1	3	18	17	42
"	"	32					32
"	"		1	15	8	3	27
"	"				23	14	37
"	"	17		6	5		28
"	4/62	14	1	9	5	1	30
"	1/62	25		4	1		30
"	2/62	29		2	1		32
"	3/62	33		1			34
"	5/62	32					32
8th	Extra				24	22	46
"	"	7		9	9	4	29
"	"				29	13	42
"	"			8		1	9
"	"				25	30	55
"	"	12			15	3	30
"	1/62	1		7	5		13
"	2/62	30			4	2	36
"	No.94			1	17		18
9th	Extra				17	20	37
"	"	2			16	25	43
"	"			1	19	26	46
"	"				22	18	40
"	"			1	23	13	37
"	"			21	5	1	27
"	"	32				1	33
"	1/62				4		4
"	2/62	34				1	35
"	3/62	33					33
"	4/62	32					32
"	5/62	31		1			32
"	6/62-Ex.	33					33
"	No.94				9	17	26
10th	Extra	19			9	10	38
"	"	34					34
"	"	34					34
"	"	1		7	21	11	40
"	"		1		39	1	41
"	"	2		5	18	12	37
"	"	33					33
"	1/62			3	4	11	18
"	2/62	34				1	35

911

1279g

No. 5.

CONSIST OF FREIGHT TRAINS OUT OF SAVANNA, ILL. EAST-BOUND
FOR THE FIRST 15 DAYS OF FEBRUARY, 1904.

-CARS-

Date	Train No.	Live Stock	Fruit	Perishable Freight	Dead Freight	Empty	Total
10th	3/62	30		3		1	34
"	4/62	10		17	5	1	33
"	5/62	34				1	35
"	No.94				9	21	30
11th	2/62	28		3		1	32
"	3/62	36					36
"	4/62	30		4	3	1	38
"	No.94-Ex.				13	15	28
"	Extra	25		9			34
"	"	1		2	24	13	40
"	"	1	3	15	6		25
12th	Extra				25	13	38
"	"	6		18	5		29
"	"	6		6	16	3	31
"	"	13		8	8	1	30
"	"	36		1			37
"	1/62			9	1		10
"	2/62 & 62	37		1			38
"	No.94-Ex.				6	8	14
13th	Extra	1		10	14		25
"	"				8	8	16
"	"			1	31	16	48
"	"	1		4	10		15
"	"	20		5		6	31
"	No.94	[illegible]	[illegible]	[illegible]	11	4	15
14th	Extra		1	3	31	9	44
"	"				1	16	17
"	"	1		6	11	6	24
"	"	3		11	11	12	37
"	No.62	21	1	8	3	2	35
"	1/62	22		7			29
"	2/62	25			6		31
"	3/62	30					30
"	4/62	33					33
"	5/62	26			3	1	30
"	6/62	31					31
"	7/62	31					31
"	8/62	28					28
"	9/62	25		3	1		29
15th	Extra	19		4	4	4	31
"	"				14	33	47
"	"	16		5	23	5	49
"	"		2		19	17	38
"	"	22			7	3	32
"	"				15	27	42
"	1/62			2	13	4	19
"	2/62	31					31
"	No.92-Ex.				8	22	30
"	No.94			2	5	6	13

912

1279k.

S U M M A R Y

Live Stock	1786
Fruit	40
Perishable Freight	527
Dead Freight	1435
Empty Cars	871.
Total	4659.

Q. Now, so far as you know, Mr. Calkins, does the movement covering fifteen days in February, being a winter month, and then fifteen days in October, a fall month, and better weather, fairly represent the movement of trains through Savanna east bound and the manner in which they are made up?

A. I think it would, yes sir.

Q. Is there practically any material difference in the live stock traffic as handled east bound on your lines of railroad and the lines of your competitors?

A. Well, I would not like to say as to that, I don't know what their system is, but I presume it is somewhat similar under the same conditions. Those conditions change according to grade, line, drawing capacity of the engine and a great many other details that enter into the operation of the railroad that I am not competent to testify on.

Q. Do you happen to know at this time what proportion of the live stock tonnage of the St. Paul Raod and the packing house products and dressed meat tonnage moves through Savanna in coming to Chicago?

1282 A. I could not answer that.

Q. Do you know whether it was greater than half, or less than half of the Iowa business in both classes of traffic?

A. Well, I think it would be less than half.

Q. All of the traffic moving out of Council Bluffs and Omaha and all moving out of Kansas City, and all that is intermediate between these points and Savanna and the Savanna River crossing, would cross the river at that point?

A. No sir. The Kansas City division business would not be included in the Savanna reports.

Q. Where does it cross at, Davenport?

A. Yes sir, it comes through Davenport on a cut off east of Savanna.

Q. It would just take the Omaha and western Iowa business?

A. Yes sir, also the Dubuque division.

Q. The showing made though at Savanna crossing as to the makeup of trains and train tonnage would not be materially different probably from your Prairie du Chien Crossing, do you call that to Chicago?

A. The trains would be heavier out of Savanna than they would out of Prairie du Chien considerably, the grades are much lower.

Q. And that would apply to both classes of traffic?

A. Yes sir.

1283 Q. Aside from that the relative conditions then, aside from that, would be substantially the same, would they?

A. Well, the Prairie du Chien division is not considered a first-class modern railway.

Q. And the other is?

A. The other is.

O. P. ANDERSON, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. You live in Nashville?
A. Yes sir.
Q. You are my Secretary?
A. Yes sir.

Q. I wish you would state if you have correctly compiled a comparison between the local rates of the Chicago, Milwaukee & St. Paul Railway on cattle and hogs to Chicago, from points on the main line intermediate between St. Paul and Chicago, with the rates on cattle and hogs in other sections of the country for similar distances?

A. Yes sir, I have made that compilation. The stations on the C. M. & St. P. Railway beginning with Deerfield, Illinois, which is 23.8 miles from Chicago, and the stations selected progress at intervals of 25 miles approximately in the direction of St. Paul. The furthest distant station from Chicago which I used was a place
1284 in Lemoyle, Wisconsin. I think took the tariffs——

Mr. SEVERANCE: Three hundred miles from where, Chicago?

A. Three hundred miles from Chicago, yes, all on the main line of the C. M. & St. P. Railway, between St. Paul and Chicago. I then took the tariffs of a number of southern railways, by that I mean lying in territories south of the Ohio River, and I find that the rates on cattle, local rates upon cattle from intermediate stations on the Milwaukee Road into Chicago are lower than the rates of the Nashville, Chattanooga & St. Louis Railway, to Memphis, to Evansville, to Louisville, or to Atlanta on cattle. They are lower than the rates of the Louisville & Nashville Railroad from its Kentucky Central Division to Cincinnati. They are lower than the rates of the Louisville & Nashville Railroad from its main line stations in Kentucky and Tennessee to Louisville. They are lower than the local rates of the Southern Railway in Alabama. They are lower than the local rates of the Southern Railway in Virginia, upon its Washington line. They are lower than the Interstate Distance tariff that the Southern Railway applies in Tennessee, Alabama and Georgia, and Mississippi. They are lower than the rates of the Southern Railway from points in East Tennessee to Atlanta. They are lower than the rates of the Tennessee Central Railroad, that is the railroad
1285 which extends from Nashville, Tennessee, to Knoxville, Tennessee. They are lower than the rates of the Tennessee Central Railroad to Louisville and Cincinnati. They are lower than the distance tariff of the Canadian Pacific Railway on its western line. I have also included in said statement a comparison of rates with the 23½ cent rate that prevails from the Missouri River, and I find that from Tennessee points to points in Virginia—there is a great deal of cattle raised in Tennessee and it is fed in Virginia, and a great deal moves on these rates—from Tennessee points to points in Virginia the rate is higher than this 23½ cent rate for a similar distance. The rates from points in Manitoba on the Great Northern Road, I

think it is, to St. Paul are higher than these rates. The rates from points in Washington and Idaho to Portland, Oregon, where there are packing houses are lower—are higher than the rates in controversy. All that I have said so far relates to cattle.

I did not have as many tariffs showing the rates on hogs as I did showing the rates on cattle, being away from home. My comparison with hog rates shows that the local rates on the Canadian Pacific Railway are higher than the rates in controversy. The rates of the Southern Railway in Alabama are higher. The Interstate
1286 rates applied by the Southern Railway in Tennessee, Alabama, Georgia and Mississippi are very much higher than these rates. The rates from stations on the Louisville & Nashville Railroad in Kentucky and Tennessee to Louisville are higher. The rates from the Kentucky Central Division of the Louisville & Nashville Railroad in Kentucky, to Cincinnati, Ohio, are higher. The rates from Nashville Chattanooga & St. Louis stations to Atlanta and Memphis, are also higher. I file said statement as Exhibit No. 1 to my testimony.

1286*a* O. P. ANDERSON EX. No. 1.

Comparison of Rates on Cattle for Similar Distances in Other Sections with the Local Rates of the C. M. & St. P. Ry. on Cattle to Chicago.

23.8 miles, Deerfield, Ills. to Chicago, 5.5 cents.
25 miles, Canadian Pacific Distance Tariff, 6.5 cents.
25 miles, Southern Ry. Alabama Local 8 cents.
25 miles, Southern Ry. interstate rates between stations in Tenn., Ala., Ga. and Miss., 8 cents.
26 miles, Demossville, Ky. to Cincinnati, L. & N. R. R., 6 cents.

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49 miles, Fox Lake to Chicago, 6 cents.
49 miles, Laconia, Tenn. to Memphis, N. C. & St. L. Ry., 6.9 cents.
50 miles, Canadian Pacific Local, 10 cents.
50 miles, Southern Ry., Alabama Local, 9½ cents.
50 miles, Southern Ry. in Virginia, 8 cents.
50 miles, Interstate So., bet. stations in Tenn., Ala., Ga. and Miss., 9½ cents.
52 miles, Boyd, Ky. to Cincinnati, L & N R R, 9 cents.
52 miles, Nolin, Ky. to Louisville, L & N R R, 7½ cents.

73.6 miles, Walworth to Chicago, 8.3 cents.
75 miles, Neely, Tenn. to Memphis, N C & St L, 9.9 cents.
75 miles, Canadian Pacific local, 13 cents.
75 miles, Southern Ry. Alabama Local, 11½ cents.
75 miles, Southern Ry. in Virginia, 9 cents.
75 miles, Interstate Southern Ry., Tenn., Ala., Ga. and Miss., 11½ cts.
Kiserton, Ky. to Cincinnati, L & N R R, 11 cents. 75 miles.
Rowletts, Ky. to Louisville, 75 miles, 12 cents.

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99 miles, Janesville, Wis. to Chicago, 10 cents.
100 miles, Canadian Pacific local, 15 cts.
100 miles, So. Ry., Ala. Local, 13½ cents.
100 miles, So. Ry. interstate in Tenn., Ala., Ga. and Miss., 13½ cts.
Flanagan, Ky. to Cincinnati, 10[illegible]miles, 13½ cents, L. & N R R.
Smiths Grove, Ky. to Louisvil[illegible], 100 miles, 15 cents, L & N R R.

1286*b* 125 miles, Stoughton, Wis. to Chicago, 11 cents.
128 miles, Huron, Tenn. to Memphis, 11.4 cents, N C & St L.
130 miles, Canadian Pacific local, 16½ cents.
125 miles, So. Ry. Alabama Local, 16 cents.
125 miles, So. Ry. stations in Va., 14 cents.
125 miles, Interstate So. Ry. bet. stations in Tenn., Ala., Ga. and Miss., 16 cents.
129 miles, Mayde, Ky. to Cincinnati, L & N R R, 14 cents.
125 miles, Woodburn, Ky. to Louisville, L & N R R, 15 cents.

151.9 miles, Windsor, Wis. to Chicago, 12½ cents.
Whiteside, Tenn. to Atlanta, 152 miles, 22 cents.
Birmingham, Ala. to Meridian, Miss., 152 miles, 22 cents.
150 miles, Canadian Pacific local, 17½ cents.
150 miles, So. Ry. stations in Va., 16 cents.
150 miles, Interstate Southern Ry. bet. stations in Tenn., Ala., Georgia and Mississippi, 18 cents.
Mullins, Ky. to Cincinnati, 151 miles, 16½ cents, L & N R R.
South Tunnel, Tenn. to Louisville, 152 miles, 15 cents, L & N R R.

177.3 miles, Portage Wis. to Chicago, 12.5 cents.
Atlanta, Ga. to Vidalia, Ga., 180 miles, 16.2 cents.
180 miles, Canadian Pacific local, 18½ cents.
175 miles, So. Ry. stations in Va., 17 cents.
175 miles, Interstate So. Ry. bet. stations in Tenn., Ala. Ga. and Miss., 19 cents.
175 miles, Edgefield Jc. to Louisville, 15 cents, L & N R R.
Athens, Tenn. to Atlanta, 167 miles, 17.3 cents.
176 miles, Stevenson, Ala. to Atlanta, 24 cents, N C & St L.

202.8 miles, Lyndon, Wis. to Chicago, 15 cents.
Cowan, Tenn. to Atlanta, 202 miles, 24 cents.
Kimbro, Tenn. to Louisville, Ky., 201 Miles, 18 cents.
200 miles, Canadian Pacific local, 19½ cents.
200 miles, So. Ry. stations in Va., 17½ cents.
200 miles, So. Ry. interstate bet. stations in Tenn., Ala., Ga. and Miss., 20 cents.
Franklin, Tenn. to Louisville, 17½ cents, L & N R R.
208 miles, Bellebuckle, Tenn. to Evansville, 24.1 cents.
Umatilla, Ore. to Portland, Or[illegible]., 187 miles, 26.4 cents.

224.2 miles, Orange, Wis., to Chicago, 16 cents.
Winsted, Tenn. to Louisville, Ky., 224 miles, 21 cents, N C & St L.
230 miles, Canadian Pacific local, 21½ cents.
225 miles, So. Ry. stations in Virginia, 17½ cents.
225 miles, Interstate So. Ry. between stations in Tenn., Ala., Ga. and Miss., 22 cents.
225 miles, Darks Mill, Tenn. to Louisville, 20 cents.
226 miles, Tullahoma, Tenn. to Evansville, 226 miles, 25 cents.

1286c 249.6 miles, Lafayette, Wis. to Chicago 17 cents.
Winsted, Tenn. to Atlanta, 252 miles, 24 cents.
Normandy, Tenn. to Louisville, 249 miles, 23 cents.
Hawkinsville, Ga. to Augusta, Ga., 160 miles, 17.1 cents.
Watertown, Tenn., to Louisville, Ky., 231 miles, 22 cents.
Lancaster, Tenn. to Louisville, Ky., 252 miles, 27 cents.
250 miles, Canadian Pacific local, 22 cents.
250 miles, So. Ry. in Va., 18 cents.
250 miles So. Ry. interstate in Tenn., Ala., Ga. and Miss. 23½ cents.
Lynnville, Tenn., to Louisville, Ky., 250 miles, 20 cents.
Mt. Pleasant, Tenn. to Louisville, 244 miles, 20 cents.
Lebanon, Tenn. to Evansville, Ind., 188 miles, 20.5 cents.
Birmingham, Ala. to Memphis, 251 miles, 20.5 cents.

277.6 miles, Medary, to Chicago, 18 cents.
Kimbro, Tenn. to Atlanta, 275 miles, 24 cents.
Cowan, Tenn. to Louisville, Ky., 274 miles, 25 cents.
Cookeville, Tenn. to Louisville, Ky., 276 miles, 28 cents.
280 miles, Canadian Pacific Local, 23 cents.
275 miles, So. Ry. stations in Va., 19½ cents.
275 miles, Interstate So. Ry. between stations in Tenn., Ala., Ga. and Miss., 25 cents.
278 miles, Prospect, Tenn., to Louisville, Ky., 23 cents.
Winchester, Tenn. to Louisville, 272 miles, 22.7 cents.
Wartrace, Tenn. to Evansville, 212 miles, 24.1 cents.

300.3 miles, Lamoille, Wis. to Chicago, 19 cents.
Bellevue, Tenn. to Altanta, 301 miles, 30 cents.
Stevenson, Ala. to Louisville, Ky. 300 miles, 27 cents.
Cookeville, Tenn. to Louisville, Ky., 276 miles, 28 cents.
300 miles, Canadian Pacific local, 24 cents.
300 miles, So. Ry. stations in Va., 20½ cents.
300 miles, Interstate So. Ry. bet. points in Tenn., Ala., Ga. and Miss., 25 cents.
Athens, Ala. to Louisville, 294 miles, 23 cents.
La Grande Ore. to Portland, Ore., 305 miles, 31.6 cents.

Tariff References.

Atlanta Local Tariff No. 4, Amdt. No. 27 to I. C. C. No. 630-A. So. Ry.
Western Livestock Tariff, N. C. & St. L., I. C. C. No. 377-A, Amdt. No. 19 to I. C. C. No. 377-A.
Supp. No. 1 to Western Livestock Tariff No. 1, I. C. C. No. 377-A, N C & St. L.
A. G. S. R. R. I. C. C. 233.
So. Ry., I. C. C. 8499.
I. C. C. No. 17, Tennessee Central Ry.
Canadian Pacific Western Lines Tariff W. No. 49.
Alabama Local Tariff 4, So. Ry., I. C. C. 7732.
Virginia Local Tariff No. 3, I. C. C. 7251, Table 1.
So. Ry. Interstate Local Tariff 1-C, I. C. C. No. 8186.
L. & N. G. F. O. 325, I. C. C. No. A-3447.
Amdt. No. 10 to I C. C. No. A-3447, L & N R R.
1286d So. Ry. Supp. 1 to Interstate Local Tariff, I. C. Amdt. No. 1 to I. C. C. No. 8186, effective June 20, 1904.
So. Ry., I. C. C. No. 8519, I. C. C. No. 6060, I. C. C. No. 5638.

Miscellaneous Rates Higher than the 23½ Cent Rate on Cattle, Missouri River to Chicago.

New Orleans, La. to Greensboro, Ala., 286 miles, 32.5 cents.
L. & N. R. R. I. C. C. B—1861, So. Ry. I. C. C. No. 7732.
Harriman Jc. Tenn. to Memphis, 390 miles, 33 cents.
So. Ry. I. C. C. No. 4494 and 7217.
Holmes Gap, Tenn. to Cincinnati, O., 375 miles, 34½ cents.
Caney Fork, Tenn., to Cincinnati, O., 355 miles, 32½ cents.
Cookeville, Tenn., to Cincinnati, O., 334 miles, 30½.
I. C. C. No. 17, T. C. R. R.
450 miles, Canadian Pacific Local, 31½ cents.
Canadian Pac. Western Lines Tariff W. No. 49
450 miles, So. Ry. in Virginia, 25½ cents.
Va. Local Tariff 3, I. C. C. 7251.
450 miles, So. Ry. interstate in Tenn., Ala., Ga. and Miss., 32 cents.
I. C. C. No. 8186.
Limestone, Tenn. to Richmond, 393 miles, 27.7 cents.
Greeneville, Tenn. to Richmond, Va., 407 miles, 27.7 cents.
So. Ry. Rate Issue, B 7121, I. C. C. No. 8900.
Morris, Man. to St. Paul, 446 miles, 32 cents.
Gretna, Man. to St. Paul, 419 miles, 32 cents.
G. N. Ry., G F O No. 7690, I. C. C. A-842?
Sprague, Wash. to Portland, Ore., 499 miles. 36.2 cents.
Northern Pacific Tariff I. C. C. No. B–401.
Boise Idaho, to Portland, Ore., 506 miles, 52.7 cents.
U. P. Ry., I. C. C. No. 851.

1286e *Comparison of Rates on Hogs for Similar Distances in Other Sections with the Local Rates of the C. M. & St. P. Ry. on Hogs to Chicago.*

23.8 miles, Deerfield, Ill. to Chicago 6 cents.
Eads, Tenn. to Memphis 24 miles, 8 cents N C & St L.
25 miles, Canadian Pac. local, 6½ cents.
25 miles, So. Ry., Alabama Local, 9 cents.
25 miles So. Ry. interstate in Tenn., Ala. Ga. and Miss., 9 cents.
Demossville, Ky. to Cincinnati, 26 miles, 7 cents.
Belmont, Ky. to Louisville 6 cents.

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49 miles, Fox Lake to Chicago, 8 cents.
Laconia, Tenn., to Memphis, 49 miles, 10 cents.
50 miles, Canadian Pacific local, 10 cents.
50 miles, So. Ry., Alabama Local, 11 cents.
50 miles, So. Ry. in Virginia, 8 cents.
50 miles, So. Ry. interstate between stations in Tenn., Ala., Ga. and Miss., 11 cents.
Boyd, Ky. to Cincinnati, 52 miles 11 cents.
Nolin, Ky. to Louisville, 52 miles 10 cents.

73.6 miles, Walworth, to Chicago, 11 cents.
Neely, Tenn. to Memphis, 75 miles, 11.1 cents.
75 miles, Canadian Pacific, 13 cents.
75 miles, So. Ry. Ala. local, 13 cents.
Kiserton, Ky. to Cincinnati, 75 miles 13 cents.
Rowletts, Ky. to Louisville, 75 miles, 17 cents.

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99 miles, Janesville, Wis. to Chicago, 12½ cents.
100 miles, Canadian Pacific local, 15 cents.
100 miles, So. Ry. Alabama local, 15 cents.
100 miles So. Ry. interstate between Tenn. Ala. Ga. and Miss., 15 cents.
Flanagan, Ky. to Cincinnati, 101 miles, 16 cents.
Smiths Grove, Ky., 100 miles, 20 cents.

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125 miles, Stoughton, Wis. to Chicago, 13½.
130 miles, Canadian Pacific local, 16½ cents.
125 miles, So. Ry. Ala. Local, 17½ cents.
125 miles, So. Ry. Interstate bet. stations in Tenn., Ala., Ga. and Miss., 18 cents.
Mayde, Ky. to Cincinnati, 129 miles, 19 cents.

1286*f* 151.9 miles, Windsor, Wis. to Chicago, 16½.
Whiteside, Tenn. to Atlanta, Ga., 152 miles, 30 cents.
150 miles, Canadian Local, 17½ cents.
150 miles, So. Ry. stations in Va., 16 cents.
150 miles, So. Ry., interstate in Tenn., Ala. Ga. and Miss., 20 cents.
Mullins, Ky. to Cincinnati, 151 miles, 21 cents.
South Tunnel, Tenn. to Louisville, 152 miles, 20 cents.

177.3 miles, Portage, Wis. to Chicago, 17½ cents.
Stevenson, Ala. to Atlanta, Ga., 176 miles, 31 cents.
180 miles, Canadian Pacific Local, 18½ cents.
175 miles, So. Ry. stations in Va., 17 cents.
175 miles, Interstate So. Ry. Tenn., Ala. Ga. and Miss., 21 cents.

202.8 miles, Lyndon, Wis. to Chicago, 20 cents.
Cowan, Tenn. to Atlanta, 202 miles, 31 cents.
200 miles, Canadian Local Tariff, 19½ cents.
200 miles, Interstate So. Ry. bet. Tenn., Ala., Ga. and Miss., 22 cents.

224.2 miles, Orange, Wis. to Chicago, 22 cents.
Winsted, Tenn. to Louisville, Ky., 224 miles, 21 cents.
225 miles, So. Ry. interstate in Tenn., Ala., Ga. and Miss., 24½.
Darks Mill, to Louisville, 225 miles, 21 cents.

249.6 miles, Lafayette, Wis. to Chicago, 22 cents.
Winsted, Tenn. to Atlanta, 252 miles, 31 cents.
Normandy Tenn. to Louisville, Ky., 249 miles, 24 cents.
Lancaster, Tenn. to Louisville, Ky., 252 miles, 27 cents.
250 miles, Canadian Pacific local, 22 cents.
250 miles, Interstate So. Ry. bet. stations in Tenn., Ala., Ga. and Miss., 26 cents.
Lynnville, Tenn., to Louisville, 250 miles, 24 cents.

277.6 miles, Medary, to Chicago, 22 cents.
280 miles, Canadian Local, 23 cents.
275 miles, So. Ry. interstate bet. Tenn., Ala. Ga. and Miss., 28 cents.

300.3 miles, Lamoille, to Chicago, 22 cents.
Stevenson, Ala. to Louisville, 30 cents., 300 miles.
300 miles, Canadian local, 24 cents.
300 miles, So. Ry. Interstate, Tenn., Ala. Ga. and Miss., 28 cents.
Athens, Ala. to Louisville, 294 miles, 27 cents.

1287 Cross-examination.

By Mr. COWAN:

Q. Did you compare the rates in Central Traffic Association territory?

A. I only claim to be comparing rates in southern territory.

Mr. COWAN: The other comparisons will be put in by other witnesses.

Q. Did you examine and make a comparison, I don't mean did you make a statement? I know you didn't. In the course of your comparison did you look at the Central Traffic Association territory rates?

A. No, sir, I did not.

Q. That was because you knew they were less, did you not?

A. I know the rate from Chicago to New York was 28 cents; that is all I did know.

Q. But taking this middle western country, north of the Ohio River and between the Allegheny Mountains and the Mississippi, are not those live stock rates lower than the rates complained of in this case?

A. I could not say a word about that, for I do not know.

Q. All right. That is all.

1288 HIRAM R. MCCULLOUGH, a witness called in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. BAXTER:

Q. What is your name?

A. Hiram R. McCullough.

Q. With which one of the defendant companies are you connected and in what capacity?

A. I am third vice president of the Chicago & Northwestern Railway.

Q. How long have you been connected with the freight traffic department of railroads in the United States?

A. My railroad experience has been with the two railroads, the Illinois Central and Chicago & Northwestern. I was with the general freight department of the Illinois Central for six years; division freight agent of the Chicago & Northwestern Railway five years; assistant general freight agent of the Chicago & Northwestern Railway one year; general freight agent of the Chicago & Northwestern Railway four years; general traffic manager of the Chicago & Northwestern road one year; third vice president of the Chicago & Northwestern Railway for the past eight years.

Q. Has your duties during any portion of that period had relation to the making of freight rates?

A. All of it.

1289 Q. What are the rates at the present time on cattle and hogs and packing products and fresh meats in car loads to

Chicago from Sioux City, Council Bluffs, Omaha, South Omaha, Des Moines and Cedar Rapids?

A. I have a statement here showing those rates, from our printed tariffs, shall I read them?

Q. No, sir, there are so many of them.

The COURT: Just file them.

Mr. BAXTER:

Q. Does that show the rates from your intermediate stations?

A. Yes, sir, it shows the rates on cattle and hogs, fresh meats, packing house products in car loads, from Council Bluffs, Omaha, South Omaha, Sioux City, Des Moines, Marshalltown and Cedar Rapids to Chicago; also to the Mississippi River.

Mr. LYNDE: Simply those points?

A. Those points, only.

Mr. COWAN:

Q. Does it show the proportional, Mr. McCullough, to the Mississippi River?

A. Yes, sir.

(The statement produced by the witness was marked "McCullough's Exhibit No. 1," and filed with the Court as a part of the testimony of said witness.)

1288*a* STATEMENT No. 1.

To Chicago from—	Cattle, carloads, per 100 lbs.	Hogs, carloads, per 100 lbs.	Fresh meat, carloads, per 100 lbs.	P. H. P., carloads, per 100 lbs.
Council Bluffs.....	23.5	23.5	20	20
Omaha.....			*a*18.5	*a*18.5
South Omaha.....				
Sioux City.....	25	23.5	20	20
			*a*18.5	*a*18.5
Des Moines.....	22	23.5	18.5	18.5
			**a*10	**a* 7
Marshalltown.....	22	21	16	16
			**a* 8	**a* 5
Cedar Rapids.....	21	18.5	13.5	13.5
			**a* 7	**a* 4

a To Chicago when destined to points East of Indiana-Illinois State line.
**a* To Mississippi River when destined to points East of Indiana-Illinois State line.

McCullough Exhibit No. 1, vol. 11, p. 1288.

Mr. BAXTER:

Q. What freight earnings did your company receive on packing house products and fresh meats and what were the total
1290 freight earnings of your road on all freight transported for the year ending June 30th, 1905?

A. I prepared here a statement, No. 2, of the total freight earnings of the Chicago & Northwestern Railway Company for the year ending June 30th, 1905, $39,863,918.26; earnings on cattle and hogs approximately, $3,500,000; earnings on packing house products and fresh meats approximately, $320,000.

Q. How does that amount paid by your Company for loss and damage and delay for live stock and the amount paid for injuries paid to parties traveling in charge of live stock compare with the amount paid for loss and damage to packing house products and fresh meats?

(The statement produced by the witness in answer to the previous question was marked "McCullough's Exhibit No. 2," and filed with the court as a part of the testimony of said witness.)

1290*a* STATEMENT No. 2.

For the Year Ending June 30th, 1905.

Total freight earnings	$39,863,918.26
Earnings from cattle and hogs, approximate	3,500,000.00
Earnings on packing house products and fresh meats, approximate	320,000.00

McCullough Exhibit No. 2, vol. 11, p. 1290.

A. The amount- paid by our Company for loss and damage on live stock, dressed beef and packing house products of course vary from year to year; the average payment per annum for the last three years was on live stock $63,000; personal injuries, amount of claims paid to parties in charge of live stock, $25,000; total, $88,000. And the amount of claims paid for loss and damage on dressed beef and packing house product averages $5,000 per year.

1291 Q. Are the rates on cattle and hogs from Sioux City and Omaha and from other points on your road affected by competition?

A. A very large per cent. of our tariffs on live stock are fixed by competition. That is especially true of the Missouri River and adjoining territory.

The COURT: Did you make any settlements with the S. & S. Company?

A. No, the S. & S. do not do any business at any point reached by the Chicago & Northwestern Railroad.

Mr. LYNDE: We do not have anything to do with them.

Mr. BAXTER: Are the through rates on cattle and hogs from points of shipment on your road to the final destination greater or less than the sum of the local rates?

A. The shipments of live stock from a station to an intermediate station and the rate from that intermediate station to destination would in each case be higher than the through rate.

Q. What is the established minimum car load rate on cattle and

hogs respectively, and how does the actual lo-ding of cattle cars on your road compare with the minimum?

A. I have a statement here showing our established minimum on different sized cars.

Q. Will you file that as an exhibit?

1292 A. Yes, sir. It is taken from our printed tariffs and reports that we have.

(The document produced by the witness was marked "McCullough's Exhibit No. 3," and filed with the Court as a part of the testimony of said witness.)

1291a STATEMENT No. 3.

The actual loading of all cars of live-stock moved over our road show- at lease, nin-ty (90) per-cent. up to or above the established minimums which are as follows:

Live Stock.

Where rates are quoted in cents per 100 lbs., the following minimum weights will govern in either common or patent stock cars:

Length of cars, inside measurement.	Cattle.	Hogs, double deck.	Sheep, double deck.	Hogs, single deck.	Sheep, single deck.
31 feet and under.....	19,000	19,000	19,000	15,000	10,000
Over 31 feet, to and including 33 feet 9 inches.....	20,500	20,500	20,500	16,000	11,000
Over 33 feet 9 inches, to and including 36½ feet.....	22,000	22,000	22,000	17,000	12,000
Over 36½ feet, to and including 40 feet...	24,000	24,000	24,000	19,000	14,000
Over 40 feet	26,000	26,000	26,000	21,000	16,000

Number of stock cars in use, about 5,000. Length 36 feet.

McCullough Ex. No. 3, vol. 11, p. 1291.

Q. You need not read that, to save time, just file it as an exhibit to your testimony.

A. Yes, sir. Statement No. 3 shows the established minimum on our various sized stock cars and the report we have is that about 90 per cent. of our shipments are loaded in excess of the minimum provided for in this statement—Statement No. 3.

Q. How do the rates in cents per hundred pounds from various stations on your road on cattle and hogs compare with the rates on other live stock shipments from said stations on your road?

A. Statement No. 4 (producing a statement). This statement shows the rates on live stock, agricultural implements, stoneware, fifth class freight, wool, machinery, between Chicago and 10 or 15 stations on the Northwestern Railroad which are shown, your Honor, very plainly on that map (producing a map). The first statement

shows the rates on live stock and the articles mentioned between Chicago and Bellefourche, South Dakota and Casper,
1293 Wyoming. The next statement shows the rates between Chicago and Eagle Grove, Iowa, the next statement between Chicago and Maurice, Iowa, the next statement, between Chicago and Ireton, Iowa; the next statement between Revere, Minnesota, and Chicago; the next statement between Chicago and Sanford, Minnesota; the next statement between Chicago and Whitewood, South Dakota; the next statement between Chicago & Huron, South Dakota; the next statement between Chicago and Council Bluffs and Omaha. The statement shows that the rates on all the commodities named in these statements is greater than it is on live stock, the rate in cents per hundred pounds.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 4," and filed with the Court as a part of the testimony of said witness.)

1293a

1293b

McCULLOUGH'S EXHIBIT No. 4, Vol. 11, p. 1293.

STATEMENT No. 4.

Rates Between Chicago and Bellefourche, South Dakota.

Mileage, 1069.7 Miles.

Date.	Cattle.	Hogs.	Sheep. S. D.	Sheep. D. D.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool, in grease.	Machinery.
Aug. 10, 1897.....	48	65	63	55	1.25	95	1.30	$1.30		
Mar. 8, 1902.....	48	65	63	55	1.25	95	1.22	$1.22	$1.42	1.27
Dec.,—, 1902.....	48	65	63	55	1.25	95	1.22	1.22	1.42	1.27
Jan. 15, 1903..... ..	48	65	63	55	1.25	95	1.22	1.22	1.42	1.27
Feb. 9, 1903.....	48	65	63	55	1.25	95	1.22	1.22	1.42	1.27
July 20, 1903.....	48	65	63	55	1.25	95	1.22	1.22	1.42	1.27
Nov. 16, 1903.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
Feb. 4, 1904.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
Feb. 16, 1904.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
Feb. 22, 1904.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
May 9, 1904.....	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
June 10, 1904..... ..	48	65	...	55	1.25	95	1.22	1.22	1.42	1.27
Jan. 21, 1905, present rate.....	48	65	...	55	1.25	95	1.22	1.22	1.42	.75

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STATEMENT No. 4.

Rates Between Chicago and Eagle Grove, Iowa.

Mileage, 369 miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900.....	23½	23½	25	26	24	24	24	42	29
Jan., 1902.....	23½	23½	25	26	24	24	24	42	29
Aug., 1903.....	23½	23½	25	26	24	24	24	42	29
June, 1904.....	23½	23½	25	26	24	24	24	42	29
Present rate, 1905,	23½	23½	25	26	24	24	24	42	29

1293d

STATEMENT No. 4.

Rates Between Chicago and Maurice, Iowa.

Mileage, 496 miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900	25	23½	30	31	27	27	27	45	32
Jan. 20, 1902..	25	23½	30	31	27	27	27	45	32
Sept. 13, 1902	25	23½	30	31	27	27	27	45	32
Feb., 1904	25	23½	30	31	27	27	27	45	32
March, 1904.....	25	23½	30	31	27	27	27	45	32
May, 1904	25	23½	30	31	27	27	27	45	32
June, 1905.....	25	23½	30	31	27	27	27	45	32

1293e

STATEMENT No. 4.

Rates Between Chicago and Ireton, Iowa.

Mileage, 504 miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900.....	25	23½	30	31	28	28	28	46	33½
Jan. 20, 1902.....	25	23½	30	31	28	28	28	46	33½
Sept. 13, 1902	25	23½	30	31	28	28	28	46	33½
Feb., 1904.....	25	23½	30	31	28	28	28	46	33½
May, 1904.....	25	23½	30	31	28	28	28	46	33½
June, 1905.....	25	23½	30	31	28	28	28	46	33½

1293f

STATEMENT No. 4.

Rates Between Chicago and Revere, Minnesota.

Mileage, 496 Miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900	29	31	32½	30	27	28	28	46	30
Feb., 1904.....	27	30	32	30	27	28	28	46	30
May, 1904.....	27	30	32	30	27	28	28	46	30
June, 1905	27	30	32	30	27	28	28	46	30

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1293*g*

STATEMENT No. 4.

Rates Between Chicago and Sanborn, Minnesota.

Mileage, 483 Miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900.....	27	30	31½	30	25	26	26	46	30
Feb., 1904	27	30	31½	30	25	26	26	46	30
May, 1904.....	27	30	31½	30	25	26	26	46	30
June, 1905.....	27	30	31½	30	25	26	26	46	30

1293*h*

STATEMENT No. 4.

Rates Between Chicago and Whitewood, South Dakota.

Mileage, 1050.8 Miles.

Date.	Cattle.	Hogs.	Sheep. S. D.	Sheep. D. D.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
Aug. 10, 1897.....	48	65	63	55	1.18	89	1.22	1.22		
Mar. 8, 1902.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
Dec. 22, 1902.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
Jan. 15, 1903.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
Feb. 9, 1903.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
July 20, 1903.....	48	65	63	55	1.20	92	1.22	1.22	1.42	.75
Nov. 16, 1903.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
Feb. 4, 1904.....	48	65	..	55	1.20	92	1.22	1.22	1.42	.75
Feb. 16, 1904.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
Feb. 22, 1904.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
May 9, 1904.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
June 10, 1904.....	48	65	...	55	1.20	92	1.22	1.22	1.42	.75
Present rate, 1905..	48	65	...	55	1.20	92	1.22	1.22	1.42	.75

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1293*i*

STATEMENT No. 4.

Rates Between Chicago and Huron, South Dakota.

Mileage, 646 Miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
May 21, 1900.....	43½	48	48	45	40	42	42	75	45
June 21, 1900.....	43½	48	48	45	40	42	42	75	45
May 10, 1902.....	43½	48	48	41	36	37	37	67	41
June 20, 1902.....	43½	48	48	41	36	37	37	67	41
Aug. 28, 1902.....	43½	48	48	41	36	37	37	67	41
Oct. 9, 1902..... ...	43½	48	48	41	36 §	37	37	67	41
May 11, 1903.....	43½	48	48	41	36	37	37	67	41
Dec., 1903	43½	48	48	41	36	33½	37	67	41
Feb. 20, 1904.....	43½	48	48	41	36	33½	37	67	41
May 9, 1904.....	43½	48	48	41	36	33½	37	67	41
July, 1904.....	43½	48	48	41	36	33½	37	67	41
Present rate, 1905..	43½	48	48	41	36	33½	37	67	41

1293*j*

STATEMENT No. 4.

Rates Between Chicago and Council Bluffs and Omaha.

Council Bluffs Mileage..... 489 miles.
Omaha Mileage ..... 505 miles.

Date.	Cattle.	Hogs.	Sheep.	Agricultural implements.	Stoneware.	Sugar.	5th class.	Wool in grease.	Machinery.
June, 1900	23½	23½	25	30	27	27	27	45	32
Jan. 7th, 1904.....	23½	23½	25	30	27	27	27	45	32
Feb. 16, 1904.....	23½	23½	25	30	27	27	27	45	32
June, 1904	23½	23½	25	30	27	27	27	45	32
Present rate.....	23½	23½	25	30	27	27	27	45	32

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Q. How do the rates on cattle and hogs to Chicago from points intermediate between the Missouri River on the one hand, and Chicago on the other compare with the rates charged by other railroads for similar distances in the territory reached by the Chicago & Northwestern Railway for the transportation of cattle and hogs from other points of shipment to other points of destination?

A. Statement No. 5. Your Honor, these stations are shown on that map with a cross, (referring to the map heretofore introduced).

1294 I have taken ten stations intermediate between Chicago and the Missouri River in Iowa. I have shown the distance to Chicago and the rate charged on live stock. I have taken a comparison from stations west of the Missouri River into Omaha; from stations in Minnesota to St. Paul; stations north and northwest of St. Paul over the Great Northern, and Northern Pacific and other roads which shows the rates charged from those intermediate points in Iowa to Chicago and the rates charged from stations west of Omaha into Omaha; west and northwest of St. Paul. It shows that the rate from these intermediate stations between Chicago and the Missouri River to Chicago are less than the rates charged into Omaha and into St. Paul from stations corresponding distances from those points.

Q. Have the rates on cattle and hogs from stations on your road been so high as to prevent the shipment of cattle and hogs or have such shipments moved freely over your road in competition with cattle and hogs moved from similar markets in other portions of the United States?

A. There is some live stock, I think, driven to large markets, like Sioux City, from nearby territory; but I think the shipments are very few, and I do not think they are driven on account of the freight rates charged by the railroads.

1295 Q. Are the rates on cattle and hogs so low as to induce the shipment by rail?

A. Yes, sir, our live stock business is increasing right along.

The COURT:

Q. Do you think the change of these rates in the summer of 1902 made any difference in shipments either way, did you see it in your shipments?

A. Your Honor, I don't remember the change you speak of.

Q. When this rate was made and live stock was lessened and the products were cut down, did you see any difference in the shipments to Chicago or Council Bluffs?

A. I have a statement here that will show the movement.

Q. What does that show, does that show any difference before or since?

A. I have forgotten how the statement shows.

Q. In other words, suppose this rate is put back on dressed meat and products of cattle and hogs, would it make any difference in the shipments?

VERTICAL IN BOOK

A. I don't think it would. I have a statement here that the territory on the Northwestern that the packers seem to—the packers at Sioux City, Omaha and Chicago, as well as the Stock Yards Company at those points, and also the commission firms located at those points in the territory where we have not been very successful in adjusting our tariff so as to satisfy them all, is from 75 to 100 miles east of Omaha and east and northwest of Sioux City. I have a statement here from that territory which shows the rates to
1296 Omaha, the rates to Sioux City, the rates to Chicago; shows the movement from each station for one year previous to July 1st, 1905; shows the total movement to Omaha, the total movement to Sioux City and the total movement to Chicago.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 5," and filed with the Court as a part of the testimony of said witness.)

To Chicago, Ill., from—	Mi.	Cattle.	Hogs.	To Omaha, Neb., from—	Mi.	Cattle.	Hogs.	To St. Paul, Minn., from—	Mi.	Cattle.	Hogs.
De Witt, Ia..C & N W	157	15½	16½	Clearwater, Neb..C & N W	161	15	20	Appleton, Minn.. G N	155	16½	16½
Tama, " .. "	270	22	21	Johnstown, " .. "	270	20	26½	Montrose, S. D....C St P M & O	267	22½	21
Ames, " .. "	326	22	22½	Georgia, " .. "	328	23	30	Winside, Neb.... "	326	28	29½
Carroll, " .. "	396	23½	23½	Gordon, " .. "	396	25½	31	Bathgate, N. D... G N	393	23½	29½
Dunlap, " .. "	441	23½	23½	Chadron, " .. "	443	28	35	Canda, S. D.... "	440	26	33
Radcliffe, " .. "	329	22	22½	Max, " ..C B & Q	326	22½	28½	Winside, Neb... C St P M & O	326	28	29½
Lohrville, " .. "	388	23½	23½	Eckley, Col.. "	388	26½	34½	Randolph, " .... G N	388	28	29½
Ute, " .. "	457	23½	23½	Whitney, Neb..C & N W	458	28	37	O'Neill, Neb.... "	457	33	37
Mapleton, " .. "	460	23½	23½	Ft. Morgan, Col...C B & Q	460	29	39	Perth, N. D... "	460	26½	33½
Correctionville, Ia.. "	473	23½	23½	Ft. Robinson, Neb..C & N W	472	28	37	Barton, " ... "	476	25¾	33

McCullough's Exhibit No. 5, vol. 11, p. 1295.

Mr. BAXTER:

Q. How does the revenue derived by your Company from other car load freight, for instance coal, lumber or other low grade traffic compare with the revenue derived by your Company for transportation of cattle and hogs in a car of the same capacity between the same points or for a similar distance?

A. The average gross receipts that we receive on live stock between Chicago and Missouri River points in Western Iowa is about $45 per car. We would receive on a car of lumber from $60 to $65; we would receive on a car of coal from $60 to $70, that is about the difference between the gross receipts we are getting on live stock and other freight.

Q. What are the rates charged by your company on cattle and hogs, respectively, to Chicago, Illinois, from each intermediate point on its line between the Missouri River on one hand and Chicago on the other?

A. That is statement No. 6. That is our printed tariff which shows the rate from each station to Chicago.

1297 Q. Will you file that as an exhibit?

A. Yes, sir, I will.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 6," and filed with the Court as a part of the testimony of said witness.)

Q. What has been the volume of live stock for the year ending June 30th, 1905, over your road to Chicago, Sioux City and South Omaha, and what has been the volume received at those points over the other large railroad systems?

A. That is statement No. 7 (producing a statement). This is a statement made up from the report of the Stock Yards in Chicago, the Stock Yards at Sioux City and the Stock Yards at South Omaha.

The COURT: What does that show?

A. It gives the total receipts of live stock at Chicago, Illinois, the Union Stock Yards at Chicago; at Sioux City, Iowa, South Omaha, Nebraska for the years 1902, 1903, 1904, and the year 1905 up to August 1st, over the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul, and all the lines hauling live stock to those various markets.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 7, and filed with the Court as a part of the testimony of said witness.)

1297a STATEMENT No. 7.

Number of Carloads of Live Stock Received at Chicago, Illinois.

Roads.	1902.	1903.	1904.	1905 to July 31st.
C. & N. W. R'y.....	65,654	61,706	62,601	39,706
C., M. & St. P. R'y...	57,407	60,456	58,833	33,758
C., B. & Q. R'y.....	47,589	56,255	55,365	30,959
C., R. I. & P. R'y.....	24,808	36,076	32,182	19,561
C. G. W. R'y.....	6,857	9,599	9,882	6,012
Ill. Cent. R. R.....	25,327	27,145	24,111	16,628
A., T. & S. F. R'y.....	9,301	12,783	8,651	4,065
Total	236,943	264,020	251,625	150,689
Via other roads.....	41,157	38,985	35,248	18,740
Grand total...	278,100	302,915	286,873	169,429

Number of Carloads of Live Stock Received at Sioux City, Iowa.

Roads.	1902.	1903.	1904.	1905 to July 31st.
C. & N. W. R'y.....	5,736	5,040	4,866	3,295
C., M. & St. P. R'y...	11,993	11,969	11,939	8,038
C., St. P., M. & O. R'y..	5,389	5,334	5,557	4,388
Ill. Cent. R. R	2,173	2,149	2,054	1,583
W. & S. F. R'y.....	3,498	3,546	3,555	2,962
Total	28,789	28,038	27,991	20,266

Number of Carloads of Live Stock Received at South Omaha, Nebraska.

Roads.	1902.	1903.	1904.	1905 to July 31st.
C. & N. W. R'y.....	22,749	25,374	23,612	13,826
C., M. & St. P. R'y...	3,070	6,774	5,104	1,503
Wabash R'y.....	806	843	623	227
Mo. Pac. R. R.....	1,648	1,756	1,604	1,084
Un. Pac. R'y.....	15,946	16,586	17,106	11,083
C., St. P., M. & O. R'y..	6,300	6,792	6,032	4,202
C., B. & Q. R. R.....	21,680	22,398	21,602	11,123
C., R. I. & P. R'y.....	6,203	4,918	3,446	2,347
Ill. Cent. R. R.....	1,190	1,067	865	758
C. G. W. R'y.....	.....	262	1,041	723
Total	79,592	86,770	81,035	46,876

McCullough's Exhibit No. 7, vol. 11, p. 1297.

Q. Are these South Omaha and Sioux City and other cattle
1298 markets to which live stock shipments on your road are shipped, of benefit or injury to persons raising and shipping cattle?

A. The more markets a person raising and shipping cattle has, the better it must be for him.

Q. What effect, if any, would the reduction of rates on cattle and hogs at points east of the Missouri River have upon the revenue rea-ized by your Company for the transportation of cattle and hogs?

A. If for any reason the rates on live stock from Council Bluffs and Omaha were to be reduced three and a half cents per hundred pounds or the rate from Sioux City be reduced five cents, it would be pretty hard to tell just what the exact effect would be upon the revenue of our road. It would disturb the rates out in that country and it is a good deal like a row of bricks, a reduction will get started and you never would know where it would stop. I have here a copy of our tariff leaving from all stations east of the Missouri River showing our present tariff rates.

Mr. ANSOM: Towards South Omaha?

A. No, this is our present tariff on live stock from stations east of the Missouri River.

Q. To Chicago?

A. To Chicago from the territory in which I think, and I think I know, the rates would have to be reduced if any reduction was made, at Council Bluffs and Omaha and Sioux City.

1299 I have shown in this tariff in red ink the reduced rates that I am satisfied we would have to put in force if this proposed reduction is made at Council Bluffs, Omaha and Sioux City.

The COURT: About where are those places, give a few examples?

A. I can show you on this map, your Honor, if you like, better. That would make it a little plainer to you, (showing map to the Court). Council Bluffs, Omaha, Sioux City—This map shows the Chicago & Northwestern Railroad and especially its lines from Council Bluffs east and Sioux City east. This reduction which I put into this tariff in red ink takes in nearly all, takes in the main line in Iowa as far east as Cedar Rapids, takes in all the stations north of the main line in Iowa, nearly all the stations in Minnesota, and some stations in South Dakota. If our movement in that territory for this year should be about as it was last, we figure that would mean a reduction in our gross revenue on live stock from $200,000 to $300,000 a year.

Q. Will you file that statement as an exhibit to your testimony?

A. Yes, sir, that is exhibit No. 9.

(The statement here produced by the witness, which is accompanied by a map, was marked "McCullough's Exhibit No. 9," and filed with the Court as a part of the testimony of said witness.)

1300 Mr. RANSOM:

Q. Do you file the map?

A. That ought to go with it, I think.

The COURT: How is that to be brought about, how would they force you to make those other reductions?

A. The fourth section of the Interstate Commerce law. We of course could not charge any more to the stations this side of Council Bluffs than the charge at Council Bluffs. The 23½ cent rate at present extends ¾ of the distance across Iowa. The Chicago & Great Western Road in putting in this reduction from Omaha goes through the Northern part of Iowa, through Mason City and Dubuque, and would reduce their rates all through the northern part of the state, and that would compel us to do the same thing. In Minnesota the reduction would be forced on us for the reason the roads running from Minnesota to Chicago would give a reduced rate to Chicago from their stations, and I take it would make the same reductions to St. Paul as is made over the other roads to Chicago.

Mr. BAXTER:

Q. State what the switching or terminal charge is paid by your Company on packing house products, fresh meats and live stock at Missouri River points?

A. I have that made in a statement, Statement No. 10. Live stock from points in Wyoming, the Nebraska Division of the Northwestern Road taken at South Omaha and reshipped on the
1301 Chicago & Northwestern road, our terminal charge at the Union Stock Yards is one dollar per car; fifty cents for unloading and fifty cents for re-loading; on shipments local from points in Nebraska to South Omaha Stock Yards we pay a dollar, fifty cents switching in and fifty cents for unloading. On fresh meat and packing house products in car loads from South Omaha over our road, we pay a terminal charge of $2. a car. That is Statement No. 10.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 10," and filed with the Court as a part of the testimony of said witness.)

1300c STATEMENT NO. 10.

South Omaha.

Live-stock from points on the Nebraska and Wyoming Division is taken to South Omaha Stock Yards at our local rate, and if reshipped to Chicago the billing is corrected to read through from original point of shipment to Chicago; the shipper getting the benefit of the through rate with no extra charge being made for the stop at the Stock Yards at South Omaha.

On this stock the expense to our Company at the Union Stock Yards is $1.00 per car; divided, 50 cents per car for unloading and 50 cents per car for reloading.

On shipments locally from points in Nebraska to South Omaha Stock Yards we pay $1.00; 50 cents switching in and 50 cents unloading.

Stock forwarded from South Omaha Stock Yards over our road, coming from points on the Union Pacific road, is forwarded to destination at through tariff from point of shipment on the Union Pacific road. The cost to our Company is 50 cents for reloading.

All other shipments of live-stock from the South Omaha Stock Yards over our road pays our full local rate to destination.

On fresh meats and packing house products in carloads shipped over our road terminal charge is $2.00 per car.

McCullough's Exhibit No. 10, Vol. 11, p. 1300.

Q. How many cars of packing house products and fresh meats were moved by your road from South Omaha and Sioux City during the year ending June 30, 1905?

A. That is Statement No. 11. (Producing a statement.) The number of cars of fresh meat and packing house products from South Omaha, Nebraska and Sioux City, Iowa, over the Chicago & Northwestern Railway from July 1st, 1904, to June 30th, 1905, inclusive, from Sioux City, 2535 cars and from South Omaha 3700; a total of 6235 cars.

Q. And will you file that statement as an exhibit?

A. I will, exhibit No. 11.

(The statement here produced by the witness was marked "McCullough's Exhibit No. 11," and filed with the Court as a part of the testimony of the said witness.)

1300*d* STATEMENT No. 11.

Number of Carloads of Fresh Meat and Packing House Products from South Omaha, Neb., and Sioux City, Iowa, July 1st, 1904, to June 30th, 1905, Inclusive.

Months.	Sioux City.	South Omaha.	Grand total.
July	51	222	273
August	103	281	384
September	87	254	341
October	108	292	400
November	106	276	382
December	163	335	498
January	377	354	731
February	376	292	668
March	449	334	783
April	301	260	561
May	250	443	693
June	164	357	521
Total	2535	3700	6235

McCullough's Exhibit No. 11, Vol. 11, p. 1301.

1302 Q. Should your road attempt to charge higher rates on packing house products and fresh meats from South Omaha to Chicago and points east than are charged by the Chicago Great Western Railway under its contract with the packers, what would be the effect upon your traffic in packing house products and fresh meats?

A. We would abandon it to the other roads whose rates are less than ours.

The COURT: Do you get your share of the traffic now?

A. Yes, sir, the rates being the same.

The COURT: Well, they have a contract—the Great Western has, haven't they?

A. Well, we duplicate their rates, we seem to get our share of the business. This statement shows we have.

Q. How many people do they have contracts with, does the Great Western have contracts with?

A. I am not advised.

Q. You don't know. If they have a contract with all of them for all the product, how can you get any of the traffic?

Mr. LYNDE: Mr. Stickney's statement was there was a contract for a certain amount, a certain percentage.

The COURT: From certain points.

Mr. LYNDE: He don't state how much that was.

A. By duplicating their tariffs we were able to get 3700
1303 cars from South Omaha on our road.

Q. Now, Mr. McCullough, if you should attempt to raise your packing house rates so as to make them as high as your live stock rates, I understand you would have to go out of the business as long as the contract between the Great Western and the packers continued?

A. Unless all the other railroads did the same thing.

The COURT: Including the Great Western?

A. Yes, sir.

Mr. BAXTER:

Q. I say, so long as that Great Western contract stands, if your company or all of the other companies go out of the packing house business how would it help anybody that is interested in the situation, would not the Great Western Railway continue to carry it under its contract?

A. I think so.

Q. So the packing house product would still be carried by the Great Western Railway at the rates they now use?

A. Yes, sir, at the present rates.

Q. And the only effect of it would be to dr[illegible] you and the other lines that operate between the Missouri River and Chicago out of the packing house business?

A. We would retire from the business and turn it over to the Great Western Road.

Q. Have you cause to be correctly compiled a statement showing

the distances to Chicago and Sioux City, Iowa, respectively,
1304 from certain stations on the Chicago & Northwestern Railway south and east of Sioux City, with the straight rates from said stations to Chicago on cattle and hogs and the combination of the live stock rates from said stations to Sioux City, Iowa, plus the packing house products and dressed beef rate of 20 cents from Sioux City to Chicago, Illinois. If so, please file said statement as Exhibit A to your testimony and state briefly what it shows.

An adjournment was here taken until the following day, September 28th, 1905, at 10 o'clock A. M.

1305 THURSDAY, *September* 28, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon HIRAM R. MCCULLOUGH, resumed the stand for further direct examination by Mr. Baxter:

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Sioux City, Iowa, respectively between stations on the Chicago & Northwestern Railway south-east of Sioux City, the straight rates from such stations to Chicago, Illinois, on cattle and hogs and the combination of the live stock rates from said stations to Sioux City, Iowa, plus the packing house product and dressed beef rate of 20 cents from Sioux City, Iowa, to Chicago? If so, please file said statement as Exhibit A to your testimony?

A. I have a statement compiled as requested. It shows the rate on live stock from stations 70 to 60 miles south of Sioux City, 37 to 75 miles east of Sioux City. The rates on live stock to Sioux City and the rates on packing house products and dressed beef from Sioux City to Chicago and the direct rate on live stock from those
1306 stations to Chicago, showing that the adjustment is in favor of Chicago.

(The said statement so produced by the witness is marked Exhibit A, and is attached hereto.)

1306c McCULLOUGH EXHIBIT "A."

From stations south and east of Sioux City.	Distance to—		Straight rates to Chicago.		Rate to Sioux City.		Combination of the live stock rates from said stations — Sioux City plus P. H. P. rate — 20 cents from Sioux City.	
	Chicago	Sioux City.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Sargeants Bluffs, Iowa.....	510	7	24.5	23.5	5.53	6.00	25.53	26.00
Onawa	480	37	23.5	23.5	7.89	8.00	27.89	28.00
Mondamin.. ..	484	57	23.5	23.5	9.21	9.33	29.21	29.33
Moville.....	494	27	23.5	23.5	7.11	7.33	27.11	27.33
Correctionville..	473	49	23.5	23.5	8.68	8.67	28.68	28.67
Battle Creek....	445	73	23.5	23.5	10.	10.16	30.	30.16

Q. Have you caused to be correctly compiled a statement showing the distance to Chicago and Sioux City respectively from certain stations on your road north and west of Sioux City, the straight rates from said stations to Chicago on cattle and hogs and the combination of the live stock rates from said stations to Sioux City plus the packing house product and dressed beef rate of 20 cents per hundred pounds from Sioux City to Chicago? If so, please file said statement as Exhibit B to your testimony and state briefly what it is.

A. I have such a statement. It shows the rates from stations north-west of Sioux City, distances 44 miles to 338 miles. It shows the rate on live stock to Sioux City and the rate on the product, Sioux City to Chicago and also the direct rates on live stock from stations to Chicago. The statement shows the adjustment in favor of Chicago.

(The said statement so produced by the witness is marked Exhibit B, and attached hereto.)

941

13066 McCULLOUGH EX. "B."

From stations north and west of Sioux City.	Distance to—		Straight rates to Chicago.		Rates to Sioux City.		Combination of the live-stock rates from said stations to Sioux City plus P. H. P. rate of 20c. from Sioux City.	
	Chicago.	Sioux City.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Orange City, Iowa.....	490	44	25	23.5	8.29	8.33	28.29	28.33
Alcester, So. Dak.	522	75	25	26	11	11.9	31.	31.9
Hooker "	547	101	27	30	14	15.5	34.	35.5
Wolsey "	659	225	35	40	21 5	24	41.5	44
Redfield "	664	252	37	42.5	23	26	43	46
Oakes..No. Dak.	759	348	39	42.5	27	32.6	47	52.6

Q. Have you caused to be correctly compiled a statement showing the distance, Chicago and South Omaha respectively from certain stations on the Chicago & Northwestern Railway east of
1307 South Omaha, Nebraska, showing the straight rates from said station to Chicago on cattle and hogs and the combination of the live stock rates from said stations to South Omaha, plus the packing house product and dressed beef rate of 20 cents per hundred pounds from South Omaha, to Chicago? If so, file said statement as Exhibit C, to your testimony and state briefly what it shows.

A. I have such a statement. It shows the rates on live stock from stations 27 to 160 miles east of South Omaha, to South Omaha; the rates on the product, south Omaha to Chicago and the direct rates on live stock from the stations to Chicago showing the combination in favor of Chicago.

(The said statement so produced by the witness is marked Exhibit C, and attached hereto.)

1307a McCULLOUGH EXHIBIT "C."

From stations east of So. Omaha, Neb.	Distance to—		Straight rates to Chicago.		Rates to So. Omaha.		Combination of the live-stock rates from said stations to So. Omaha plus P. H. P. rate of 20c. from So. Omaha.	
	Chicago.	So. Omaha.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Missouri Valley, Iowa	467	27	23.5	23.5	8.52	9.29	28.52	29.29
Dunlap	441	54	23.5	23.5	10.49	10.96	30.49	30.96
Vail	415	80	23.5	23.5	11.81	12.45	31.81	32.45
Glidden	389	106	23.5	23.5	13.13	13.25	33.13	33.25

Q. Have you caused to be correctly compiled a statement showing the distances to Chicago and South Omaha respectively from certain stations on the Chicago & Northwestern, west of South Omaha, the straight rates from said stations to Chicago on cattle and hogs, and the combination of the live stock rates from said stations to South Omaha, plus the packing house product and dressed beef rate of 20 cents per hundred weight from South Omaha, Nebraska to Chicago? If so, please file said statement as Exhibit D to your testimony and state briefly what it shows?

1307b McCULLOUGH EXHIBIT "D."

From stations west of So. Omaha.	Distance to—		Straight rate to Chicago.		Rates to So. Omaha.		Combination of the live-stock rates from said stations to So. Omaha plus P. H. P. rate of 20 cents from So. Omaha.	
	Chicago.	So. Omaha.	Cattle.	Hogs.	Cattle.	Hogs.	Cattle.	Hogs.
Blair, Neb.	480	25	23.5	23.5	8	10.5	28.1	30.5
Nickerson, "	513	47	30.5	30	9.5	12.5	29.5	32.5
Dodge, "	541	74	30.5	34.5	10.5	14.5	30.5	34.5
Plainview, "	617	151	31.	37.	14	18	34.	38
Long Pine, "	718	252	39.5	43	19	25.	39	45

A. I have such a statement. It shows the rates on live stock from stations west of South Omaha, 25 to 50 miles distance
1308 to South Omaha, shows the rates on the product from South Omaha, to Chicago. It shows the direct rate on live stock from those stations to Chicago. The adjustment is in favor of South Omaha.

Q. In favor of what?

A. South Omaha.

Q. State whether there are any stations on the Chicago & Northwestern other than those mentioned in your Exhibits A. B. C and D, inclusive, with reference to which the rate adjustment is in favor of Chicago against the packing points covered by your exhibits?

A. Yes, there are a large number of stations intermediate between the stations named in those statements to Sioux City and South Omaha. The adjustment of the rates in and out of South Omaha and Sioux City, as compared with the direct rate to Chicago will show similar conditions of comparisons as shown by those statements.

Mr. LYNDE:

Q. You spoke of the effect of the reduction of rates, if we are compelled to reduce our live stock rates to Missouri river points and intermediate points to the basis of the packing house and dressed beef rates and have you made a statement as to what will be the amounts of revenue that will be lost to the Northwestern Company in that case?

A. Yesterday, yes sir. From $200,000.00 to $300,000.00 a year.

1309 Q. In that statement, did you include any reduction in rates west of the Missouri river?

A. None whatever.

Q. What will be the effect of any such reduction on rates of the Missouri river? Will it compel a corresponding reduction in those rates?

A. I would expect that those rates would have to be reduced.

Q. Just explain why, please?

A. Well, the through rates on live stock from points in Nebraska to Chicago are on a certain basis as compared with the rates on live stock from those stations to South Omaha; and the rates from South Omaha to Chicago. If the rates from points in Nebraska to Chicago are to be reduced to South Omaha by the reduction of the tariff from South Omaha, I would expect without doubt that the through tariff from points in Nebraska to Chicago would have to be reduced.

Q. The effect of the reduction on the rate in any territory spreads beyond that particular territory, does it not?

A. It does, yes.

Q. And that would apply here as to these rates?

A. Yes, it is uncertain whether the reduction would be west of the river or not.

The COURT:

Q. The through rate now is lower than the local rate. Why would you have to reduce that?

1310 A. I expect the shippers of live stock in Nebraska who desire to ship through to Chicago would make a demand on the railroads (whether or not it would be conceded, I do not know) that their through rate to Chicago should bear the same relative relation to the rates into Omaha and out of Omaha that they did before the Omaha rate was reduced.

Mr. LYNDE:

Q. And from intermediate points between Omaha and Chicago.

The COURT: Why would they be entitled to have that?

A. In my statement yesterday in figuring what the reduction would be, and what I knew would have to be made by our company, I left out our lines west of the Missouri river for the reason that it is uncertain to my mind whether there will be any reduction made there or not.

Q. If they would be entitled to it, the only reason would be that it is a longer distance, and it is a little cheaper to carry the longer distance than it is the shorter one?

A. No, the pressure would be brought on the railroad on this basis; that if the rate on live stock from Iowa and Nebraska is 30 cents, the rate from Omaha to Chicago should be 35 cents which would make the direct rate five cents less than the rates on Omaha. I think the shippers in Nebraska would demand and ask that the direct rate to Chicago still be 5 cents less.

Whether that demand would be met or not, I do not know.

1311 If it should be made on the railroads I don't know whether it would be conceded or not.

Mr. LYNDE:

Q. What is the amount or number of cars of packing house product and dressed beef that the Northwestern Company gets out of Omaha? I have lost your memorandum.

A. The figures were shown in my statement exhibited yesterday. I have forgotten just the number of cars. It is a very small percentage of the business, much less than our company think we are entitled to.

Q. You don't want to be understood as saying that the Northwestern Company gets what you would consider its fair proportion of that business determined on the basis of the facilities that it furnishes to that business?

A. I tried not to say that yesterday.

Q. I understood you to say that you did. You were asked whether you got your share of the business yesterday, I understood you to say that you did. Is that your view or not?

A. It is not. My recollection is that I was asked whether we had any of the traffic and I furnished a statement of the number of cars that we received.

Q. The total number of cars moved out of Omaha, do you know what that total amount is, east bound?

A. I do not know. It is in the statement I filed yesterday.

1312 Q. I don't mean the total number handled by the Northwestern, but the total handled by all the railroads?

A. No, I do not.

Q. Where would that appear?

A. In my statements of yesterday.

The COURT: He testified to that yesterday.

Mr. LYNDE: I mean the total number of packing house cars and dressed beef product moving eastward over all the roads from Omaha.

The COURT: Is that in your statement?

The WITNESS: No sir, I have not got that in it.

Mr. COWAN: Mr. Mahoney has been requested to furnish that statement and he will do so as soon as he gets it up, showing the total amount of packing house product and dressed meat products moving eastward. He will give the gross amount of revenue, also.

Mr. LYNDE:

Q. Now, you have made a statement as to the amount paid by the Northwestern Company for damage claims, both on the live stock and the personal injury claims to those accompanying live stock and the amount paid for damages to packing house products and dressed beef. Are those claims handled in your department?

A. No, sir, our company has a bureau known as the Claim Bureau in charge of a general claim agent.

1313 Q. Who is that?

A. Mr. R. C. Richards. The figures submitted by me were furnished me by the claim agent.

The COURT:

Q. Who did you say it was?

A. Mr. R. C. Richards, the claim agent and the figures furnished by me yesterday were from statements made for me by Mr. Richards.

Mr. LYNDE:

Q. I want to ask you whether, you of your own knowledge—I withdraw that question. I want to ask you whether you as the head of the traffic department of the Chicago & Northwestern Railway Company have at any time since the issuance of the injunction, and I think that was sometime in March or April, 1902, I am not quite sure of the date, by the federal court as to the payment of rebates, you remember the injunction?

A. Yes sir.

Q. Whether you have ever authorized the payment of any rebates to any of those packers, at any time since that time?

A. Since the injunction referred to, the handling of Interstate traffic over our road has had my personal attention. It has been under my personal charge.

There has been no freight of any kind, Interstate freight, moved

over our road since that injunction at any rates different from the rates shown in our printed tariff, that is with the packers, as well as with any other shippers.

Q. Have you ever authorized the entertainment of any fictitious claim for damages on packing house product or dressed
1314 meat for the purpose of paying rebates?

A. I never have.

Q. I think you said you had made no settlements with the S. & S. You understood by that that that referred to the fact that certain officers of the S. & S. Company had pleaded guilty here recently in the Federal Court to a conspiracy to obtain rebates by presenting fictitious claims. Now, independently of S. & S., and I understand that means Swarzschild & Sulzberger Company, have you ever *has* head of the traffic department, in charge of that business of the Northwestern Railway Company, authorized the payment of any money to the packers of fictitious claims for damages, for the purpose of paying rebates?

A. Never have.

Q. Now would any one else connected with the Chicago & Northwestern Railw-y Company in its transportation business or its traffic business have authority to do that besides yourself?

A. They would not.

Mr. BAXTER:

Q. There is one question that I had a memorandum of but which I overlooked. Are any packing house products moved in carloads from any point between the Missouri river or St. Paul and Chicago on your road unless there be packing houses at such intermediate point?

A. I did not catch that.

1315 Q. Are there any packing house products moved on the line of your road from any of your intermediate stations between the Missouri river and Chicago, except from such points as have packing houses located at them?

A. No sir, there would be no traffic of that kind forwarded over our road except where these packing houses are constructed and are slaughtering cattle.

The COURT:

Q. Don't you carry packing house products and dressed meats to these different points?

A. The Judge's question was from.

The COURT: Don't you take carloads to some of these towns?

A. I understood the Judge's question to be in respect to our stations. We, of course, would receive packing house products and dressed meat in less than carload lots, possibly in carloads at stations on our road.

Mr. BAXTER:

Q. Are any of them shipped in car loads from any intermediate point on your road where there are not packing houses located.

A. No sir.

Mr. LYNDE:

Q. There is a movement of packing house product from Chicago to points in the north.

A. Yes sir.

1316 Mr. LYNDE: I don't know whether the Judge's question would include that or not.

Mr. BAXTER: No, I was only dealing with the intermediate stations.

Mr. LYNDE: That is up into the lumber camps?

A. That traffic moves largely from the stock yards at Chicago.

Mr. RANSOM:

Q. I understood you to say that if the 23½ cent rate on live stock from the Missouri river were reduced, there would be a necessity for reducing the rates into Sioux City and Council Bluffs, is that correct?

A. No sir.

Q. What was your statement in regard to that, I understood you to state that?

A. This morning?

Q. No, yesterday. If the 23½ cent rate were reduced it would work a dislocation of those rates, a displacement of the adjustment of the rates.

A. At the present time the rates on live stock in the district that I refer to in northwestern Iowa—we, of course, have a certain tariff on live stock from all of those stations to Sioux City. We have a tariff to South Omaha. We have a tariff from those particular stations to stations this side of those stations in Iowa, to Chicago.

1317 The statement I have filed this morning shows that the rates from these stations into South Omaha and into Sioux City would indicate that Chicago,—as compared with the direct tariff on live stock, it shows the adjustment is in favor of Chicago.

If those rates should be reduced for any reason, 3½ cents to Chicago, it would show in favor of Chicago 3½ cents better than it was before.

Q. That would be a discrimination against South Omaha and Sioux City?

A. It would be in favor of Chicago 3½ cents more than it is to-day.

Q. And to that extent a further discrimination against Missouri river points?

A. Those rates as they are today are a discrimination.

Q. Don't the railroad companies charge the same on packing house products from Chicago to the Pacific Ocean that they do from Missouri river points?

A. I could not answer that without looking it up.

Q. Well, what department of your road would we have to go to in order to ascertain that?

A. You would have to inquire from our Tariff Bureau.

Q. Could you ascertain that rate and state it?
A. Yes sir.
Q. If you will do that I will be much obliged.
A. Your question is how the rates on packing house products from Chicago to the Pacific coast——
1318 Q. No, no. Don't the railroad company charge the same rate for packing house product from Chicago to the Pacific coast as they charge from Missouri river points on the same product? Isn't the rate the same from Chicago to the ocean as it is from the Missouri river?
A. I can have that prepared for you.

Mr. BAXTER:

Q. Is there any commodity that moves from New York via Chicago to the Pacific ocean?
A. From New York?
Q. Yes.
A. I believe there is, yes sir.
Q. I wish you would take any commodity that actually moves from New York to the Pacific Ocean and if you can find any that moves to Asiatic points and give me the through rate from New York to the Pacific Ocean. New York to Yokohama if you can, with the division of the different lines of that rate?
A. Any traffic that is moved?
Q. Any commodity that moves.
A. In carloads?
Q. In carloads or otherwise, if you have got any carload traffic. I want to show the difference between the through rates and the divisions of the other rates. Your Honor will allow me to recall the witness. I am nearly at the end of my case and I don't want to stop now for it.

The COURT: Certainly.
Mr. BAXTER: Mr. Ransom said he wanted to introduce a
1319 witness at this point, didn't he?
Mr. RANSOM: I thought we would wait until Mr. Cowan got through with the cross-examination.

Cross-examination by Mr. COWAN:

Q. In making the statement on the Pacific coast traffic, include some principal things like nails, for example, from Pittsburg, and steel rails and things of that sort that are shipped very extensively from Pittsburg, such as locomotives and the like, railroad material.
A. It would assist me if I could be given a memorandum of the articles you would like to have.
Q. Well, take railroad supplies and nails.
A Yes.
Q. Mr. McCullough, do you believe as a traffic man from your experience, that in order to determine the proper relative rates between dressed meat and packing house product, that there should be deducted from the rate from the point from which the packing house buys its supply, the local rate into such market, like the

Missouri river, in order to arrive at what ought to be charged on the packing house product? Do you think that ought to be the fact?

A. The way I have tried to handle that matter——

Q. I would be awfully pleased if that question is answered
1320 and then your explanation made afterwards. Do you believe, for example, that you ought to deduct what it cost to ship through Boone, Iowa to Omaha from the rate on live stock to Chicago from Boone, in order to give you the basis of rate on the product from Omaha to Chicago?

A. If there is a packing house at South Omaha which wishes to purchase hogs or cattle at Boone, Iowa, to-day, we do what we can to adjust our rates from Boone to South Omaha, and South Omaha to Chicago so as to put him as near as possible on an equality with the packer at Chicago who would ship those cattle and hogs direct.

Q. The equality for what, to do what? The equality where, in what market?

A. South Omaha *vs.* Chicago.

Q. Now, suppose that in points equally distant between the Missouri river and Chicago there is a consuming market for the product of live stock, do you not believe that Chicago is equally entitled to participate in selling on that consuming market, to Omaha?

A. If we had an application from Chicago——

Q. How is that?

A. If we had an application from a packer at Chicago to try and do that, we would investigate it carefully. If we thought it was something that he ought to have we would try to regulate our rates so as to make it fair for him.

Q. Is it not a fact that Chicago does not ship westward
1321 packing house products and dressed meats in any considerable quantity?

A. No sir, I think that trade is all held by packing houses west of the Mississippi river.

Q. It could not possibly be otherwise on the present adjustment of rates, could it?

A. That is correct.

Q. Do you say that the packing houses ought to be entitled to ship the dressed carcasses from the Missouri river to Chicago cheaper than the live stock men can ship the live animal?

A. I did not.

Q. Do you contend that the packer on the Missouri river ought to have the right to ship the dressed carcasses to Chicago via Boone, cheaper than the live stock man can ship from Boone, the live animals to Chicago?

A. I did not so state.

Q. Is it not a fact that if a packer can ship the dressed carcass from the Missouri river cheaper than I, a feeder at Missouri river, can ship the live animal, that that gives to the packer an advantage to that extent over me, if we both have to market our products in the east at Chicago or eastward?

A. I am not sufficiently well, posted in reference to the dressed beef business to answer that question.

Q. Does the fact that a large volume of traffic from the Missouri river moves eastward through the Mississippi river gateways—it is a fact that it moves that way for consumption, isn't it?

1322 A. That is the only outlet they have over our road.

Q. Commercially it seeks that direction, doesn't it?

A. Well, I could not say.

Q. Well, if you were adjusting those rates to give an equality between them, you must have taken that into consideration?

A. The only outlet for packing house products at Sioux City and South Omaha, as for its shipment over our road, is through the Mississippi river at Clinton, Iowa.

Q. Isn't it a fact that the great volume of the business seeks a market east of the Mississippi?

A. All that we have moved, it is. I don't know about the movement on the other roads.

Q. If I am feeding cattle, for example, in the vicinity of Omaha or Sioux City, and I desire to ship those cattle to Chicago, to market, I have got to pay 3½ cents more per hundred pounds than the packer would pay on the dressed carcasses.

Q. Doesn't that give him a commercial advantage to that extent over the shipper of the live stock?

A. Well, I have stated, but I am not sufficiently posted in the dressed meat business to know whether it is a fact or not.

Q. In your opinion as already expressed, as I understand

1323 it you do not claim that the packer should have a lower rate on the dressed product than the live stock man has on his live stock from the same point or from the intermediate points?

A. I have not so stated.

The COURT:

Q. What is your judgment about it?

A. My general observation and the information that has come to me from time to time, I think our present rates on dressed beef and packing house products, our present rates on live stock from Missouri river points and all the territory that is tributary to the Missouri river are lower than they should be.

As to what differences should be made in those rates so as to make them fair and reasonable to the railroad and to the shipper, in cents per hundred pounds, I am unable to say.

As to the relative difference in the rate between dressed beef and packing house products and live stock, I am thoroughly satisfied in my mind that there should be a difference, that the rate on live stock should be higher than the rate on dressed beef and packing house products. What that difference should be in dollars and cents, I could not state to-day.

Q. How does it happen that the practice has been otherwise in all the history of other railroads and in the history of your

1324 road up to this time?

A. In 15 or 18 years, our company of its own free will has never changed a rate on dressed beef or packing house product or live stock from the Missouri river points to Chicago. The rates

that we have had in force from time to time are the rates established at those points by other roads. The rates on dressed beef and packing house products from time to time seem to have been made by other roads for our company, with very little, if any regard to the rates on live stock or the rates on any other kind of freight.

Mr. COWAN:

Q. You ship dressed meat and packing house product in carloads to Deadwood, South Dakota and Omaha?

A. We have a railroad there, and I suppose we do, yes sir.

Q. Your rate on the dressed meat and packing house product is higher from Omaha to Deadwood on dressed meat and packing house product than it is on live stock to Belle Fourche over the same line, 25 or 30 miles further on?

A. I could not say.

Q. It is higher than the rate on live stock from Belle Fourche or from the vicinity of Deadwood—there being none loaded probably right in Deadwood—back to Omaha in the reverse direction, isn't it?

1325 A. That would be so, yes. In answering your first question, we have a railroad from South Omaha to Deadwood. I have not with me today the records of our rates on dressed beef products and packing house products and live stock.

If we should have a tariff from South Omaha to Deadwood on dressed beef and packing house products that is higher than our rate on cattle and hogs, it would be no discrimination, I think, or no basis as to fixing a comparison between the rates on cattle and hogs and the rates on dressed beef and packing house products, as I am satisfied there has never been a car of live stock shipped from South Omaha to Belle Fourche since the road was built. I don't think cattle move between those points west bound. If there was cattle moving between those points west bound, the probability is we might have another adjustment of the tariff on live stock.

Q. Isn't it a fact in the movement of range stock that comes from the Pan Handle of Texas to the Belle Fourche territory, that you take it either at South Omaha or at points very near by and carry it out to Belle Fourche and unload it by the hundreds and thousands of carloads?

A. I think the stock you refer to is all handled on through tariff from Texas to Belle Fourche. I am sure, though I cannot say positively, but I am sure that you will not find, since our road was built, that there has been any cattle or live stock moved at our local rate from Omaha to Belle Fourche or the Belle Fourche district.

Q. Well, you ship in the reverse direction?

1326 A. Yes, sir.

Q. Now, you don't ship live stock from Chicago to South Omaha?

A. I don't think we ever did, I never heard of such a movement.

Q. But if you were going to adjust the rate in the reverse direction, if the volume of traffic would justify it, you would make it on a different basis?

A. What we would do in reference to the transportation of live stock from Chicago to South Omaha, would be decided when the traffic was offered.

Q. Is there any basis on which you make rates? Have you any factors that you can tell the Court that you are governed by in the rates which you publish?

A. At every hearing that I have been present at since the Interstate Commerce Law took effect, either before the Interstate Commission or before the United States Court, that has usually been the first question that is asked a traffic official, and, to a great many traffic men I think it is a kind of a nightmare.

In making the rates on the 8,000 miles of railroad with which I am connected, there are three features, three conditions that fix about every rate we have in force on our road.

1327 First, is competition. One time our company thought that when a rate was made by a competing road that was less than our company thought we could do the business at, we thought for awhile that it was not necessary for us to meet those reduced rates. Take a country station, for instance, where there is a local station on our road, and a local station on a competitive road, the stations being six or eight miles distant.

We found that the farmer would, of course, drive his live stock and sell it at the station where he would get the most money for it. If the rate from our station was higher than the rates from the competing stations on the other road, he gets a better price, of course, on the other rate, and the live stock, instead of being driven to our station was driven to the station on the other road. We found that where the farmer sold his cattle he sold his grain, provided he could get as much money for his grain at the station where he sold his cattle as he could at other markets. We found that where he sold his cattle and grain he also sold anything else, the product of his farm. We also found that where he sold his cattle and his grain and his farm products, he bought his lumber, and he bought his coal, and he bought his dry goods and his groceries, provided they were sold as cheap at that station as they were at the station on the other road.

1328 Since that time it has been the policy of our company to adopt at our stations rates on freight of all kinds, particularly live stock or freight that can be moved readily from one part of the country to another, the rates adopted by our competitors, without regard to whether the rates were what we considered remunerative or whether they were otherwise.

That, I think, illustrates how the tariffs, 80 per cent. of the rates now in force on the 8,000 miles of road I am connected with, are adjusted.

Mr. LYNDE: You spoke of that as the first element.

A. The second element is commercial conditions. We have today, for instance, regularly established tariffs from one station on the Northwestern road to another station, 50 miles or 100 miles, or 250 miles apart. We may find today some traffic offered to our company or some traffic we may secure at one station on our road to move to

another station where our present tariff is prohibited and more than the traffic would stand and leave any profit to the owner or shipper. That brings around a conference between the shipper who has this freight to ship, and our company. As a rule, almost without exception, before our conference is finished, we agree with that shipper on what would be a fair rate on the traffic referred to; the tariff is published, the rate is put in force and that becomes what is
1329 known in railroad circles as "a commodity tariff."

The COURT: The point about that is that you fix him a tariff so that he can make something in his business?

A. Our point is this, that we have a tariff today that we think is a fair rate to everybody. A man comes along and satisfies us that he has a lot of freight to move and that he cannot move it on our present tariff. We have a conference with him and we find out what the freight is worth. Sometimes he tells us what it costs him and sometimes he tells us what profit he is satisfied with and what he can get at destination, whether it be 100 or 150 miles, and that results in a tariff, a special tariff covering that particular commodity from that particular station to another particular station on our road. That tariff, of course, is subject to the provisions of the Interstate Commerce law, and particularly the fourth section of that law. It is, of course, published and becomes what is known as a commodity tariff to that man and to all men.

Q. You publish that rate under the Interstate Commerce law?.

A. Yes, it is especially for that man but it becomes an open tariff for all.

Q. Unless you establis*j* that to every other place——

A. Well, it would, of course, apply to intermediate stations.

1330 Mr. SEVERANCE:

Q. On the long and the short haul?

A. Yes, sir.

The COURT: Well, now, what is your third element?

A. I guess I have covered my third reason in the second.

Q. The first is competition and the second is the commodity tariff.

Mr. LYNDE: Let me suggest how about the cost of handling the business itself? Was that your third element?

A. How is that?

Q. The cost itself of the transportation service. You haven't referred to that and I wondered whether that was not your third element that you had in mind.

A. No, sir, competition settles our tariff and we meet the tariffs of other railroads now without figuring whether it is profitable or how profitable it is, and so forth.

The COURT:

Q. Suppose there is not any competition and there is not any commodity tariff, how do you get at what you ought to fix it at?

A. Well, we would have a tariff there today. If the shipper had the commodity to move and the tariff we had in force is, in his

opinion, too high, that results in the ship-er coming to the railroad.

Q. That results in your commodity tariff?

A. Yes, sir, that results in the commodity tariff.. There
1331 is a third feature which I think the best name for is the "Experimental tariff." Our company would construct and open for business, for instance, on the first day of next month 150 miles of new railroad. That may be up in the Lake Superior country or it may be our in Wyoming.

When we are notified that that 150 miles of road are finished, we open for business on a certain day. We, of course, take the necessary steps to prepare tariffs for the transportation of freight between all stations on that 150 miles of road of every station on our road.

In compiling these tariffs we would take into consideration the rates at competitive stations on our road or competitive stations on other roads, if there were any, and we would put in force a tariff taking effect the day the stations were open for business, that we would think was fair and was satisfactory to all parties.

That road would be opened for business and perhaps in a short time afterwards, some one would go into the manufacturing business located on that road, manufacturing lumber for instance, or any other manufactured article, and looking at the tariffs, we would find that his tariff on wagons, for instance, if he was manufacturing those, to Omaha or some other point on our road, were too high, and were prohibited. That would result in a conference between that
shipper and our railroad and would result in an agreement
1332 between us as to what would be a fair rate, and the tariff would be issued accordingly. In that case we would find our experimental tariff on wagons was not correct. From time to time the probability is that we would have other freight offered going to those stations and coming from those stations, on which our tariff, experimental tariff, was out of line, was too high.

That would continue perhaps for a year and perhaps longer and finally our experimental tariff would be a thing of the past and we would have a regular standard tariff there which we would consider fair to all parties, the shipper as well as the railroad.

Q. Wouldn't you fix what it cost you to carry the stuff in those figures in your experimental tariff.

A. We would think that over, yes, sir.

Q. You would not want to lose money on it, on the business?

A. If we had a shipper that would come to us tomorrow with a lot of traffic to move to a station on our road, if he thought the present rate was too high, if we thought we could move it at a reduced rate, we would give him that reduced rate if we thought it was remunerative to our company.

If we were satisfied it was otherwise, we would decline the rate and decline to print the tariff.

Those three features, I think, have fixed the present tariffs that
are in effect on all the roads and at all the stations on the line
1333 of our road. I think I am justified in saying that they are reasonable for the reason that today, last month or last year or five years from now, or five years past, with the exception of an

occasional complaint which is a minor one, usually, we are without a single complaint from any single shipper. There are thousands of shippers who are shipping this freight over our road and that is particularly the case with reference to our tariffs on live stock, which are in force today at every station on our road.

If the live stock tariff on our road for the remaining three months of this year continues as it has in the past nine months, we will have moved over our road about 100,000 cars of live stock. If the live stock continues to follow that channel for the next few months than it has in the past nine months, of those 100,000 cars of live stock, 70,000 cars, or 70 per cent. will be transported to the Union Stock Yards at Chicago, leaving 30 per cent. to be moved to St. Paul, Sioux City, South Omaha, Marshalltown, Des Moines and Cedar Rapids, to the packing houses at those points and we are without a single complaint today. There are thousands of people who are shipping that live stock over our road on these rates that our company is charging without a complaint on a single car.

Mr. LYNDE:

1334 Q. In that period of time that you refer to, has this country that has been served by your road, either in this territory or elsewhere, progressed and developed, or what has been its progress?

A. You mean the live stock territory?

Q. Yes.

A. In my opinion the live stock industry on the 8,000 miles of railroad operated by the Chicago & Northwestern Railroad is as prosperous, and perhaps more prosperous, than any other line of business on our road. That is a general statement. I am not in the live stock business, but the business is increasing and the shipments are increasing, and from my talks with the shippers, which are very frequent, they seem to be pretty happy and contented.

Q. The country itself has developed, hasn't it, that whole country?

A. Yes, sir.

Mr. COWAN:

Q. Mr. McCullough, is it not true that your rates on practically all of the class goods and commodities are not made for the purpose, and do not, in fact, yield any uniform per cent. of profit or of gross revenue proportionate to the distance carried?

A. I don't think I can answer any question in reference to any rate in force on the lines of our road that is not covered in the general statement here as to how the rates were established and how they got there.

1335 Q. Now, is it not true that when each traffic man of each one of the roads is asked to state the basis of fixing the rates, he claims that competition with other roads is a very material factor in fixing those rates?

A. I guess I did not catch that.

(The pending question was then read.)

Mr. DAWES: I object to that.

Mr. LYNDE: The witness has made it one of his very first and leading reasons.

The COURT: Well, this is a little different. He asks him if they don't claim that. I guess he may answer.

A. Yes, generally one traffic fellow says it is the other fellow.

Mr. COWAN:

Q. The cost of transporting a particular traffic is always or practically always lessened, as a general rule, by the large volume of that traffic moving over the same line of railroad in regularity, is it not?

A. Sometimes, not always.

Q. Is it not true that when you are furnished with a hundred thousand carloads of live stock to handle on your road, and 70,000 cars of that comes to Chicago over these lines in question largely, that you would be enabled to give a very much lower rate to that

1336 large volume of traffic than you would to the volume of traffic that moves in comparatively few cars in the same or opposite direction?

A. From any station on the Chicago & Northwesten Railroad from which we would move a train load of cattle, we would also move a train load of grain.

I think the amount of grain moved over our road in tons is equal, and I believe would exceed the number of tons of live stock that we move. So that the grain is one commodity that we move by train load to any point where we would move live stock in train loads, and the gross freight charges we would receive on a car of grain would be several times the gross freight charges we would receive on a car of cattle of live stock.

Q. You are mistaken about its being several times, aren't you?

A. Yes; we receive on a car of live stock from the Missouri River to Chicago $45. We receive on a car of corn $80.

The COURT:

Q. Corn is the raw material?

A. Corn and oats.

Q. That is the raw material as compared with the live stock?

A. First, is the tonnage of live stock, and next, I say, the tonnage we have that moves in train loads similar to live stock, is grain.

Q. Is the rate higher on grain than it is on live stock?

A. Not in cents per hundred pounds. The average earn-

1337 ings on live stock from the Missouri River to Chicago on our road was $45 per car, that is, taking hogs and cattle and sheep. The rate on corn and oats is 15 cents. Those cars are loaded from 40,000 to 60,000 pounds. A load of 50,000 pounds would be $45 on live stock, and $75 for a car of grain. So my point is from any station on our road where we move live stock in train loads we would also move grain in train loads, the amount of tonnage of grain moved over our road will be as great if not greater than the amount of tons of live stock moved. Therefore, there is one commodity.

Also, we would move over our road, to and from any station where we move live stock in train loads, other train loads of freight,

not all loaded with one commodity, but mixed cars. In those mixed trains of dead freight, our tonnage would be per train largely in excess of the tonnage on live stock, and the gross earnings between Chicago and the Missouri River on a train load of dead freight of 25 cars of agricultural implements, and lumber and iron or coal, would be many times in excess of the live stock.

Q. How many cars of corn would you carry on a train?

A. About 25 cars.

Q. And how many of cattle?

A. I think the average train of cattle is about 25.

Q. You carry a great deal more weight in the grain train?

A. Oh, yes.

1338 Q. Do you go slower?

A. Yes, it is moved at our convenience.

Mr. COWAN:

Q. Your rate on grain is very much less per hundred pounds than your rate on cattle?

A. From what territory?

Q. Well, from this territory?

A. The difference between 15 cents and 23½ cents.

Q. You claim that the difference is made up by the fact that your loading in the grain car is an amount sufficient to make your receipts per car more on the grain than it is in the case of the live stock?

A. I understood your question to be that because our tonnage on live stock was so much in excess of the tonnage we had on any other commodity moving over our road, that therefore the rate on live stock on account of the large tonnage moved, should be less.

Q. Yes, I think your tonnage on live stock is very much greater than it is on grain.

A. That was your question, as I understood it.

Q. Yes. Now, the first question I asked you was whether you could not handle the live stock, when it comes in such large quantities, on a lower basis than you could on commodities which did not furnish that large volume of traffic, like agricultural imple-

1339 ments. You would not compare 100,000 cars of live stock and the rates that had to be made on that, to 5,000 cars of agricultural implements, would you? You would not base the rate on one to compare it with the other?

A. Twenty-five cars of cattle from the Missouri River to Chicago, —the gross freight charges collected would be,—that would be 22,000 pounds at 25 cents a hundred. That is between $45 and $50 per car.

Our operating department advise me that competition compels them to haul that train of live stock from the Missouri River to Chicago, in a certain number of hours. We have another train on a side track at Council Bluffs and Omaha loaded with 25 cars of grain. Those cars are probably loaded 50,000 pounds to the car. That would be, on 25 cars, $75 a car.

The Operating department advises me that to move that train of live stock with the train of grain, it could be moved in one train.

Mr. SEVERANCE: I would like to hear the last sentence of that answer read.

Mr. COWAN: I am cross-examining the witness.

Mr. SEVERANCE: I would ask, as a great favor, that Mr. Cowan would permit me to have that portion of the answer read.

(The answer was then read.)

1340 The WITNESS: Our Operating Department advises me that 25 cars of live stock, and the 25 cars of grain could be moved from the Missouri River to Chicago in a solid train with the same locomotive and the same train crew.

Mr. COWAN:

Q. Unless you can simply answer the questions that I ask you, I cannot proceed with the cross-examination. You make a great long statement in reply to each question as it is. I say this with all courtesy.

The WITNESS: Give me the question once more.

Mr. COWAN: I was not asking a question then.

The COURT: The witness will answer the question, of course.

Mr. COWAN: It will be impossible for me to proceed, otherwise.

Mr. LYNDE: You said that once, Mr. Cowan.

Mr. COWAN: I will be unable to proceed with the cross-examination.

Mr. SEVERANCE: Don't be so dissatisfied with his answers.

The COURT: That will be all of that. Go ahead and ask questions. Make your objections to questions and I will pass on them.

Mr. COWAN:

Q. It is a fact that your live stock traffic moves with more regularity per month than any other large volume of traffic mov-
1341 ing from that country to Chicago?

A. East bound?

Q. Yes.

A. No, I think the movement of grain is about in line with the live stock. When the grain movement is heavy I think the live stock movement is heavy; when the grain is light the live stock is light.

Q. Isn't it a fact that a large part of the grain moving from there by your road is moved on a proportional to the Mississippi River and the export rate from there?

A. I think we have a very large traffic, yes, sir.

Q. Isn't it a fact that in such cases, the rate, or rather the revenue received out of that division, would be very much less in proportion to the distance hauled than the local rate from such station to Chicago?

A. The highest rate that we can get on grain—Will you allow me to answer it in my own way?

Q. Yes, as briefly as you can.

A. I can say yes or no, if you prefer it.

Q. I don't mean to confine you to that.

A. The highest rate we can get on grain from Council Bluffs and

Omaha to the Atlantic Seaboard, is, of course, the local rate to St. Louis and the local rate from St. Louis to the Seaboard. Those two rates make a less rate from Council Bluffs to the Seaboard
1342 than our tariff from the Missouri River to Chicago and the current tariff from Chicago to the Seaboard.

Therefore, to equalize it and to enable us to make the same rates on export grain, all grain, but export grain especially, from the Missouri River points to the Seaboard, we have an arrangement with the lines east of Chicago whereby we bill that corn to the Mississippi River at Clinton, Iowa, on our road, at a rate in force to St. Louis, and we have a general tariff from Clinton, Iowa, to New York in connection with lines east of Chicago, making the same rate as made from St. Louis to New York.

That rate from the Mississippi River to New York, 140 miles over our road to Chicago, and a thousand miles from here to the Seaboard, is divided on agreed percentages arrived at mutually between our road and the lines east of Chicago.

Sometimes the rate that we make to the Mississippi River in our proportion of the tariff from the Mississippi River to New York is less than our local rate to Chicago and sometimes it is more.

The COURT: I guess that answers it.

The WITNESS: As a rule it is a fraction less.

Mr. COWAN:

Q. There is a proportional rate which applies on grain moving from the Missouri River through the Mississippi river gate-
1343 way of 9 cents per hundred pounds, isn't there?

A. I have forgotten the present tariff.

Q. And two cents less on corn. Do you know what the average revenue received by your road is for all the tons of freight it hauls per ton, per mile?

A. No, sir, I will have to confine my testimony here today to rates in force in the movement of traffic over our road; the movement of that traffic on the rates and tariffs provided; my judgment as to whether or not the rates are reasonable or unreasonable. I am not prepared today to go into the part of the operation of our road that is led up to by your question.

Q. The printed annual report shows whatever that is.

A. You will find all that in the printed annual report and I have no reason to think it is not correct.

Q. Isn't it a fact that if you compare particular commodities where you take a tonnage that is light on one commodity, and a tonnage that is very heavy on another, that you always find the rate established on the commodity furnishing the large tonnage, less than it is on the commodity furnishing the smaller amount of tonnage, assuming that they are at all similar in the character of the commodity carried?

A. I have told you in answer to the previous question how, in my opinion, every rate we have on our roads is established.

1344 Q. Do you run through any town that has a packing house in it between the Missouri River and the Mississippi?
A. Marshalltown and Cedar Rapids.
Q. Do you believe that——
Mr. SEVERANCE: Do you go to Des Moines?
A. Not on the direct line. We do business on our road, on our branch road there. His question was on the direct line.

Mr. COWAN:

Q. Do you believe that the live stock shipper ought to have to pay more on his live cattle from Cedar Rapids to Chicago than the packing house would have to pay on the dressed meat if it killed them?
A. Would you allow me to tell you how the rates are established to Cedar Rapids?
The COURT: Please answer the question first.

Mr. COWAN:

Q. I just want to know, if you please, if you believe that the live stock shipper ought to have to pay a higher rate on cattle than the dressed product of the cattle?
A. Yes; for the reason that the rate on dressed beef and packing house product from Cedar Rapids has nothing whatever to do with the live stock from that station.
Q. Does the live stock from Cedar Rapids have anything to do with the dressed meat traffic?
1345 A. Very little.
Q. In the case of the product of hogs?
A. Very little.
Q. Does the one rest upon the other?
A. At Cedar Rapids?
Q. Yes. Does the rate on hogs depend on the rate on packing house product, or *vice versa?*
A. None whatever.
Q. At the other packing towns on your line of road, aren't the rates on the one dependent upon the rates on the other?
A. You mean packing house product *versus* live stock?
Q. Yes.
A. No.

Mr. SHAVER:

Q. I believe you stated it to be your opinion that the rates now in force, both on the packing house product and the live stock, are too low?
1346 A. My statement was that it is my belief that we have to-day a rate on packing house products and that we have to-day a rate on live stock that is too low.
Q. That both are too low. It not the rate—was not the rate in

force on products prior to the reduction yielding the carriers a profit, or an adequate compensation in excess of the cost of service, in your opinion.

A. I think even if the rates on dressed beef and packing house products were advanced over the present rate of 18½ cents to the old rate of 23½ cents, the rate would still be too low.

Q. You think then, the former rate on products was unreasonably low?

A. Yes sir.

Q. It is a fact then isn't it Mr. McCullough, that the rates on products, already in your opinion unreasonably low, *or* unremunerative?

Mr. SEVERANCE: He means that the 23½ cent rate was low and you made it lower.

A. Yes sir, I have already stated that in my opinion the rate of 23½ cents was too low.

Mr. COWAN:

Q. I am talking about the rates on products.

The COURT: Mr. Shaver, state another question.

(Question read by the reporter by request of Mr. Shaver.)

1347 Mr. SHAVER: The witness has testified that the rates in force before the reduction, were, in his opinion, too low.
The COURT: Yes.
Mr. SHAVER: They were then reduced.
The COURT: Yes.
Mr. SHAVER: So I ask that question.
The COURT: And you state "yes" (addressing the witness)?
The WITNESS: Yes, sir.

The COURT:

Q. The railroad companies are doing pretty well, and have been for the past four or five years?

A. Our company have made a very fortunate step I think, in the last six or eight years, by spending a very large amount of money—we have spent a million dollars a year, and though our rates are gradually going down hill, we can do the business cheaper than we did formerly. My observation is that the millions of dollars spent in the last six or eight years has resulted in our getting a good return for the money invested.

The COURT:

Q. Even at a lower rate?
A. Even at a lower rate.
Q. If those rates are too low and have been, where are you making

your money, what sort of products are you making your money upon, and have you been?

1348 A. Our annual report shows that for the year ending July 1, 1905, that we transported a certain number of tons of freight over our road and for the reason that fr m the thousands of shippers who are shipping that freight we have had no complaint, and everybody seems to be satisfied and happy, we think that while a particular rate on a particular commodity may be too low, may be not fair to the railroad, may be even less than cost to the railroad, that there are other commodities moving over our road which——

Q. That is what I am asking, what other commodities are there that pay enough freight?

A. Well, our tariffs on freight in our country are pretty near what they ought to be, except on live stock, packing house products, and in some territory, grain.

Q. That answers the question.

Mr. SHAVER:

Q. You stated Mr. McCullough, that the competition setles the charges; cost of service did not originate the reduction in the live stock producta rate then did it, extra cost of service, if any, in relation to live stock, did not originate the reduction in the product rate, did it, in your opinion?

A. I have already stated that for ten or fifteen years, to my knowledge our company have never charged a rate on live stock, or dressed beef or packing house product at the Missouri River

1349 points, the trouble with the rates at our Missouri River points, or South Omaha and Sioux City—the trouble in reference to adjusting rates out there and getting the rates what we think they ought to be, and which I believe most everybody conceded to be fair to the railroad, is that reduced rates and *disburance* in rates comes up at Kansas City and St. Joe. We have roads running from Kansas City to St. Joe and Omaha and Sioux City. They claim that the packing houses at those points, all of them, should have the same rates. We get a notice that on a certain day there is to be a change in the packing house product rate, or the dressed beef rate from Omaha and Sioux City. We ask "why." They say that is to be the rate from Kansas City and St. Joe on a certain day and it will be a discrimination against the packers at South Omaha and Sioux City unless we give them the same rates as Kansas City and St. Joe.

The COURT: Where does that notice come from?

A. That would usually be at a conference.

Q. With other railroads, you don't mean the Interstate Commerce Commission?

A. Oh, no, from other railroads.

Mr. SHAVER:

Q. Will you please answer this question: Did you reduce the

product rates because of any greater cost of handling the
1350 live stock?

A. We reduced the rates to meet the rates of other roads.

Q. Competition?

A. Competition.

Q. What competition was that in this case?

A. I just tried to explain it.

Q. Competition with the Chicago & Northwestern, is that it—Chicago Great Western?

A. Do you mean this particular rate now?

Q. Yes sir.

A. Yes sir.

The COURT: The Great Western caused that competition?

A. Yes sir. We were advised—the rates on cattle and hogs and dressed beef and packing house products from South Omaha to Chicago were 23 and a half cents per hundred pounds—on a certain day we were advised by the Chicago Great Western Railroad that they proposed to put in force a rate of 20 cents on dressed beef and packing house products.

Mr. SHAVER:

Q. Competition then, alone, originated the reduction in the rate on the products?

A. That is right.

Q. And that competition was the competition of the Chicago Great Western?

A. The Chicago Great Western.

1351 Further cross examination by Mr. COWAN:

Q. Mr. McCullough, were you with your company at the time that that contract was made, or about that time, say on August 4, 1902?

A. Yes sir, I have been with them thirty-four years.

Q. Did you ever see the letter of Mr. Stickney relating the circumstances and conditions which brought about the establishment of his contract?

A. I don't think I ever did, no sir.

Q. Speaking of the facts that led up to that, I want to read a section from his letter and ask you whether——

Mr. SEVERANCE: I object your Honor, unless the letter is first offered in evidence and we are given an opportunity to make such objections as we may desire to make to it.

The COURT: Let him read the letter.

Mr. COWAN: I just wanted to ask——

Mr. SEVERANCE: I object to the letter.

Mr. COWAN: I will put it in another form. I will ask if these facts I am about to state are true.

Mr. SEVERANCE: That doesn't make it any better in view of what has come before it.

The COURT: Let him put his question and you can object to it.

Mr. SEVERANCE: Very well.

1352 Mr COWAN:

Q. Is it not true that the railway companiees felt that the average rate had been too low, and the packers expressed a willingness to pay a rate 15 per cent. higher provided it could be made uniform and stable, is that true at the time, as leading up to the publishing of these rates in question?

A. I do not recollect any request or any application from any packer at South Omaha for a reduction of the 23½ cent rate.

Q. Did you have a conference together, the various railway and traffic men, previous to the time of publishing this reduced rate on packing house products and dressed meat?

A. I remember attending a conference with the Legal Departments of those roads, I do not know——

Q. Did you attend any meeting of the Traffic Officials of other railroads at the office of the Western Trunk Line Committee?

A. I could not say.

Q. Don't you recollect such an important matter as that, whether you did or not?

A. No. The probability is that if such a conference was held, our company would be represented, but I don't think I was there.

Q. Isn't it true that the actual amount of money received from packers previous to that time, I mean by that the net — on
1353 packing house products and dressed meat from the Missouri River was less than the published rates that you then put in effect, or which are in question now?

A. I could not say.

Q. How is that?

A. I could not say.

Q. Why couldn't you say, don't you know?

A. I don't recollect.

The COURT: He wants to know, I suppose whether you paid rebates at that time before this Great Western contract and before this change?

Mr. LYNDE: I wish to object to it, if that is the question.

The COURT: That is the question, isn't it.

Mr. COWAN: It is equivalent to the same thing.

Mr. LYNDE: I object to it then.

Mr. COWAN: I want to know if it is not a fact that when you published and have since maintained, if you have maintained, the present schedule of rates on packing house products and dressed meats, you in effect established an advance over what you were getting from the packers theretofore for the haul.

Mr. LYNDE: I wish to object to that question.

The COURT: The objection is overruled. Of course, the Court has

a right to know whether it advanced it in fact. The schedule rate does not amount to anything if it is not charged, I think
1354 it is important to the Court to know whether they advanced the rate or cut it down.

Mr. LYNDE: Is that the question, whether the rate was advanced or cut down?

The COURT: The published rates cut no figure if they do not receive pay according to their schedule. Now repeat the question and let him answer.

(Question read by the reporter, the question beginning, "I want to know if it is not a fact" etc.)

A. Previous to the date of the Great Western contract—previous to the date their reduced tariff was issued from South Omaha, there was more or less misunderstanding and demoralization in the rates on dressed beef and packing house product from South Omaha and over our road, without discrimination as between persons or localities, we did move some dressed beef and packing house product destined for export, and sent to foreign countries at rates different from the rates shown in our printed tariff. What those rates were, I, of course, cannot say.

The COURT: I think that answers it.

Mr. COWAN:

Q. Is it not true that the railway companies met in their Traffic Association to determine upon the rates which they would publish in their tariffs and thereafter collect?

Mr. LYNDE: That is objected to as not redirect examina-
1355 tion.

The COURT: How is that material, Mr. Cowan?

Mr. COWAN: It is material to show that instead of the rate being, if your Honor please, forced upon all the railroads by the Great Western contract, that it was an agreed rate that they put in as settling a previously disturbed condition of rates when they had all been hauling for less than the amount of the Great Western contract.

The COURT: Well, what difference would that make? The question here is: Is this a discrimination again- traffic or localities? The objection is sustained.

Mr. COWAN:

Q. With respect to the live stock rates in the 23½ cent territory, and from the Missouri River to Chicago, were the carriers transporting that previously at less than the published rate?

A. When for export, I think, yes.

Q. Well, to Chicago?

A. Yes.

Q. When it was simply shipped to Chicago?

A. I think not.

Q. Who was exporting?
A. Well, that is a general statement of mine, of course, it is so far back that I could not exactly recollect.
Q. The packers principally exported?
1356 A. My recollection is that during this demoralization in rates on dressed beef and packing house products, especially for export, that there was some misunderstanding about rates on cattle, and there were some cattle moved, I think, at rates different from the printed tariffs. When that was done, or to what extent, of course, I cannot tell.
Q. That was only from the Missouri River?
A. Only from the Missouri River.
Q. That never applied from intermediate territory?
A. I don't think it did, no sir.

Examination by Mr. LYNDE:

Q. That was all prior to the issuance of the injunction that has been referred to?
A. Yes sir, we are all talking of the time previous to that.
Q. Now, this Great Western contract is still in force, you understand?
A. I so understand it.
Q. The competition you refer to still exists, doesn't it?
A. The same thing.
Q. Can you advance the present rates on products and dressed beef from Missouri River points and participate in that business?
A. If we should advance our rates, and the Great Western
1357 should continue their tariff, and it remained unchanged, nothing would be accomplished except that we would drop the business and turn it over to the Great Western road.
Q. That is, you would not carry any of the business?
A. No.

WILLIAM A. GORMAN, called as a witness in behalf of the defendant-, having been first duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

Q. What is your full name?
A. William A. Gorman.
Q. With which one of these companies defendant are you connected, and in what capacity?
A. With the Chicago, Milwaukee & St. Paul Railroad as Chief Tariff Clerk.
Q. Have you caused to be correctly compiled a statement showing comparisons between the rates on cattle and hogs from points on the Chicago, Milwaukee & St. Paul Railway, intermediate between Chicago and St. Paul, and between Omaha and Chicago, to Chicago,

and rates on cattle and hogs charged by other railways for similar distances, from local stations into South Omaha, Kansas City, Sioux City and South St. Paul?

1358 A. I have.

Q. Please file that statement as "Exhibit No. 1" to your testimony.

(The statement identified by the witness was marked "Gorman's Exhibit No. 1" and filed with the Court as a part of his testimony.)

Exhibit, no. 1 W. A. Gorman 1358a vol 12. p. 1358

RATES FROM LOCAL STATIONS ON MAIN LINE C.M.& ST.P.R'Y., BETWEEN ST.PAUL, MINN., AND CHICAGO, ILL., TO CHICAGO, ILL., AND COMPARATIVE RATES ON OTHER LINES FOR SIMILAR OR LESS DISTANCES.

Distance to Chicago.	Name of Station.		Cattle	Hogs.	Comparative rates in cents per 100 lbs. From			Distance	To		Cattle	Hogs.
23.8	Deerfield,	Ill.	5.5	6.5	So.Bend,	(3)	Neb.	27.5	So.Omaha,	Neb.	7	9.5
					De Soto,	(1)	Kan.	24	Kansas City,	Mo.	6	8
					Elk Point,		S.D.	20.9	Sioux City,	Iowa.	7.11	7.33
					Castle Rock,		Minn.	26.1	So.St.Paul,	Minn.	7.5	7.5
49.6	Fox Lake,	Ill.	6	8	Ames,	(5)	Neb.	49	So.Omaha,	Neb.	9	12
					Lecompton,	(1)	Kan.	51	Kansas City,	Mo.	8	10.5
					Gayville,		S.D.	49.8	Sioux City,	Iowa.	11	13
					Plato,		Minn.	51.9	So.St.Paul,	Minn.	9.5	9.5
73.6	Walworth,	Wis.	8.3	11	Schuyler,	(5)	Neb.	71	So.Omaha,	Neb.	11	14.5
					Pauline,	(1)	Kan.	74	Kansas City,	Mo.	8.5	11
					Lesterville,		S.D.	77.6	Sioux City,	Iowa.	14	16
					Stewart,		Minn.	74.6	So.St.Paul,	Minn.	12.5	12.5
99	Janesville,	Wis.	10	12.5	Duncan,	(5)	Neb.	95	So.Omaha,	Neb.	13	17
					Peterton,	(1)	Kan.	98	Kansas City,	Mo.	10.5	13.5
					Avon,		S.D.	99.9	Sioux City,	Iowa.	16.5	18.5
					Olivia,		Minn.	99.6	So.St.Paul,	Minn.	14	14
125.2	Stoughton,	Wis.	11	13.5	Thummel,	(5)	Neb.	122	So.Omaha,	Neb.	14.5	18.5
					Emporia,	(1)	Kan.	128	Kansas City,	Mo.	11	14
					Ethan,		S.D.	126	Sioux City,	Iowa.	17	20.25
					Minnesota Falls,		Minn.	124.9	So.St.Paul,	Minn.	15	15
151.9	Windsor,	Wis.	12.5	16.5	Grand Island,	(5)	Neb.	149	So.Omaha,	Neb.	14.5	18.5
					Strong City,	(1)	Kan.	148	Kansas City,	Mo.	12	15.5
					Platte,		S.D.	149.8	Sioux City,	Iowa.	19	21.6
					Watson,		Minn.	146.6	So.St.Paul,	Minn.	16	16
177.3	Portage,	Wis.	12.5	17.5	Shelton,	(5)	Neb.	173	So.Omaha,	Neb.	15	20
					Florence,	(1)	Kan.	173	Kansas City,	Mo.	14	18
					White Lake,		S.D.	172.7	Sioux City,	Iowa.	20.5	23
					Correll,		Minn.	170.6	So.St.Paul,	Minn.	16.5	17

RATES FROM LOCAL STATIONS ON MAIN LINE C.M.& ST.P.R'Y., BETWEEN ST.PAUL, MINN., AND CHICAGO, ILL., TO CHICAGO, ILL., AND COMPARATIVE RATES ON OTHER LINES FOR SIMILAR OR LESS DISTANCES.

Distance to Chicago.	Name of station.	Cattle	Hogs.	Comparative rates in cents per 100 lbs. From		Distance	To	Cattle	Hogs
202.8	Lyndon, Wis.	15	20	Odessa, Newton, Chamberlain, Milbank,	(5) (1) Neb. Kan. S.D. "	201 201 204.6 197.6	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	15.5 14.5 22 17	20.5 19 25 17.5
224.2	Orange, Wis.	16	22	Lexington, Kent, Redfield, Wheaton,	(5) (1) Neb. Kan. S.D. Minn.	227 227 224.8 224.2	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	16.5 16.5 23 17	22 21.5 26 21.5
249.6	Lafayette, Wis.	17	22	Bassett, Bunker Hill, Duxbury, Bristol,	(2) (5) Neb. Kan. S.D. "	246.5 253 250.2 255.3	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	18.5 16.5 25 21.5	24.5 21.5 27 23
277.6	Medary, Wis.	18	22	Maxwell, Cabool, Bath, Groton,	(5) (4) Neb. Mo. S.D. "	273 279 273.9 275	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	19.5 18 25 23	25.5 22.5 28 26.5
300.3	Lamoille, Minn.	19	22	Hershey, Burnham, Winship, Newark,	(5) (4) Neb. Mo. S.D. "	300 298 297.7 303.7	So.Omaha, Neb. Kansas City, Mo. Sioux City, Iowa. So.St.Paul, Minn.	22 20 27 22	29 25 30.7 25

(1) A.T.& S.F.R'Y.
(2) C.& N.W.R'Y.
(3) C.R.I.& P.R'Y.
(4) ST.L.& S.F.R.R.
(5) U.P.R.R.

13585

RATES FROM LOCAL STATIONS ON MAIN LINE C.M.& ST.P.R'Y., BETWEEN MISSOURI RIVER AND CHICAGO. ILL., AND COMPARATIVE RATES ON OTHER LINES FOR SIMILAR OR LESS DISTANCES.

Distance to - Chicago.	Name of station.		Cattle	Hogs.	Comparative rates in cents per 100 lbs. From		Distance	To	Cattle	Hogs.
297	Eidsell,	Iowa.	22	21	Pawnee Rock,	(1) Kan.	299	Kansas City, Mo.	17.5	20.5
					Hershey,	(4) Neb.	300	So.Omaha, Neb.	22	20
					Winship,	S.D.	293	Sioux City, Iowa.	27	20.5
					Newark,	"	304	So.St.Paul, Minn.	22	25
330	Maxwell,	Iowa.	22	22.5	Wakeeney,	(4) Kan.	322	Kansas City, Mo.	18	22.5
					Benklemen	(2) Neb.	329	So.Omaha, Neb.	23	30
					Bowdle,	S.D.	323	Sioux City, Iowa.	26	30
					Harlem,	N.D.	321	So.St.Paul, Minn.	22	25
347	Nowall,	Iowa.	22	23.5	Spearville,	(1) Kan.	353	Kansas City, Mo.	24	28
					Big Spring,	(4) Neb.	357	So.Omaha, Neb.	24	31
					Zeeland,	N.D.	353	Sioux City, Iowa.	27	28
					Bowdle,	S.D.	351	So.St.Paul, Minn.	24	30
370	Jamaica,	Iowa.	23.5	23.5	Sears,	(1) Kan.	374	Kansas City, Mo.	24	28.5
					Julesburg,	(4) Colo.	368	So.Omaha, Neb.	25	30.
					Strasburg,	N.D.	373	Sioux City, Iowa.	27.5	30.
					Selby,	S.D.	371	So.St.Paul, Minn.	26.	32.
403	Churdan	Iowa.	23.5	23.5	Ingalls,	(1) Kan.	394	Kansas City, Mo.	24.5	30
					Sidney,	(4) Neb.	410	So.Omaha, Neb.	28	30
					Chadron,	(3) Neb.	402	Sioux City, Iowa.	28	30
					Evarts,	S.D.	391	So.St.Paul, Minn.	28	34
427	Manilla,	Iowa.	23.5	23.5	Wallace,	(4) Kan.	420	Kansas City, Mo.	25	30.5
					Potter,	(4) Neb.	429	So.Omaha, Neb.	28	30
					Whitney,	(3) "	414	Sioux City, Iowa.	28	27
					Oberon.	(5) N.D.	421	So.St.Paul, Minn.	24.5	31
453	Portsmouth,	Iowa.	23.5	23.5	Hartland,	(1) Kan.	448	Kansas City, Mo.	25.5	31
					Kimball,	(4) Neb.	447	So.Omaha, Neb.	29	33
					Harrison,	(3) "	456	Sioux City, Iowa.	28	29
					Leeds,	(5) N.D.	450	So.St.Paul, Minn.	24.5	32.5

1358d

RATES FROM LOCAL STATIONS ON MAIN LINE C.M.& ST.P.T'Y., BETWEEN MISSOURI RIVER AND CHICAGO, ILL., AND COMPARATIVE RATES ON OTHER LINES FOR SIMILAR OR LESS DISTANCES.

Distance to Chicago,	Name of Station.	Cattle	Hogs.	Comparative rates in cents per 100 lbs. From		Distance	To	Cattle	Hogs.
473	Underwood, Iowa.	23.5	23.5	Medway,	(1) Kan.	477	Kansas City, Mo.	25.5	31
				Dickson,	(2) Colo.	479	So.Omaha, Neb.	31	41.5
				Van Tassel,	(3) Wyo.	463	Sioux City, Iowa.	29	41
				New Salem,	(5) N.D.	477	So.St.Paul, Minn.	26.5	
503	Luton, Iowa.	24	23.5	Grenada,	(1) Colo.	501	Kansas City, Mo.	26.5	34.5
				Hardin,	(4) Colo.	503	So.Omaha, Neb.	33	42.5
				Koeline,	(3) Wyo.	505	Sioux City, Iowa.	33	45
				Glenullen,	(5) N.D.	506	So.St.Paul, Minn.	26.5	

(1) A.T.& S.F.R'Y.
(2) C.B.& Q.R'Y.
(3) C.& N.W.R'Y.
(4) C.P.R.R.
(5) Nor.Pac.R'Y.

Q. State generally what the statement "Exhibit 1" shows Mr. Gorman.

A. The statement shows the local rates on the main line of the C. M. & St. P. Railway between St. Paul and Chicago, and on the main line of the C. M. & St. P. Railway between Omaha and Chicago on cattle and hogs, to Chicago, for distances from 25 miles to 500 miles at intervals of 25 miles.

It also shows the rates for the same distances into South Omaha, Kansas City, Sioux City and South St. Paul.

There are 166 comparisons, and of those 166 comparisons, 153 of the rates into South Omaha, Kansas City, Sioux City and South St. Paul, are higher than the rates for the same distances into Chicago on cattle and hogs; 13 of the rates into South Omaha, Kansas City, Sioux City and South St. Paul are lower than into Chicago.

1359 Cross-examination by Mr. COWAN:

Q. Mr. Gorman, is it not a fact that the rates on your line of road on packing house products and dressed meat are higher than for shipments of live stock between the same points, except in in-shipments from the Missouri River and interior Iowa points, where packing is done, eastward?

A. Well, I am not prepared to answer that question.

H. R. MCCULLOUGH, recalled as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. LYNDE:

Q. What proportion Mr. McCullough of the entire traffic, freight traffic on the Northwestern road, is this live stock business?

A. I had those figures, but I have forgotten, it is already in evidence.

Q. Mr. Gardner stated about 3 per cent.

A. Yes sir, that is my recollection.

Mr. COWAN: The annual report will show.

Mr. LYNDE: I don't think it is divided between live stock and other traffic.

Mr. SEVERANCE: It is already in evidence.

The WITNESS: It is already in Mr. Gardner's papers.

1360 Mr. LYNDE: I think that is all.

Mr. SEVERANCE: I would like to ask one question.

Examination by Mr. SEVERANCE:

Q. Mr. McCullough, haven't you with you a statement showing the comparative rates into South Omaha and Sioux City on the one hand, and Chicago on the other from points in this 23½ cent zone in Western Iowa?

A. Yes sir, I have filed one here that gives the rates for three or four stations.

Q. Haven't you a detailed statement there?
A. Yes sir, I have.
Q. I would like to have you produce that and put it into your testimony.

(The witness here produced a document, which was marked "McCullough's Exhibit X" and filed with the Court as a part of his testimony.)

EXHIBITS NOT SUITABLE FOR MICRO-FILMING

McCullough Exhibit "X"

978
1360d

NUMBER OF CARS OF LIVE STOCK FROM THE FOLLOWING STATIONS IN IOWA.
FROM JULY 1st, 1904, TO JULY 1st. 1905.

FROM	To Omaha			To Sioux City			To Chicago.		
	Cattle	Hogs	Total	Cattle	Hogs	Total	Cattle	Hogs	Total
Mo Valley	18	48	66	1		1	21	15	36
Logan	28	129	157				24	50	74
Woodbine	44	48	92				103	27	130
Dunlap	1	21	52				119	36	155
Dow City	7	30	37				57	17	74
Arion	3	6	9				10	6	16
Dennison	19	61	80				64	54	118
Vale	2	38	40				236	74	310
West Side	8	46	54	2		2	315	58	373
Arcadia	10	49	59				45	43	88
Maple River	16	5	21				38	13	51
Carroll	20	9	29				81	13	94
Glidden	16	47	63				80	55	135
Ralston	21	18	39				18	13	31
Scranton	12	11	23				51	32	83
Jefferson	12	4	16				59	77	136
Grand Junction	3		3				93	86	179
Beaver	1		1				19	5	24
Ogden	22	4	26				58	34	92
Mongonia	1	3	4				5	1	6
Boone	32		32				27	5	32
Halbur	6	13	19				25	14	39
Manning	7	10	17				44	13	57
Gray	16	47	63				54	11	65
	325	677	1002	3		3	1646	752	2398

	To Omaha			To Sioux City			To Chicago		
FROM	Cattle	Hogs	Total	Cattle	Hogs	Total	Cattle	Hogs	Total
Ross	13	33	46	1		1	61	22	83
Audubon	12	28	37				70	75	145
Botna		19	19				69	6	75
Irwin	2	2	4	1		1	57	59	116
Kirkam		16	16				32	28	60
Harlan	8	17	25				59	10	69
Dayton							80	57	137
Hardourt							27	38	65
Gowrie							47	41	88
Farnhamville							49	56	105
Lohrville							29	54	83
Lake City		12	12				59	75	134
Auburn	14	26	40				31	50	81
Carnarvon		2	2				7	13	20
Wall Lake	1	8	9				74	73	147
Odebolt				2	23	25	136	214	350
Arthur					22	22	133	89	222
Id Grove				6	2	8	315	269	584
Battle Creek	5		5	5	84	89	395	156	551
Danbury		14	14	8	37	45	150	69	219
Mapleton	2	7	9	9	41	50	51	10	61
Castana				4	9	13	13	7	20
Turin		1	1	28	29	57	30	15	45
Onawa	17	6	23	13	48	61	1	1	2
	74	188	262	75	295	370	1975	1487	3452

FROM	To Omaha			To Sioux City			To Chicago		
	Cattle	Hogs	Total	Cattle	Hogs	Total	Cattle	Hogs	Total
Breda	3	30	35				25	93	118
Lake View		15	15		1	1	53	64	117
Sac City	3		3	1		1	61	43	104
Early	2		2	5		33	114	93	207
Schaller	2	1	3	3		53	93	103	196
Galva						19	169	143	312
Holstein				10		56	201	256	457
Cushing				7		83	118	75	193
Correctionville				3		50	19	26	45
Pierson				3		68	140	166	306
Kingsley				15		156	215	116	331
Moville				86		224	134	7	141
Lawton				56		128	20		20
Bronson	1		1	81		156	92	2	94
Sargents Bluff				22		41	21	1	22
Deloit		19	19	1		1	7	18	25
Boyer	4	9	13				32	19	51
Herring	1	22	23				49	23	72
Kiron		4	4				104	146	252
Schleswig	1	18	19			3	199	213	412
Ricketts	17	52	69				69	77	146
Berne	3	12	15	1	1	2	24	18	42
Ute		11	11				2	10	12
Soldier	8	12	20				61	62	123
	45	205	250	294	781	1075	2024	1774	3798

1360g

	To Omaha			To Sioux City			To Chicago		
	Cattle	Hogs	Total	Cattle	Hogs	Total	Cattle	Hogs	Total
FROM									
Moorehead	10	55	65		2	2	110	52	162
Fiegah	22	41	63	10		10	25	13	38
Orson	13	34	47				8	11	19
Mondamin	11	33	44				6	1	7
Californina Jct	2	11	13						
Modale	17	45	62				13	1	14
River Sioux	14	12	26				6		6
Blencoe	19	26	45	2	6	8		12	12
Whiting.	2		2	24	74	98	56	2	58
Sloan	3	6	9	48	29	77	79	43	122
Salix				29	38	67	9	1o	19
Sioux City	3		3				160	11	171
	116	263	329	113	149	262	472	156	628
Grand Total	560	1333	1893	485	1225	171o	6117	4169	1o286

Q. State generally what that statement shows, and then we will file the statement?

A. This statement shows the distance, the rate on cattle and hogs from all stations on the Chicago & Northwestern Railroad east of the Missouri River for 150 miles, to South Omaha, to Sioux City, and to Chicago—that shows the mileage and the rates.

Q. Shows the mileage to these various termini from those stations?

A. Yes sir. It also shows the movement of cattle and hogs
1361 from each one of these stations to South Omaha and to Sioux City, and to Chicago from July 1, 1904, to July 1, 1905. It shows in detail the number of cars shipped from each station to Sioux City to South Omaha and to Chicago. The recapitulation from these stations is as follows:

To Omaha, 560 cars of cattle, 1333 cars of hogs, total, 1893 cars. That is South Omaha.

To Sioux City, 485 cars of cattle, 1225 cars of hogs, a total of 1710 cars.

To Chicago: Cattle, 6117 cars, hogs, 4169 cars, total, 10,286 cars.

So that the total movement for 12 months figures, 1893 cars at South Omaha, 1710 cars to Sioux City and 10,286 cars to Chicago.

The stations mentioned in this statement are the stations on our road at which it is proposed to reduce the rates from 3½ cents on cattle to 5 cents on cattle.

Mr. LYNDE:

Q. That is in the 23½ cent zone?

A. In the 23½ cent zone, and also the 5 cent zone to Sioux City, to reduce live stock rates to Sioux City, or reduce the dressed beef and packing house products, there would be a reduction in
1362 that of 5 cents.

Mr. SEVERANCE:

Q. This statement shows the mileage into these places from each station separate and the rate?

A. Yes sir, and the movement for one year.

Q. I would like to have that statement identified, your Honor and filed as part of Mr. McCullough's testimony.

(This was done as heretofore shown.)

Mr. LYNDE:

Q. This statement you have filed here is correct?

A. Yes sir, it is made from our books.

Q. Under the rates as now adjusted into South Omaha, Sioux City and into Chicago, out of this 23½ cent zone, three times as many cattle went on those rates to Chicago as did to Omaha?

A. Yes sir.

Mr. COWAN:

Q. Why was that?

A. It is a very difficult thing to say. Why, you go to one station

on our road and find one man shipping to Sioux City, another to South Omaha, and another to Chicago.

Mr. LYNDE: From the same station?

A. From the same station. I do not know any reason that anybody can give for it, any more than when a man goes away from home, some man will go to Sioux City, another to Omaha and another to Chicago.

1363 Mr. RANSOM:

Q. Mr. McCullough, in your opinion, these rates are relatively properly adjusted, are they not?

A. The rates on live stock in that territory, both to Sioux City, South Omaha and Chicago, are low in themselves; the relative adjustment as between Chicago and South Omaha and Sioux City, I think is fair, and the best that we have been able to do with them.

Q. And in your estimation, they are properly adjusted?

A. As they are now.

The COURT:

Q. Why didn't you do that then before this contract was made with the Great Western?

A. Why did we do it?

Q. Why didn't you, if you think it is fair, why didn't you do it before the contract was made?

A. They are on the same basis now as they were before the contract was made.

Mr. RANSOM: We are talking about the live stock rate, the question was.

The COURT: No, he is talking about the relative rates on live stock and packing house products.

Mr. RANSOM: No.

The WITNESS: The contract of the Chicago Great Western Railroad has not made any change in our rates on live stock from any of these stations to Sioux City, to South Omaha, or to Chi-
1364 cago, they are just the same as they were before this contract was made.

Mr. DAWES: I think your Honor misapprehended the question, it related entirely to the relation of the rates between localities.

The COURT: They have been the same all of the time between the three localities relatively?

A. Yes sir.

Mr. COWAN:

Q. Those rates to the River are the rates of the Iowa Commission, are they not?

A. Local in the State.

Q. I am just asking you, are they the rates of the Iowa Commission to Sioux City?

A. Yes sir.

Q. And to Council Bluffs plus the bridge charge?

A. To Council Bluffs, Iowa, the rates are the Iowa rates, to South Omaha, it would be the Iowa rates plus the bridge rate.

Q. How much?

A. I think that is $4 a car.

Q. Is that a fair rate to charge?

A. I could not say.

Mr. RANSOM:

Q. Just one moment. Do you know anything about that bridge toll personally Mr. McCullough?

A. The bridge toll on live stock from points on our road in
1365 Iowa going to South Omaha is fixed by the Union Pacific Railroad, we know nothing about that except their printed tariff.

Q. Do you cross the Union Pacific bridge?

A. We take live stock to — these are tariffs on live stock—our tariffs on live stock to South Omaha reads, both by way of Council Bluffs and the Union Pacific——

Q. Do you use the Omaha bridge?

A. Our tariffs on live stock from points in Iowa to South Omaha read by way of the Union Pacific transfer and Union Pacific railroad, Union Pacific Transfer to South Omaha; they also read to South Omaha by way of Missouri Valley, California Junction, over the Blair bridge, and over our own railroad into South Omaha, the shipper can send his live stock either way.

Q. And it costs him the same?

A. Yes sir. How it is moving, I don't know.

Q. You do not know of any $4 arbitrary bridge toll there across the Union Pacific bridge, do you?

A. I suppose that is their bridge toll.

Q. Now, as a matter of fact, Mr. McCullough, don't you know that there is no railroad crossing the Union Pacific bridge that pays the arbitrary bridge toll *on* $4 a car, don't you know that is true?

A. The only information I have is in having this statement made up in my office. They tell me that the bridge toll charged by
1366 the Union Pacific Railroad on live stock to South Omaha over their railroad is $4 per car.

Q. Well is it $4 per car on everything else?

A. That I do not know. Their bridge toll you know is a regular published circular the same as a tariff.

Q. But they do not collect any such rate of toll from the Northwestern Road?

A. Well, they must I guess.

Q. You know that all those roads cross that bridge under leases, don't you? And it applies to all the freight and passenger trains that have use of the tracks?

A. I don't think that would apply on a shipment of hogs local from Iowa, destined to South Omaha. It might. I don't know.

Q. You don't know?

A. No, I don't know.

Mr. LYNDE:

Q. You can find that out, can you?
A. Yes sir.
Mr. LYNDE: Please do so.

Mr. COWAN:

Q. Does it apply on packing house products?
A. I could not say.

1367 Mr. BAXTER: May it please your Honor, we close our oral testimony at this point with the exception that at least one of our witnesses, in reading over his testimony, as taken by the stenographer, has detected some clerical errors as to figures, and I wish to reserve the right to call witnesses back to make any corrections in such matters.

The COURT: Certainly.

Mr. SEVERANCE: That permission will be granted to all defendants.

The COURT: Certainly.

Documentary Evidence Introduced.

Mr. BAXTER: I wish to put in evidence on behalf of the defendants, extracts from appendix "G" to the 16th Annual report of the Interstate Commerce Commission, entitled "A Forty Year Review of Changes in freight tariffs, prepared by the Auditor of the Commission, namely, page 102, table LXVII, freight rates charged for transportation of classified traffic and important commodities from Atchison, Kansas, St. Joseph, Missouri, Kansas City, Missouri and Leavenworth, Kansas, and Chicago, Illinois, from January 2, 1877 to April 1, 1902."

The COURT: Where is that found?

TABLE LXVII.—Freight Rates Charged for the Transportation of Classified Traffic and Important Commodities from Atchison, Kans., St. Joseph, Mo., Kansas City, Mo., and Leavenworth, Kans., to Chicago, Ill., from January 2, 1877, to April 1, 1902.

Date.	Classes and commodities.													Rates per car.		
	Rates in cents per 100 pounds.															
	1	2	3	4	5	6	7	8	9	10	Wheat.	Rye and barley.	Corn and oats.	Cattle.	Hogs.	Sheep.
1877—Jan. 2	75	60	45	30	....	....	....	....	....	....	30	22½	22½	$67.50	$67.50	$50.00
May 1	75	60	45	30	....	..	..	....	..	..	30	25	25	70.00	70.00	50.00
July 12	75	60	45	30	....	....	....	....	....	..	28	21	21	67.50	67.50	50.00
Aug. 20	75	60	45	30	....	....	....	....	....	..	30	25	25	67.50	67.50	50.00
Nov. 1	75	60	45	30	....	....	..	..	....	....	30	25	25	67.50	67.50	45.00
1878—Jan. 12	75	60	45	25	....	....	..	....	..	....	30	20	20	67.50	67.50	45.00
Jan. 14	75	60	45	25	....	....	..	....	....	....	25	20	20	67.50	67.50	45.00
July 25	75	60	45	25	..	....	..	....	....	....	25	20	20	67.50	57.50	45.00
Nov. 18	75	60	45	31	....	....		..	....	....	25	20	20	67.50	57.50	45.00
Nov. 27	75	60	45	31	....	....	....	..	..	....	25	20	20	67.50	57.50	45.00
1879—Feb. 1	75	60	45	31	....	....	....	....	....	....	25	20	20	67.50	57.50	45.00
Feb. 10	75	60	45	26	..	....	....	....	....	....	25	20	20	67.50	47.50	45.00
Mar. 1	75	60	45	25	..		..	....	....	..	28	23	23	67.50	47.50	45.00
Nov. 1	75	60	45	26½	....	....	..	....	..	....	26½	21½	21½	67.50	47.50	45.00
1880—Feb. 2	75	60	45	27	....		..	..	....	....	25½	20½	20½	67.50	47.50	45.00
Mar. 1	75	60	45	27	..	....	..	....	....	..	25½	20½	20½	67.50	47.50	45.00
Apr. 5 (new classification)	75	60	45	27	27	27	27	20½	25½	25½	25	20	20	67.50	47.50	45.00
Apr. 14	75	60	45	27	27	27	25½	20	25½	25½	18	14	14	67.50	47.50	45.00
Apr. 21	75	60	45	27	27	27	25½	20	25½	25½	15	12	12	67.50	47.50	45.00
Apr. 24	75	60	45	27	27	27	25½	20	25½	25½	27½	22½	22½	67.50	47.50	45.00
Sept. 29	75	60	45	27	27	27	25½	20	25½	25½						

Page 102, Appendix "G."

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1368 Mr. BAXTER: It is found in the annual report of the Interstate Commerce Commission, and is made evidence I understand by the Act of Congress.

The COURT: Yes, but where do you find it?

Mr. BAXTER: I find it in this pamphlet which is an appendix to the report — the correct description is "Appendix 'G' to the Sixteenth Annual Report of the Interstate Commerce Commission." The appendix is entitled "A forty year review of changes in freight tariffs, prepared by the Auditor of the Commission."

The COURT: Well, let it be admitted.

Mr. BAXTER: It is a hundred odd pages. I don't want to put in the record but certain pages.

The COURT: Indicate what you want to go in.

Mr. BAXTER: Page 102, table LXVII. Freight rates charged for the transportation of classified traffic and important commodities from Atchison, Kansas, St. Joseph, Missouri, Kansas City, Missouri, Leavenworth, Kansas, to Chicago, Illinois from January 2, 1877 to April 1, 1902.

Page 103, freight rates charged for the transportation of classified traffic and important commodities from Atchison, Kansas, St. Joseph, Missouri, Kansas City, Missouri and Leavenworth, Kansas to Chicago, Illinois, from January 2, 1877, to April 1, 1902, being table LXVII con-

TABLE LXVII.—Freight Rates Charged for the Transportation of Classified Traffic and Important Commodities from Atchison, Kans., St Joseph, Mo., Kansas City, Mo., and Leavenworth, Kans., to Chicago Ill., from January 2, 1877, to April 1, 1902—*Continued.*

Date.	Classes and commodities.															
	Rates in cents per 100 pounds.													Rates per car.		
	1	2	3	4	5	6	7	8	9	10	Wheat.	Rye and barley.	Corn and oats.	Cattle.	Hogs.	Sheep.
1880—Oct. 27	75	60	45	27	27	27	25½	20	25½	25½	25	20	20	67.50	47.50	45 00
Nov. 1	75	60	45	27	27	27	25½	20	25	25½	27½	22½	22½	67.50	47.50	45.00
Nov. 6	75	60	45	27	27	27	26½	20	25	25½	25	20	20	67.50	47.50	45.00
Nov. 22	75	60	45	27	27	27	26½	20	26½	25½	25½	20½	20½	67.50	47.50	45.00
1881—Jan. 1	75	60	45	27	27	27	26½	20½	25½	25½	25½	20½	20½	67.50	47.50	45.00
Mar. 8	75	60	45	27	27	27	26½	20½	27	25½	25½	20½	20½	67.50	47.50	45.00
Apr. 1	75	60	45	27	27	27	25½	20	26½	25	25	20	20	67.50	47.50	45 00
July 23	75	60	45	27	27	27	25	20	26	25	25	20	20	67.50	47.50	45.00
Nov. 7	75	60	45	27	27	27	25	20	26	25	25	20	20	60.00	47.50	45.00
1882—Jan. 2	75	60	45	27	27	27	25	20	26	25	25	20	20	60.00	45.00	45.00
Feb. 1	75	60	45	27	27	27	25	20	25	25	20	18	18	60.00	45.00	45.00
Mar. 13	75	60	45	27	27	27	25	19	25½	25	21	16½	16½	60.00	47.50	45.00
Apr. 1	75	60	45	27	27	27	25	20	25½	25	25	20	20	65.00	50.00	45.00
Aug. 1	75	60	45	27	27	27	25	20	25½	25	27½	22½	22½	65.00	50.00	45.00
Oct. 16	75	60	45	30	27	27	25	20	25½	25	25	20	20	65.00	50.00	45.00
Dec. 1	75	60	45	30	27	27	25½	20	26½	25½	25	20	20	65.00	50.00	45.00
1883—Jan. 1	75	60	45	30	27	27	25½	20	26½	25½	25	20	20	65.00	42.50	45.00

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TABLE LXVII—Freight Rates Charged for the Transportation of Classified Traffic, etc.—*Continued.*

Date.	Classes and commodities.															
	Rates in cents per 100 pounds.													Rates per car.		
	1	2	3	4	5	6	A	B	C	D	Wheat.	Rye and barley.	Corn and oats.	Cattle.	Hogs.	Sheep.
1883—May 5 (new classification)....	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	42.50	45.00
Nov. 12.	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	45.00	45.00
Dec. 17.	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	45.00	45.00
1884—Jan. 15.....	90	75	50	32	28	25½	37½	32	23	23	25	20	20	65.00	42.50	45.00
Mar. 15.....	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	42.50	45.00
June 2.	90	75	50	35	30	25	32½	29½	23	23	25	20	20	65.00	42.50	45.00
June 16..	90	75	50	35	30	25	32½	29½	23	23	25	20	20	65.00	42.50	40.00
1886—Aug. 23....	90	75	50	35	30	22½	32½	29½	23	23	25	20	20	65.00	42.50	40.00
1887—Jan. 1.	90	75	50	35	30	25	32½	29½	23	23	25	20	20	65.00	42.50	40.00
	1	2	3	4	5	A	B	C	D	E						
Apr. 1 (new classification)....	90	75	50	35	30	32½	29½	23	20	16	25	20	20	65.00	55.00	45.00
Aug. 1.....	90	75	50	35	30	32½	29½	23	20	16	22½	20	20	65.00	45.00	45.00
Dec. 20.	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	45.00	45.00
1888—Jan. 9.....	75	60	40	30	25	30	25	15	15	15	22½	20	20	60.00	45.00	45.00
Mar. 26.....	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	45.00	45.00
Oct. 1.	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	40.00	40.00
Oct. 25.....	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,27½	1,25	1,27½
1889—July 16.....	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,22	1,25	1,22
Dec. 21.	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,18	1,25	1,22
1890—Jan. 25.....	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,12½	1,25	1,22
Aug. 25.	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1,22	1,25	1,25
Oct. 1.	75	60	40	30	25	30	25	20	17½	16	20	20	17	1,22	1,25	1,25

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1891—Jan. 1	75	60	42	30	25	30	25	20	17½	16	20	20	17	[1].23½	[1].22	[1].25
Jan. 15	75	60	42	30	25	30	25	20	17½	16	23	20	[2]	[1].23½	[1].22	[1].25
1893—June 10	75	60	42	30	25	30	25	20	17½	16	24	20	20	[1].23½	[1].22	[1].25
1894—May 12	75	60	42	30	25	30	25	20	17½	16	24	20	20	[1].15	[1].12	[1].15
June 1	75	60	42	30	25	30	25	20	17½	16	24	20	20	[1].23½	[1].22	[1].25
July 1	80	65	45	32	27	32	27	22	18½	16	24	20	20	[1].23½	[1].22	[1].25
Dec. 1	80	65	45	32	27	32	27	22	18½	16	24	20	20	[1].23½	[1].23½	[1].25
1895—Oct. 22	80	65	45	32	27	32	27	22	18½	16	8	8	8	[1].23½	[1].23½	[1].25
Nov. 3	80	65	45	32	27	32	27	22	18½	16	24	20	20	[1].23½	[1].23½	[1].25
1896—July 13	80	65	45	32	27	32	27	22	18½	16	16	14	14	[1].23½	[1].23½	[1].25
July 15	80	65	45	32	27	32	27	22	18½	16	13	14	14	[1].23½	[1].23½	[1].25
July 21	80	65	45	32	27	32	27	22	18½	16	17	14	14	[1].23½	[1].23½	[1].25
July 26	80	65	45	32	27	32	27	22	18½	16	16	14	14	[1].23½	[1].23½	[1].25
July 28	80	65	45	32	27	32	27	22	18½	16	12	9	9	[1].23½	[1].23½	[1].25
Aug. 1	80	65	45	32	27	32	27	22	18½	16	17	15	15	[1].23½	[1].23½	[1].25
Oct. 15	80	65	45	32	27	32	27	22	18½	16	17	13	13	[1].23½	[1].23½	[1].25
Nov. 2	80	65	45	32	27	32	27	22	18½	16	22	17	17	[1].23½	[1].23½	[1].25
Dec. 22	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
1897—Apr. 12	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].15	[1].25
Apr. 20	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
1898—Apr. 12	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].15	[1].25
May 5	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
May 10	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].15	[1].25
May 18	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].10	[1].25
July 25	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
Sept. 27	80	65	45	32	27	32	27	22	18½	16	14	13	13	[1].23½	[1].23½	[1].25
Nov. 25	80	65	45	32	27	32	27	22	18½	16	14	13	13	[1].23½	[1].15	[1].25
1899—Jan. 2	80	65	45	32	27	32	27	22	18½	16	19	15	15	[1].23½	[1].23½	[1].25
July 1	80	65	45	32	27	32	27	22	18½	16	18	15	15	[1].23½	[1].23½	[1].25
1900—Jan. 1	80	65	45	32	27	32	27	22	18½	16	19	16	16	[1].23½	[1].23½	[1].25
Oct. 20	80	65	45	32	27	32	27	22	18½	16	17	16	16	[1].23½	[1].23½	[1].25
Dec. 10, to Apr. 1, 1902	80	65	45	32	27	32	27	22	18½	16	19	16	16	[1].23½	[1].23½	[1].25

[1] In cents per 100 pounds.

[2] Corn, 19 cents; oats, 20 cents.

NOTE.—For changes in the minimum carload weights governing the class rates shown above (from 1887) in carloads, see text, p. 18, and for those governing commodities, see Table IX.

Page 103, Appendix "G."

1369 tinued.

Page 104, table LXVIII, freight rates charged for transportation of important commodities from Kansas City, Missouri, to Chicago, Illinois, from May 25, 1869 to April 1, 1902.

Page 105, table LXIX, freight rates charged for the transportation of classified traffic and important commodities from Atchison, Kansas to Kansas City, Missouri, St. Joseph, Missouri and Leavenworth, Kansas to St. Joseph, Missouri, via. rail lines from January 2, 1877 to April 1, 1902.

Page 106, table LXX, freight rates charged for the transportation of grain and meat products from Kansas City, Missouri, to St. Louis, Missouri, from January 17, 1879 to April 1, 1902.

Page 18, table IV, "Changes in the minimum car load rates on live stock and dressed meat from April 1, 1887, to April 1, 1902, Western Classification."

The COURT: Are you through on the part of the defense?

Mr. BAXTER: Yes, sir.

The COURT: Call your witnesses.

Mr. SEVERANCE: Your Honor will recollect I reserved the right to put in evidence the annual report of the Chicago—of the St. Paul Union Stock Yards; I forgot to bring it over.

Page 104 Appendix D

993

1369a

LXVIII

Table [illegible].—Freight Rates Charged for the Transportation of Important Commodities from Kansas City, Mo., to Chicago, Ill., from May 25, 1869, to April 1, 1902.

Date.	Rates per car.	Rates in cents per 100 pounds.			Date.	Rates in cents per 100 pounds.			
	Live hogs.	Packinghouse products.	Wheat.	Other grain.		Live hogs.	Packinghouse products.	Wheat.	Other grain.
1869—May 25			44	34	1894—July 1	22	22	24	20
1871—July 1			40	35	Dec. 1	23½	23½	24	20
Nov. 1	$94.00		30	30	1895—June 18	23½	15	24	20
1874—Apr. 20	70.00		30	30	Aug. 1	23½	23½	24	20
1879—Jan. 17	57.50	31	25	20	Oct. 22	23½	23½	8	8
Feb. 1	57.50	31	25	20	Nov. 3	23½	23½	24	20
Mar. 1	47.50	25	25	20	1896—July 13	23½	23½	16	14
Oct. 16	47.50	26½	25	20	July 15	23½	23½	13	14
Nov. 10	47.50	26½	28	23	July 21	23½	23½	17	14
1880—Apr. 17	47.50	25½	25	20	July 26	23½	23½	16	14
Nov. 8	47.50	26½	25	20	July 28	23½	23½	12	9
1881—Apr. 1	47.50	25½	25	20	Aug. 1	23½	23½	17	15
July 23	47.50	25	25	20	Oct. 1	23½	15	17	15
1882—Feb. 1	45.00	25	20	18.2	Oct. 11	23½	23½	17	15
Mar. 13	47.50	25	21	16.1	Nov. 2	23½	23½	22	17
Apr. 1	50.00	25	25	20	Dec. 22	23½	23½	19	15
Dec. 1	50.00	27	25	20	1897—Apr. 8	23½	15	19	15
1883—Jan. 1	42.50	27	25	20	Apr. 12	15	13 / 15	19	15
May 15	42.50	25	25	20	Apr. 20	23½	23½	19	15
Dec. 17	45.00	25	25	20	1898—Apr. 12	15	23½	19	15
1884—Jan. 15	42.50	25	25	20	Apr. 19	15	13	19	15
1886—Aug. 23	42.50	22½	25	20	Apr. 20	15	13½	19	15
1887—Jan. 10	42.50	25	25	20	Apr. 21	15	13	19	15
Apr. 1	55.00	25	25	20	Apr. 30	15	10 / 12	19	15
Aug. 1	45.00	25	22½	20	May 5	23½	23½	19	15
Dec. 20	45.00	20	22½	20	May 10	15	15	19	15
1888—Feb. 8	45.00	13	22½	10	May 18	10	15	19	15
Feb. 9	35.00	12½	22½	10	July 25	23½	23½	19	15
Feb. 16	30.00	13	22½	10	Sept. 27	23½	23½	14	13
Feb. 27	30.00	11	22½	10	Nov. 25	15	15	14	13
Mar. 1	30.00	10	22½	10	1899—Jan. 2	23½	23½	19	15
Mar. 26	45.00	20	22½	20	July 1	23½	23½	18	15
June 29	40.00	20	22½	20	1900—Jan. 1	23½	23½	19	16
Oct. 15	37.50	20	22½	20	Oct. 20	23½	23½	17	16
1889—July 19	37.50	18	22½	20	Dec. 10, to Apr. 1, 1902	23½	23½	19	16
Nov. 1	33.00	18	22½	20					
1890—Apr. 22	33.00	12	22½	20					
Aug. 25	37.50	18	22½	20					
Oct. 1	37.50	18	20	[1]20					
1891—Jan. 1	33.00	22	20	[1]20					
Jan. 15	33.00	22	23	[2]20					
1893—June 10	41.80	22	24	20					
1894—May 12	22.80	22	24	20					

[1] Corn and oats, 17 cents.

[2] Corn, 19 cents.

Note.—For changes in the minimum carload weights governing the commodities shown above (from 1887), in carloads, see Table X.

Page 104, Appendix D

EXHIBITS NOT SUITABLE FOR MICRO-FILMING

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Table LXX.—Freight Rates Charged for the Transportation of Grain and Meat Products from Kansas City, Mo., to St. Louis, Mo., from January 17, 1879, to April 1, 1902.

Date.	Rates in cents per 100 pounds.		
	Packing-house products.	Wheat.	Other grain.
1879—Jan. 17	25	25	15
Feb. 1	25	25	15
Mar. 1	20	20	15
Sept. 15	20	20	15
Oct. 16	20	20	15
Oct. 22	20	20	15
Nov. 10	20	20	15
1880—Apr. 17	20	20	15
Apr. 21	20	20	15
Apr. 24	20	20	15
Nov. 8	20	20	15
1881—Apr. 1	20	20	15
July 23	20	20	15
Dec. 20	20	20	15
1882—Feb. 1	20	17	15
Feb. 6	20	17	15
Mar. 13	20	17	12½
Apr. 1	20	20	15
Nov. 27	20	20	15
Dec. 1	20	20	15
1883—Jan. 1	20	20	15
May 15	20	20	15
June 11	20	20	15
Dec. 17	20	20	15
1884—Jan. 15	20	20	15
1885—Jan. 1	20	20	15
1886—Jan. 1	20	20	15
Aug. 23	17½	20	15
Aug. 26	17½	20	15
1887—Jan. 1	17½	20	15
Jan. 10	20	20	15
Feb. 1	20	20	15
Feb. 15	20	20	15
Apr. 1	20	20	15
Aug. 1	20	17½	15
Dec. 20	15	17½	15
1888—Jan. 9	15	17½	15
Feb. 8	9	17½	5
Feb. 11	7½	17½	5
Feb. 16	6	17½	5
Feb. 27	6	17½	5
Mar. 1	6	17½	5
1888—Mar. 26	15	17½	15
May 11	15	17½	15
June 29	15	17½	15
Oct. 1	15	17½	15
Oct. 15	15	17½	15
1889—Apr. 1	15	17½	15
May 25	15	17½	15
July 19	13	17½	15
Nov 1	13	17½	15
1890—Mar. 3	13	17½	15
Apr. 23	7	17½	15
Aug. 25	13	17½	15
Oct. 1	13	15	[1]15
1891—Jan. 1	15	15	[1]15
Jan. 15	15	18	[2]15
1893—June 10	15	19	15
1894—Dec. 1	18½	19	15
1895—June 18	10	19	15
Aug. 1	18½	19	15
1896—July 20	18½	12	9
July 26	18½	11	9
July 30	18½	8	6
Aug. 1	18½	12	10
Aug. 6	18½	13	11
Aug. 17	18½	12	10
Sept. 30	8	12	10
Nov. 2	8	14	10
1897—Apr. 1	18½	14	10
Apr. 8	18½	10	10
1898—Jan. 1	18½	14	10
Apr. 8	8, 10	14	10
Apr. 21	18½	14	10
Apr. 23	7	14	10
May 5	18½	14	10
May 10	10	14	10
Sept. 27	10	9	8
1899—Jan. 2	18½	14	10
July 2	18½	13	10
1900—Jan. 1	18½	14	11
Mar. 6	18½	9	8
Apr. 10	18½	14	11
1902—Apr. 1	18½	14	11

[1] Corn and oats, 12 cents.

[2] Corn, 14 cents.

Note.—For changes in the minimum carload weights governing the commodities shown above (from 1887), in carloads, see Table XI.

Documentary Evidence for Defts. 1369d

Table IV.—Changes in the Minimum Carload Weights on Live Stock and Dressed Meats from April 1, 1887, to April 1, 1902.

[Applies to Table 48.]

WESTERN CLASSIFICATION.

Date of changes.	Horses and mules.		Sheep.				Hogs.				Cattle.				Dressed meats.
	When shipments are weighed.	When shipments are not weighed.	When shipments are weighed.		When shipments are not weighed.		When shipments are weighed.		When shipments are not weighed.		When shipments are weighed.		When shipments are not weighed.		
			Single deck.	Double deck.	Single deck.	Double deck.	Single deck.	Double deck.	Single deck.	Double deck.	Single deck.	Double deck.	Single deck.	Double deck.	
1887—Apr. 1.	20,000	20,000	14,000	18,000	16,000	20,000	16,000	22,000	18,000	28,000	20,000	.....	25,000	.....	20,000
1891—Feb. 2.	20,000	20,000	14,000	18,000	16,000	20,000	16,000	22,000	18,000	28,000	(1)	.....	25,000	.....	20,000
1899—July 1.	20,000	20,000	14,000	18,000	16,000	20,000	16,000	22,000	18,000	28,000	20,000	.....	25,000	.....	20,000

[1] 30 feet or under, 18,000 pounds; over 30 feet, 20,000 pounds.

Page 18, Appendix "G."

1370 Mr. RANSOM: I would like to have one witness sworn, only one sworn on behalf of the Union Stock Yards Company of Omaha, Limited.

The COURT: Let him be sworn.

Mr. LYNDE: Your Honor, I shall also want to call the general claim agent, Mr. Richards this afternoon.

The COURT: All right.

Mr. JEFFERY: Before the witness goes on with the examination, I would like to say that at the hearing of the Interstate Commerce Commission, Mr. Bird testified, he is now ill, he is the Vice-President of the Gould lines, the Missouri Pacific, which company I represent. He is now ill in California and is unable to be present and I want to ask Judge Cowan if he will agree to have it appear in the record that his testimony before the Commission may go in on account of the illness of the witness and his inability to appear here personally and testify.

The COURT: What testimony is that, the testimony taken by the Commission?

Mr. JEFFREY: Yes sir, the testimony that he gave in the hearing itself, before the Interstate Commerce Commission.

Mr. COWAN: He can offer the testimony without objections from me. I have already urged that testimony is admissible under
1371 the law, and your Honor so held but as to my making an admission about illness——

The COURT: Let the record show what you want.

Mr. JEFFREY: I want the record to show—I objected myself to the testimony because the other witnesses could be produced. I cannot produce this witness because he is ill.

The COURT: Then do you offer his testimony taken before the Commission?

Mr. JEFFREY: Yes, I offer the testimony given before the Commission.

The COURT: Very well.

Mr. SEVERANCE: We desire to object to that your Honor.

The COURT: You offer his testimony and I will pass on it later.

Mr. SEVERANCE: Your Honor, we do not object on the ground that there is not sufficient showing that Mr. Bird is without the jurisdiction and is sick, I am informed that that is true. So far as I am concerned, I am willing to stipulate to that, but I still object to the reading of the testimony.

The COURT: The objection is overruled. I will admit that testimony. When do you want to read it now?

Mr. JEFFREY: I do not care particularly to take up the
1372 time of the Court by reading this testimony. I understand you have it in your record, Mr. Cowan, to save me the trouble, I haven't got the testimony written up, but to save the trouble, why can't it go in on your record as part of my testimony?

Mr. COWAN: We had the understanding I believe, that as to the mere matter of furnishing a copy instead of the original document, that objection would not be urged, and therefore, while we would read from the record, we would furnish for the files in that case, a

copy of the testimony that we introduce. All you would have to do would simply be to have your stenographer copy the evidence. You can have the original for the purpose of copying.

Mr. SEVERANCE: Pardon me on this question, this is a very important question to us that has just been passed on and we would like to know whether your Honor admits this testimony now without further discussion of the question we raised before on the ground that Mr. Bird cannot be produced as a witness, because we desire to be further heard upon the proposition that the testimony cannot be read by Mr. Cowan where the witnesses can be obtained and brought in here for cross examination.

The COURT: Well, we will see about that when we get to it. This testimony is admitted now and you object to it and have whatever exception you want.

1373 Mr. SEVERANCE: We will reserve our objection as incompetent, irrelevant and immaterial.

The COURT: All right.

Mr. SEVERANCE: I do not object on the ground that they do not produce the records of the Commission showing the testimon- but I object on the ground that it is incompetent to read that testimony here.

The COURT: They prove he is sick.

Mr. SEVERANCE: I admit that, that they have proved that, I admit that he is sick and they are unable to get him.

The COURT: All right, let the testimony go in.

Mr. SEVERANCE: That objection applies perhaps specially in the second case. These two cases are consolidated.

The COURT: All right, have you got it the way you want it now?

Mr. LYNDE: For the purpose of the record I have no objection myself to admitting the fact that Mr. Bird is shown to be sick, and therefore, not in such condition that he can be produced as a witness. I have no objection on that ground but I do contend——

The COURT: You can save your points on the other proposition when we get to it, in rebuttal.

Mr LYNDE: I do not want to waive that objection.

Mr. JEFFREY: I objected on the other ground. I desire to have the record show that I introduced it under the common law rule of evidence and not under the Act of Congress.

1374 WILLIAM J. C. KENYON, called as a witness on behalf of the Intervenors, having been first duly sworn, testified as follows:

Direct examination by Mr. RANSOM:

Q. State your full name?

A. William J. C. Kenyon.

Q. What is your business?

A. General Manager of the Omaha Stock yards and Railway Company.

Q. How long have you been general manager of that?

A. Eight years last past.

Q. Where is that yard located?
A. At South Omaha, Neb.
Q. Where is the South St. Joe stock yards located?
A. At South St. Joseph.
Q. Will you state the markets on the Missouri river of live stock in the order of their importance from Kansas City to St. Joseph?
A. Kansas City, South Omaha, South St. Joseph, Sioux City.
Q. Do you know,—have you prepared a statement showing the origin of live stock shipped into the Missouri River markets, and the Chicago markets and the St. Paul for certain, periods?
A. I have.
Q. What period does that cover?
A. For all the railroads, the years 1901 and 1902; for all the markets except Chicago for 1902, 1904 and seven months of 1905.

1375 Q. Does this statement embrace the total shipments to Chicago during that period?
A. It does.

Q. But does it show for the excepted years, does it fail to show the origin of the stock?
A. We were unable to secure that from the Chicago yards.
Q. Where is that information obtainable?
A. From original sources at the various yards.
Q. And where did you obtain the information from which you made this calculation and statement you have referred to?
A. From the general managers of the various yards.
Q. What territory does this statement that you have spoken of cover?
A. The entire United States.
Q. Please file with your testimony this statement marking it "Kenyon's Exhibit 1."

The document produced by the witness was marked Kenyon's Exhibit 1, and filed with the Court as a part of his testimony.

Q. I wish you would name now where these seven markets are that are covered by your statement?
A. St. Paul, Kansas City, St. Joseph, South Omaha, Sioux City, South St. Paul and Chicago.
Q. Does this statement show in detail the origin of all live stock at each of these markets during the period mentioned?
A. Yes sir, with the exception of Chicago as noted.

1376 Q. Now this statement shows that Chicago received in 1903 over 500,000 head of cattle more than she received the preceding year. I wish you would explain from this statement where this gain of 500,000 head came from?

A. On the last page of this Exhibit it shows that Chicago received in the year 1903 nearly 600,000 head of cattle and calves more than during 1902, whereas Kansas City shows a decrease of 142,000 head, Omaha a small increase, about 10 per cent. increase, St. Joseph 107,000 increase, Sioux City a decrease of 13,000, St. Louis increase only 27,000 and St. Paul decrease 4000 head. Relatively based on past performances Kansas City should have shared in the

prosperity enjoyed by Chicago, she received from Missouri 80,000 head increase and she lost 26,000 head from Kansas, 80,000 loss from Indian Territory; a slight increase of 20,000 head from Oklahoma, a loss of 45,000 head from Texas, and a loss of 50% in receipts from Iowa. The Omaha market during the same period shows an increase of 147,000 head from Nebraska, but large decreases from Colorado, Wyoming, Idaho and Montana, and a slight increase from Iowa, her net increase from all sources being but 10% as great as the total increase of Chicago. Western Missouri and Southwestern Iowa are naturally tributary to St. *St.* Joseph and Kansas City, but St. Joseph only obtained from Missouri an increase of 14,000 head, and during 1901 and 1902 Chicago received from the state of Missouri 150,000 more cattle than did St. Joseph and from Kansas the increase at St. Joseph was only 34,000 head, and from Ne-
1377 braska 19,000. Her gain and loss from Oklahoma and Indian Territory being about equal and her increase from Texas was something unusual and not permanent. Sioux City shows a loss of 13,000 head, the loss being 7000 in Nebraska, 37,000 in South Dakota, a gain of 7000 stopping to feed in transit from New Mexico, and a gain of 18,000 from her own legitimate territory Northwestern Iowa. Chicago obtained her increase of 500,000 from Kansas, Nebraska, Minnesota, South Dakota, Missouri and Iowa.

The COURT: What increase did Chicago get from Iowa?

A. That I can only show your Honor, for the years 1901 and 1902, from Iowa to Chicago, we endeavored to obtain the origin from the Chicago yards but they declined to give it for the other years 1903 and 1904, and the seven months of 1905, so that I am unable to state what number of cattle and hogs and sheep Chicago got out of Iowa for those later years.

Mr. RANSOM: Did you personally make application to the Stock Yards here in Chicago for that information?

A. I did for 1903 and 1904.

Q. And did they formally decline to give it?

A. They excused themselves on the ground that they were changing their form of statistics.

Q. They didn't furnish them?

A. No sir.

Q. Now this statement shows that Chicago received in 1904 333,000 of cattle more than it received in 1902; can you
1378 point out where this increase or any part of it came from?

A. Well I can't give it in the same manner that I have for the previous years, if you desire it in detail.

Q. Well, can you state about the localities?

A. From the same territory?

Q. By states?

A. From the same territory?

Q. How many hogs did Chicago receive in 1901?

A. Chicago received in 1901 8,290,494.

Q. How many hogs were received by the other stock markets St. Louis to St. Paul during that year?

A. 11,710,000.

Q. Now hogs are generally supposed to travel short distances to market, are they not?

A. Yes sir.

Q. How many hogs from Iowa went to Chicago in 1901?

A. 3,854,775.

Q. How many went to Kansas City, Omaha, Sioux City, and the other shorter distances?

A. 1,400,000. Chicago got in that year from Missouri 400,000 hogs; from South Dakota 163,000; Minnesota 387,000.

Q. And how many did St. Louis get? Have you got that there, that year?

A. It is stated there: From the State of Illinois Chicago received five times as many as St. Louis secured from the same state.

Q. Out of Illinois?

A. Yes sir.

Q. In territory nearer St. Louis than Chicago?

A. Why some portions of it, that is from the entire state.

Q. Did you state how many went from South Dakota, how
1379 many hogs in the year 1901?

A. Yes sir, 163,000.

Q. And 387,000 from Minnesota?

A. 387,000 from Minnesota.

Q. How many from North Dakota?

A. 5625 and from Oklahoma 1875 head.

Q. How many more hogs did the markets named outside of Chicago receive than Chicago received?

A. In the year 1901 the markets outside of Chicago received 3,400,000 more hogs than Chicago, but in the year 1904 they received 2,900,000 in excess of Chicago receipts.

Q. You know Mr. Kenyon, the capacity of the Stock yards here in Chicago?

A. No, I don't know the number.

Q. Do you know — the capacity of the Kansas City yards is?

A. Why I think it is stated in their annual report.

Q. Is that in evidence?

A. I don't recall.

Q. Has that been put in evidence?

A. I don't know.

Q. What is the capacity of the St. Joe yards; do you know that?

A. They are somewhat less than the capacity of the Omaha yards.

Q. And what is the capacity of the Omaha yards?

A. The Omaha yards can accommodate 20,000 cattle, 30,000 hogs and 35,000 sheep per day.

Q. But can you state about what the average receipts are daily there at the yards?

A. Yes sir, our average receipts last year were 7300 hogs, 3000 cattle, 5600 sheep.

Q. How much does that fall short of the capacity of the yards?

A. The capacity of the packing houses at South Omaha
1380 daily are 17,500 hogs, 10,000 cattle and 8000 sheep.

Q. And what packing houses do business there in South Omaha?

A. The Cudahy Packing Company, Swift & Company, The Omaha Packing Company and Armour & Company.

Q. How many more hogs did Chicago receive in 1904 than was received in 1903?

A. That is shown on the last page of that Exhibit.

Q. I just want you to state it to the reporter so that I will get something in the record.

A. The receipts of hogs at Chicago for 1901, were 8,290,000, in 1902, 7,895,000; in 1903, 7,325,000; in 1904, 7,238,000 And for the seven months of 1905 4,676,000.

Q. Now referring to your statement about the decrease of the receipt of live stock at the Missouri river points and St. Paul and the failure to increase in proportion to the other markets, how many years will it be before Chicago on the present freight rates and train schedules as they are now adjusted will it be before Chicago receives as many hogs as all markets from St. Louis to St. Paul inclusive? Have you made that calculation?

A. Well I had a ratio of—all the markets outside of Chicago received in 1901 3,400,000 more than Chicago, and in 1904 they received 2,900,000 in excess of Chicago receipts. Now there has been no change in the rates of freight or train schedule since
1381 1901, and if Chicago continues to receive as many hogs in the future as it has in the past it will take about six years before Chicago will receive as many hogs as all these other markets combined; that is the ratio of increase.

Q. Will you please file with your testimony a statement marking it "Kenyon's Exhibit B," showing the total number of live stock, consisting of cattle, hogs, sheep, horses and mules received during the year 1901, at Chicago, Kansas City, St. Joe, etc.?

A. Those same figures are found in this Exhibit A, but this statement is made up showing the percentages that Chicago, Kansas City and Omaha received out of certain territory, Illinois, Kansas, Missouri and Nebraska. For example Chicago out of the state of Illinois received 24 per cent. of all her cattle receipts; 32 per cent. of all her hogs receipts and 20 per cent. of all of her sheep receipts; but Chicago received out of the state of Iowa 33 per cent. of all of her cattle; 42½ per cent. of all of her hogs; and 24.7 per cent. of all of her sheep. Now the same percentages are made in this statement from Kansas City, receipts from Kansas and Missouri into Kansas City and receipts from Nebraska and Iowa into Omaha, and from Nebraska and Kansas into St. Joseph figured out by percentages of actual receipts.

The statement produced by the witness was marked "Ex-
1382 hibit B" and filed with the Court as part of his testimony.

Q. Please file with your testimony a statement showing the receipt

of cattle, hogs and sheep at Omaha from the different railroads entering into that city.

A. This is a statement "Exhibit C" which shows the receipts at Omaha by all lines of all classes of live stock for the years 1903 and 1904, showing a decrease in 1904 as compared with 1903 of 33,962,000 head of cattle; 120,246,000 head of hogs and 6,722 head of sheep. The only increase by any line into Omaha being that of the Chicago Great Western which shows an increase of 7000 head in 1904 over 1903; 30,000 hogs and about the same number of sheep; 1731 as compared with 1748.

Q. From what sources was this information compiled?

A. From our own records.

Q. You keep a record of the stock you receive off of each railroad?

A. Yes sir, and its origin.

Mr. SEVERANCE:

Q. Wasn't 1904 the first year the Great Western was in there?

A. Oh no.

Q. They built in there in 1903?

A. Well they were in operation the better part of 1903, as I recollect.

Q. Only part of the year; that accounts for their having an increase and the others not.

(No answer.)

Mr. RANSOM: Can you explain that increase coming from over the Great Western road into South Omaha?

1383 A. We had very favorable rates from the Great Western road into South Omaha, but no more favorable than are the rates made into Chicago. The Great Western takes their line and cuts it in two equidistant between Chicago and Omaha, and the rates west of that point are lower to Omaha than they are from those stations to Chicago. Correspondingly rates east of this dividing line to Chicago are lower than the rates from those stations to Omaha. Now they do the same thing in their basis of construction of their tariff between Omaha and St. Paul, so that they divide the territory absolutely in two.

A recess was here taken until 2 o'clock the same day, September 28, 1905.

1384 THURSDAY, *September* 28, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon WILLIAM J. C. KENYON, resumed the stand for further direct examination by Mr. Ransom:

Q. Look at the paper which I hand you marked "Kenyon's Exhibit B," and state to the court what that is in a general way?

A. This is a statement showing the purchase by the packers for the years 1903 and 1904 at South Omaha and direct consign-

ments made from other markets to various packers at Omaha for the same period.

The packers at Omaha did not receive enough business so they had to go to other markets. The total in 1904 of purchases of cattle by the packers was 630,768 head; 1,856,000 hogs, 990,000 sheep as compared with 702 head of cattle in 1903; 1,776,000 hogs, 963,000 sheep, a decrease of 70,000 cattle and an increase of 80,000 hogs; an increase of 27,000 sheep in 1904 as compared with the previous year.

Q. Is that statement made up or compiled from reliable sources?
A. It is made from our official records.
Q. Kept in the stock yards?
A. Yes sir.

1385 (The statement produced by the witness is marked Exhibit D, and attached hereto.)

Q. Have you prepared a statement showing the amount of live stock consumed by the various packers at Chicago, Kansas City, South Omaha, St. Joe, Sioux City, St. Louis and St. Paul?
A. I have.
Q. Is that the paper marked "Kenyon's Exhibit E."
A. It is, yes sir.
Q. I will ask you how much of the live stock, hogs and cattle (having reference only to hogs and cattle) received at the Union Stock Yards at South Omaha is consumed there, what percentage of it?
A. That is shown in another exhibit.
Q. Is that shown in another exhibit?
A. Yes sir.
Q. Then I withdraw that question. Please file that paper marked "Exhibit E" with the reporter as a part of your testimony.

(The statement produced by the witness is marked "Exhibit E" and attached hereto.)

Q. That is compiled from what?
A. The same sources, our official records.
Q. The official records kept in the Stock Yard Company's office at South Omaha?

A. Well, with the exception, of course of those receipts at
1386 Kansas City, South Omaha and St. Joe and these other markets.

Q. Where did you get that information?
A. From their published annual reports.
Q. Have you prepared a statement showing the receipts and disposition of the live stock at South Omaha?
A. I have.
Q. For the years 1903 an- 1904. Is this the paper marked "Kenyon's Exhibit F."
A. It is.
Q. Does that show the disposition of all the live stock having reference now only to cattle and hogs received at South Omaha during the years 1903 and '4?

A. It does. This statement shows the receipt and disposition of live stock at those markets for those years under sub heads. "Sold to packers, consigned direct to packers, forwarded in first hands, forwarded not on the market, sold to speculators, feeders," etc.

Q. Well, is that the statement that shows the percentage that is consumed of that received at South Omaha or from that can you make such a statement?

A. Well, I can make that statement now, but there is another statement that shows that.

Q. Well, make that statement right there.

A. Well, all of those receipts, of those receipts as shown sold to packers 630,000 cattle, 1,856,000 hogs, and 990,000
1387 sheep—Well, the sheep you don't want—were sold to the packers at that point and went into the packing houses and were made into product.

Q. File that Exhibit, will you, with your testimony?

A. Yes sir. There is one thing in this that I want to explain. "Forwarded in first hands, 9816 sheep in the year 1904, 821 hogs, 102,704 sheep" that means that of our total receipts to that extent we failed to give the shippers satisfaction in price and he concluded to go on to other markets on his original through rate. The other item "Forwarded not on the market" were shippers who came in simply for rest and feed. They never offered their live stock on the market for sale and went on to their destination. In the year 1904, there were 25,000 head. The consumption of South Omaha, either by the packers or sold to speculators and shipped by feeders. In the year 1904 of cattle 96 per cent. All the hogs were sold and 94 per cent. of the sheep were sold or slaughtered.

Q. What became of the four per cent. that were not consumed there?

A. In cattle, that would consist of the two items, forwarded in first hands and forwarded not on the market.

Q. Have you prepared a statement showing the shipments by feeders at the various markets at Omaha, Denver, Sioux City and Kansas City?

A. I have.

Q. By states. Is that the paper I hand you marked "Kenyon's Exhibit G."

A. It is.

1388 Q. Please explain that?

A. It is a statement showing the shipment of feeder cattle and stockers from Omaha, Denver, Sioux City, and Kansas City to the states of Nebraska, Iowa, Kansas, Missouri, Illinois, South Dakota, Colorado, Wyoming and other states, the amount being small to other states for the years—this is from January 1st to July 31st, 1905 as compared with the same period in 1904. With that there is another similar statement for the year 1904 compared with 1903. The total for 1905 from Omaha was 111,000 head, from Denver, 103,000, from Sioux City, 135,000 and from Kansas City, 248,000 to the states mentioned. We are unable to show the feeder shipments from Chicago as we have not got access to their records.

Q. Look at the other paper and state whether that is a part of the same statement?

A. This is a statement for the calendar year 1904 compared with 1903 from the same markets to the same destination.

Q. Please attach that to Exhibit G, as a part of it and file it with the reporter.

(The statement produced by the witness is marked "Exhibit G" and attached hereto.)

Q. Have you prepared a statement showing the percentage of receipts at the various markets, at Omaha, Kansas City, Chicago, St. Joseph for the year 1904?

A. I have.

1389 Q. Is that the paper, marked Exhibit H?

A. Yes sir.

Q. Please state what that paper is and file it with the reporter as a part of your testimony?

A. This shows the number of cattle, hogs and sheep killed, the receipts, and also the number of head killed at Omaha, Kansas City, Chicago and St. Joseph. These are taken from their published records and it shows that the total receipts of cattle at Omaha, of those receipts that that market killed 68 per cent. Kansas City killed of her receipts, cattle 51 per cent. Chicago killed 61 per cent. St. Joseph killed 73 per cent. Of hogs, Omaha killed 91 per cent., Kansas City, 93 per cent., Chicago, 77 per cent., and St. Joseph 94 per cent. of the receipts at those markets respectively. The percentages are figured out on the sheet as well.

The COURT: What was done with the other not killed?

A. They went out as feeders, in respect to cattle or were shipped forward in first hands or not on the market, and so far as sheep are concerned it was principally feeders. The difference of 10 per cent. in hogs is that hogs are shipped from Omaha to Boston, Cudahy, Wisconsin, Indianapolis and some to St. Louis and some to Kansas City, and killed at those various points of destination.

Mr. RANSOM:

Q. Look at this paper and state what that is?

1390 A. This is a statement showing the feeder statements of Omaha, Sioux City and Kansas City, to Nebraska, Iowa, Kansas, Missouri, Illinois, South Dakota, Colorado, Wyoming and other states for the year 1901 and 1902.

Q. Please file that with your testimony and mark it "Kenyon's Exhibit H. H."

A. I will mark that "Kenyon's Exhibit *Ga*."

Q. Well, mark it anything you want it.

(The statement so produced by the witness is marked "Kenyon's Exhibit *Ga*" and attached hereto.)

Q. Have you collected the published rates of the railroad traversing the 23½ cent zone that has been mentioned here in eastern Iowa, Missouri and Minnesota?

A. In eastern Iowa, only.

Q. Only of eastern Iowa. You don't cover Missouri?

A. Some of the tariffs show rates from Missouri and some from Minnesota.

Q. They are practically the same rates, aren't they right along the river there?

A. This has reference to South Omaha, only.

Q. Then you have collected the published tariff sheets by the different railroads running into the Missouri river and tributary to Sioux City and South Omaha so far as Iowa is concerned?

A. To South Omaha only. I did not get the rates to Sioux City or St. Joe.

1391 Q. Well, are these the papers marked "Kenyon's Exhibit Z-1."

A. They run from Exhibits I to Z-4.

Q. Are these the published tariff rates marked Kenyon's Exhibit I to Z-1, Z-2, Z-3 and Z-4?

A. They are.

Q. You received those from the railroad companies offices?

A. I did.

Mr. RANSOM: We offer those in evidence.

The COURT: File them with the reporter.

Mr. BAXTER: If they became a part of the transcript in this case it will add very much to the cost of making up the transcript.

The COURT: Can't you arrange that when you come to make up your record?

Mr. COWAN: I think so, I think it can be arranged.

Mr. BAXTER: As long as the report shows that they are put in evidence, the clerk will make them a part of the record.

Mr. COWAN: We ought to be able to agree and have some rate clerk make up all these tariffs in one separate sheet.

Mr. RANSOM:

Q. I neglected to ask you what packing houses are in operation in South St. Joe?

A. Swift & Company, the Hammond Packing Company,
1392 Nelson Morris & Company, and I think there is one other packer whose name escapes me at this time.

Q. How long have the stock yards been located at South St. Paul?

A. Since 1884.

Q. What was the population of South Omaha when the yards were located there?

A. There was no population.

Q. A new city was located there and sprung up there soon after the stock yards were located there?

A. Yes sir.

Q. What is the population of South Omaha now?

A. 30,000.

Mr. RANSOM: That is all.

Cross-examination by Mr. BAXTER:

Q. Mr. Kenyon, have you had any experience or knowledge of the Chicago market, sufficient to state the general class of persons who purchased the live cattle and hogs that are brought in here? I suppose in the first place a large portion of them are brought by the packers in Chicago to be slaughtered?

A. I would assume that the same classes of people engaged in the live stock business here in Chicago as in Omaha or other Missouri river markets.

Q. Please state the class of persons who purchased the live cattle and hogs that are brought into these stock yards like Chicago
1393 and the stock markets on the Missouri river?

A. There would be packers and export shippers, the speculators and the feeder buyers.

Q. The packer purchases for the purpose of slaughtering in the market, does he, where he buys?

A. Yes, or for the purpose of shipment if he is an exporter. We have no exporters at Omaha.

Q. Sir?

A. We have no exporters at Omaha.

Q. The packers in Chicago——

A. I would not know in Chicago what the packers did with the cattle that they purchased.

Q. There are men here who purchase cattle for the purpose of export?

A. Yes sir.

Q. And they are shipped as cattle to New York and then as live animals, across the ocean, is that it?

A. Yes sir.

Q. Well, are there any persons who purchase cattle in the markets in the west who ship them to the east and slaughter them there?

A. Not at our market. We have speculators at our market who ship to Chicago but not to be slaughtered by the original purchaser in Omaha. They come on this market.

Q. You say you have no persons at Omaha who purchase live stock and ship them to the east?

A. There are order buyers out in Omaha.

1394 Q. Sir?

A. There are order buyers out in Omaha who purchase hogs, for example, on our market for shipment to the packers located at Cudahy, Wisconsin. Squires of Boston Kennedy & Company of Indianapolis, the McCrea Packing Company of St. Louis. Those order buyers are constantly on our market and they make shipments to those packers that I have mentioned.

Q. Then the men who buy the stock for feeding—Do I understand from that that they purchase animals that are not fit at the time, not fat enough to be slaughtered at the time and they ship them as live animals out to some point, to be fed and prepared for the market?

A. Yes sir.

Q. Now the speculator, what does he do with the live stock that he buys?

A. He sells his stock that he buys to these feeders. The feeders purchase that that you speak of. It is seldom that a man can come into the market and buy his cattle or his sheep himself and know the ruling price in the market. It is customary for him to buy from other parties or engage the services of a live stock commission man to make the purchases for him. He does, however, buy it first hand from these so-called speculators who have originally bought the fresh receipts from the commission houses to whom they have been consigned.

Q. Well, the commission man that buys live stock here on
1395 the market at Chicago or Omaha, what does he do with it, sell it to the packers?

A. The Commission man buying the stock?

Q. Does he buy it?

A. No, the stock is consigned to the commission man for sale by that commission man to whatever purchaser he can find.

Q. Are those men who engage as commission men or members of these live stock exchanges, are they engaged in the pork packing business, too, or the manufacturing of packing house products?

A. I don't know of any that are so engaged.

Q. They confine themselves to dealing in the live animal?

A. Yes sir.

Q. And acting as agents of others?

A. Yes sir.

Q. Do any of the exhibits which you have filed in your original examination contain a statement showing the number of head of cattle and calves, and the number of head of hogs received at Chicago, Kansas City, Omaha, St. Joseph, Sioux City, St. Louis and St. Paul during the years 1901, 1902, 1903, 1904, and the first seven months of 1905?

A. Exhibit A covers that, the receipts at those various markets that you have mentioned.

Mr. SEVERANCE:

Q. Mr. Kenyon, during the year 1904 there was a strike lasting a considerable time at the stock yards, was there not?

1396 A. Yes sir.

Q. And in the packing houses?

A. Yes sir.

Q. And the amount of live stock received in Chicago at the stock yards during the strike was less than the ordinary amount during the same period?

A. The same period of the previous year?

Q. Well, of ordinary years?

A. Yes, that strike continued for two months, from the 12th of July to the 12th of September.

Mr. RANSOM:

Q. Where was that strike?
A. At all the packing centers, St. Louis, St. Paul, Chicago and Fort Worth.

Mr SEVERANCE:

Q. It lasted longer in Chicago, did it not?
A. No, the strike went on the same day and went off the same day at all points.
Q. It was more severe here?
A. It was more severe in South Omaha so far as business was concerned. We recovered from that strike later than anyone else.
Q. It was more severe in Chicago than in St. Paul?
A. Certainly this is a larger place and there is more sentiment here, more feeling.

Mr. LYNDE:

Q. Are those packers at St. Paul and South Omaha the same who are engaged in the business at Chicago?
1397 A. With the exception of the Cudahy Packing Company, they have no plant here.
Q. But they have a plant up here in Wisconsin?
A. Cudahy, yes sir. I am not informed however whether the Cudahy Packing Company at South Omaha and Sioux City and Kansas City is the same concern as Cudahy Brothers at Cudahy, Wisconsin.
Q. The same parties are interested in both, are they not?
A. I don't know.

Mr. RANSOM:

Q. Will you state how far it is from the west end of the Union Pacific bridge to the stock yards in South Omaha?
A. We figure on 7 miles.
Q. And does the stock yards company act as the terminal company for the receipt of shipments of hogs and live stock or freight brought into the packing houses?
A. Yes sir.
Q. And it has its own engines and tracks?
A. Yes, does all the switching. All these industries are located on the stock yards tracks.

Cross examination by Mr. COWAN:

Q. It charges how much on packing house products and dressed meat?
A. $2.00 a car out.
1398 Q. Is there a bridge charge across the river there on packing house product and dressed meat?

A. I would say no, Mr. Cowan.

Q. Why do you put it in that form?

A. Well, for the reason that prior to 1882 the Union Pacific Railroad made an arrangement with the Iowa lines by which freight into and out of Omaha was not charged at so much a car. They leased their bridge and terminal facilities to those lines on a certain rental per annum and that arrangement was extended to South Omaha, after the rates were established at that point in 1884. But the railroads leading from Iowa to South Omaha, the tolls on the Union Pacific bridge were reduced from time to time. Just when the $4.00 so-called bridge toll was made, I have no information, but the lines leading from Iowa to South Omaha, taking the Iowa distance tariffs to Council Bluffs, added this $4.00 bridge toll arbitrarily to that rate. For years they published their tariffs based on the Iowa distance to Council Bluffs with $4.00 added. We have succeeded in getting some of the roads, the majority of them, to eliminate the appearance of the $4.00 bridge toll and to put it in to the through rate.

Q. The packing house product and dressed meat going across the river there are subject in some instances to bridge toll, are they not?

A. I think not.

1399 Q. How long has it not been so?

A. As long as I have known anything about it, for the last eight years.

Q. You say the charge is for switching and that is absorbed by the railroads in the case of Omaha, both on the live stock and packing house products?

A. Yes sir.

Q. When livestock is sold to speculators or persons who buy of these various concerns in the east, what is the rate of freight on which they move eastward?

A. The tariff rates, so far as I know.

Mr. RANSOM: I will object to that, your Honor, as not proper cross examination. I did not ask him anything about rates, I simply had him identify some papers here that are used by the railroads.

The COURT: Objection sustained.

Mr. COWAN: How is that?

The COURT: He has answered by saying that he did not know.

Mr. COWAN:

Q. You have said that hogs were supposed to travel short distances to market. Why?

A. It is generally understood that taking the summer months, the hogs lose in weight by reason of the hot weather. The hogs are raised more plentifully than cattle. Shippers seem to desire to make their markets for them at nearby points.

1400 Q. There is an advantage then in the difference of the shrinkage between the hogs raised 100 miles east of Omaha market being marketed at Omaha, or marketed at Chicago?

A. Well, I was under that impression until I heard Mr. Doud's testimony before the Interstate Commerce Commission.

Mr. RANSOM:

Q. Who was that?

A. Mr. Doud, one of the commission men in Chicago.

Mr. COWAN: Well, you have given your reason.

A. I think a hog would shrink more going 500 miles in one direction that he would going 100 miles in the other direction.

Q. Well, I asked you the reason why and you said what you thought your reason was. Then I asked you if you thought they would shrink more going to Chicago than to Omaha and you say you thought so until you heard Mr. Doud's testimony. What is your impression now?

A. Mr. Doud has been in the business a great many years and hogs were shipped to him and he testified that hogs would shrink all they were going to shrink in the first 50 miles. I think he is mistaken.

The COURT: He says he thinks Doud was mistaken. That answers the question.

Mr. SEVERANCE: That eliminates Doud.

Mr. COWAN:

Q. You still have the reason that you gave?

1401 A. I think hogs will shrink more traveling 500 miles than they will in traveling 100, and I think a steer will shrink more, too.

Q. So do I. Is it an advantage to the shipper therefore to have a nearby market?

A. It usually is.

Q. Why besides that, is there any other reason?

A. When the nearby market relatively pays him as good a price as the distant market and he has less freight to pay. He has less shrinkage on his production. It enables him in many cases to get his money quicker. He does not have to be so long away from home and if I had time I probably could think up a whole lot of other reasons why, if I was a shipper, I would ship to the nearby market.

Q. Well, now, what do you mean by relative price?

A. Well, that would be the commercial price placed upon the article for sale.

Q. That is quite as indefinite to me as relative price. What price do you mean?

A. For example, if I were shipping a carload of cattle and I wanted to make up my mind whether I would ship that carload of cattle to Omaha or to Chicago, I would first take into consideration the freight rate, the distance and time consumed and I would en-

deavor to ascertain what those two figures would produce, and if I had the privilege of stopping at a nearby market in the direct line,
1402 I would stop there and see whether the purchasers at that market would pay me the price that I thought I could obtain at the distant market. Now, if I was not satisfied with that price, I would ship to the next stopping place until I finally got to the jumping off place, which, in this case is Chicago.

Q. If the shipper has the advantage of the shrink and the advantage of the less rate and gets as good a price at the Missouri river market, why don't he ship there instead of to Chicago and pay a high rate.

1403 A. Well, I find that at Chicago, the receipts of hogs for last year, 46½ per cent. came from the State of Iowa. I also find that in Chicago every day there are held over hogs that have not been sold at all, and in some cases I advertised that some years ago in the effort to enlighten the Iowa shipper in the endeavor to get him to come to South Omaha. I find that as high as 16,000 hogs were held over here in Chicago in one day, not purchased by anyone. If the Iowa shipper furnishes merely one-half of the hogs, one-half of this 16,000 you might say belong to him and why he does not come to a near by market from points 250 miles, if you please, away, I am unable to say, unless it is that the train arrangements and the train facilities and faster time has a good deal to do with carrying in to the distant market like Chicago. There may be some sentiment in it, too. He may want to come here to a big town.

Q. Doesn't it arouse your suspicions that your price is not as good as he thinks he can get at Chicago?

A. If that was the case we would not get any business from Iowa at all.

Q. Then you have the advantage of the lower freight rate and the advantage of the shrinkage?

A. The difference in the price is figured with the rate that he obtains from this 23½ cent zone, the shipper must have figured
1404 that out, and that must be the reason that he goes to Chicago, for better facilities. Then, too, he thinks he is doing as well in Chicago as his neighbor, because his neighbor has been coming here for 30 or 40 years.

Q. It is simply a question of perverseness and ignorance in coming to Chicago?

A. We have been trying to educate these Western Iowa people for a good many years to come to the Missouri River.

Q. Isn't it a fact that if he ships into the Missouri River market, and he did want to ship back, he has to pay 23½ cents a hundred?

A. He has to pay the tariff rate, whatever it is.

Q. And if the packer wants to buy and kill them, he can ship the dresses carcasses back at 20 cents. Don't that give the packer that much advantage over him?

A. I am not familiar with those rates.

Q. When it is consumed on the market, doesn't the packer have a 3½ cent advantage of him any way you can fix it?

A. I have not figured that out. The fact is this, that when he ships to our market and is not satisfied with the price, we don't see him again until he wants to try another experiment, and perhaps on the next shipment our market is all right.

Q. Who owns the stock yards in South Omaha?

1405 Mr. RANSOM: I object to that, as immaterial, and not proper cross-examination.

The COURT: I am inclined to think so. I allowed it in one case and refused it in another. I will sustain the objection.

Mr. COWAN: I desire to except to the ruling of the Court in that particular. That is the only exception that I have taken.

To which ruling of the Court the complainant, by its counsel, then and there duly excepted.

Q. Isn't it a fact that Chicago has a less proportion of the total live stock shipments than it had four years ago or five years ago, or six or eight or ten years ago, as compared with the Missouri River markets?

A. I would have to refer to that Exhibit there. I think I could answer your question from 1901 down.

Mr. LYNDE: It is before you, Mr. Kenyon.

The COURT: I am inclined to let Mr. Cowan figure that out for himself in the argument.

The WITNESS: Those are pretty big figures to carry in one's mind as between all the markets.

Mr. COWAN:

Q. Isn't it a fact that there are a lot of stock driven into South Omaha?

A. I desire to refer to the figures on that, yes, sir.

1406 Q. Well, whether it is great or small. Your annual report will show, won't it?

A. I don't know whether it will or not.

Q. How many were driven in?

A. Into Omaha, in 1901, there were 14,000 cattle, 1902, 13,000,—I will leave off the odd hundreds—in 1903, 11,000; 1904, 12,000, and the seven months of 1905, 9,900, and of hogs there is considerable that drive in. In 1901, 39,000; 1902, 36,000; 1903, 32,000; 1904, 34,000, and the seven months of 1905, 27,000.

Q. Where did they come from?

A. Those come from nearby points within ten miles of South Omaha to the southwest and about fifteen miles over in Iowa.

Q. Suppose a man drives in 150 head of cattle that he has bought in the market and fed near South Omaha. What rate of freight does he get out?

A. The tariff rate, so far as I know.

Q. If the packer buys those and ships them out, he gets the rate on the product?

A. As product, that is?

Q. Isn't it a fact that that gives the packer an advantage of 3½ cents over the shipper of the live stock in the rate, cents per hundred pounds?

A. I could not answer that.

Mr. RANSOM: I object to that, as immaterial, and calling for a conclusion and asking the witness to decide the case.

The COURT: What did you answer?

1407 A. I could not answer that, it is a commercial discussion as between the packer and the shipper.

Mr. COWAN:

Q. What becomes of those hogs and cattle that are driven into that market in the distribution of that stuff?

A. Of the hogs, they are invariably sold to our Omaha packers.

Q. Why are they never shipped east?

A. Well, it so happens that they are centralized by a few shippers. Most of the hogs that are driven in are consigned to one or two concerns, and it is their invariable practice to sell the stuff to the packers there in Omaha.

Q. Suppose the hogs were shipped in from Lincoln? If the shipper has a mind to move them out, he moves them out on the balance of the rate, doesn't he?

A. The shipper——

Mr. RANSOM: I object to that, as not proper cross-examination.

Mr. COWAN: Here is a man doing business right on the market.

The COURT: Objection sustained. It is true that he is doing business there but counsel did not ask him anything about it on direct examination.

Mr. COWAN: That is all.

The COURT: Is there anybody else on the part of the de-
1408 fense?

Mr. SEVERANCE: Your Honor, that report is here now. I would like to have it attached as an exhibit to Mr. Flower's testimony. It was referred to by him and identified by him.

The COURT: All right.

Mr. COWAN:

Q. Mr. Kenyon, your annual report of the Stock Yards Company shows accurate statistics with respect to the various matters contained therein as to receipts and shipments of live stock?

A. Whatever is in those annual reports is correct.

The COURT: Proceed for the Interstate Commerce Commission.

Mr. LYNDE: I shall call the witness I referred to later. Mr. Cowan wants me to postpone that.

The COURT: All right.

Mr. COWAN: We have some witnesses that have been summoned

here that we would like to put on this evening and get through with as rapidly as we can.

Mr. SEVERANCE: May I inquire whether the Court will sit Saturday this week?

The COURT: I don't sit Saturday unless it will accommodate counsel. I would like to ask also as to these hours. I am willing to sit longer hours if counsel wish.

Mr. SEVERANCE: I do not think it would be a good plan.

Mr. COWAN: I don't think it would be any advantage.

ORIGIN OF LIVE STOCK SHIPMENTS BY STATES

Figures showing receipts of all kinds of live stock at seven western markets during years 1901-1902-1903-1904 and Seven Months of 1905, and states in which Shipments originated.

Kenyon's Exhibit filed Vol. 12, p. 1371.
Exhibit itself follows Vol. 12, p. 1408.

STATES	MARKETS	CATTLE AND CALVES					HOGS					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	19
Iowa	Chicago				977,193	1,056,636				3,272,400	3,884,775				812,528	
	Kansas City	12,005	6,384	10,572	23,061	57,900	23,155	95,756	32,149	25,473	22,600	23	626	3,443	2,994	
	Omaha	61,119	96,600	143,071	115,347	109,581	321,996	689,307	939,932	876,396	806,212	13,995	29,520	25,891	49,050	
	St. Joseph	10,448	16,049	29,864	30,876	30,901	125,897	180,665	277,825	352,178	265,990	2,929	6,756	16,521	16,543	
	Sioux City	59,389	58,410	90,426	72,597	80,611	276,374	386,035	377,465	365,268	313,352	1,221	3,022	3,009	18,690	
	St. Louis	2,511	2,809	1,808	2,334	2,085	23,752	33,372	18,583	30,433	21,363	240	1,107	862	1,255	
	St. Paul	364	1,963	2,561	2,924	5,447	3,484	3,120	5,047	12,456	30,169	2	663	672	6,208	
Missouri	Chicago				223,440	274,386				240,825	401,250				179,912	
	Kansas City	136,876	292,931	262,621	182,727	362,698	396,382	624,892	590,020	725,654	1,117,508	71,600	115,919	107,073	112,996	
	Omaha	6,846	23,169	29,954	34,114	40,124	165	1,453	4,913	905	---	13,002	13,564	22,120	15,774	
	St. Joseph	68,412	188,960	187,462	173,305	170,710	317,127	618,689	601,393	550,555	682,600	37,138	62,084	77,252	51,787	
	Sioux City	663	4,654	2,762	2,441	1,900	---	---	1,567	68	---	150	---	1,615	---	
	St. Louis	145,799	392,121	286,485	189,072	292,403	648,839	1,202,808	920,650	620,591	1,017,850	204,654	354,015	266,989	227,820	
	St. Paul	---	---	234	---	---	---	---	---	---	---	---	---	---	---	
[illegible]us	Chicago				47,691	48,972				11,250	60,900				18,060	
	Kansas City	470,122	1,271,542	1,140,171	1,166,121	1,149,273	859,366	1,343,396	1,092,134	1,182,761	2,046,864	176,448	348,122	292,746	253,222	
	Omaha	2,429	5,814	7,989	6,669	9,167	230	2,755	7,857	5,340	8,959	4,087	1,083	2,287	648	
	St. Joseph	46,354	131,046	134,874	100,870	112,621	181,804	271,129	347,883	247,231	400,626	95,061	67,169	52,028	21,800	
	Sioux City	---	1,308	391	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	6,637	66,484	68,774	63,365	74,022	1,308	15,280	6,713	8,879	37,592	921	1,785	634	1,613	
	St. Paul	---	---	63	---	---	---	---	---	---	---	---	---	---	---	
Nebraska	Chicago				52,962	74,508				11,025	74,100				120,137	
	Kansas City	51,857	50,674	28,289	42,548	54,600	105,900	61,761	21,091	132,877	101,300	13,703	36,667	14,912	37,505	
	Omaha	355,794	590,061	647,155	520,831	514,888	1,192,231	1,599,909	1,272,488	1,357,597	1,598,438	445,051	605,745	590,925	393,406	
	St. Joseph	85,850	105,157	94,014	65,079	60,977	536,230	276,288	459,603	532,266	724,424	73,796	88,595	40,428	43,227	
	Sioux City	23,183	23,054	27,504	34,840	29,219	167,947	216,268	164,874	128,476	166,167	5,581	5,293	9,913	1,709	
	St. Louis	176	487	---	2,662	101	12,268	4,306	833	159	---	7,496	39,726	18,378	32,045	
	St. Paul	45	486	---	---	---	194	132	---	---	---	3,900	---	---	---	
So. Dakota	Chicago				157,878	85,008				144,900	163,725				183,352	
	Kansas City	---	68	138	126	---	379	---	10,875	---	---	---	---	190	---	
	Omaha	2,462	45,143	37,882	37,086	15,282	5,649	6,131	5,266	4,691	103	9,687	42,649	63,530	50,071	
	St. Joseph	---	40	---	478	---	278	---	---	---	---	---	---	---	---	
	Sioux City	53,432	129,081	121,117	158,637	95,861	320,285	428,943	375,058	413,508	381,288	3,131	18,717	21,569	31,147	
	St. Louis	---	603	---	---	---	---	---	---	---	---	---	---	---	782	
	St. Paul	4,125	14,192	11,272	7,599	3,973	41,709	52,225	37,745	39,388	25,542	2,917	7,619	11,057	6,015	
Minnesota	Chicago				119,343	104,538				441,900	387,075				332,992	
	Kansas City	995	1,300	3,216	4,358	---	123	122	123	328	---	---	---	---	---	
	Omaha	2,072	1,156	2,187	4,872	6,770	77	---	198	322	161	565	118	1,936	593	
	St. Joseph	1,260	1,172	1,891	503	1,166	---	---	---	---	---	---	---	---	---	
	Sioux City	50,269	55,530	65,004	54,130	62,921	59,150	80,808	88,077	83,861	73,650	335	408	1,700	4,008	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	120,004	180,807	166,771	161,423	110,968	431,159	705,781	513,299	536,929	499,447	31,434	100,716	90,148	75,418	
Illinois	Chicago				665,133	781,767				2,273,325	2,641,425				645,860	
	Kansas City	143	701	171	492	---	---	---	11	33	---	---	455	1,011	188	
	Omaha	127	21	148	94	953	---	---	---	---	---	---	177	---	---	
	St. Joseph	48	10	---	186	40	---	---	---	---	---	265	---	---	---	
	Sioux City	33	527	10	151	75	---	---	---	---	---	610	246	---	---	
	St. Louis	60,059	88,193	74,160	76,196	71,029	397,290	519,671	435,761	549,627	547,604	47,193	99,450	103,474	118,803	
	St. Paul	---	104	30	---	---	---	---	---	---	---	---	143	---	---	

'S BY STATES

seven western markets during years

f 1905, and states

imated.

Kenyon's Exhibit filed Vol. 12, p. 1375.
Exhibit itself follows Vol. 12, p. 1408.

1017

1405a

1902	1901	HOGS 7 Months 1905	1904	1903	1902	1901	SHEEP 7 Months 1905	1904	1903	1902	1901	HORSES AND MULES 7 Months 1905	1904	1903	1902	1901
977,193	1,056,636				3,272,400	3,884,775				812,528	999,664				36,300	40,220
23,061	57,900	23,155	95,756	32,149	25,473	22,600	23	626	3,443	2,994	---	2,234	3,343	2,264	2,933	4,100
115,347	109,581	321,986	689,307	939,932	876,396	806,312	13,995	29,520	32,891	49,050	31,587	1,714	2,186	2,080	2,059	1,774
30,876	30,901	125,897	180,665	277,825	352,178	265,990	2,929	6,756	16,521	16,549	18,314	1,695	3,076	2,350	3,163	2,115
72,197	80,611	276,374	386,035	377,465	265,268	313,352	1,221	3,022	3,009	18,690	11,226	1,855	204	1,214	1,269	722
2,334	2,085	23,752	33,372	18,583	30,432	21,363	240	1,107	862	1,255	1,459	5,547	16,382	9,050	6,019	6,454
2,924	6,447	3,484	3,120	5,047	12,456	30,169	2	663	672	6,908	3,205	109	120	131	316	177
225,440	274,386				240,825	401,250				179,913	271,932				12,840	14,340
182,727	362,698	396,382	624,892	690,020	725,654	1,117,508	71,600	116,919	107,073	118,999	138,600	7,336	12,630	12,965	17,174	21,500
34,114	40,124	165	1,453	4,913	905	---	13,002	13,564	22,120	15,774	16,093	148	230	206	806	336
173,305	170,710	317,127	618,689	601,393	550,555	682,600	37,138	62,084	77,252	51,767	44,213	2,460	2,821	2,216	2,772	2,449
2,441	1,900	---	---	1,667	68	---	150	---	1,616	---	---	---	1	253	54	---
189,072	292,402	648,639	1,202,808	920,650	620,691	1,017,850	204,654	304,015	266,989	227,820	280,464	31,093	68,496	43,924	35,372	52,324
---	---	---	---	---	---	---	---	---	---	---	---	140	1	4	---	---
47,691	48,972				11,250	60,900				18,060	31,304				2,900	2,640
1,266,121	1,149,273	869,366	1,343,396	1,092,134	1,182,761	2,046,864	176,448	348,122	292,746	253,282	264,700	15,764	33,369	30,934	32,082	37,500
6,669	9,167	230	2,755	7,857	6,340	8,959	4,087	1,083	2,287	649	1,903	93	105	339	448	159
100,870	118,621	181,904	271,129	347,883	247,231	400,626	95,061	67,169	52,028	21,800	28,763	1,966	3,571	3,484	2,272	2,252
---	---	---	---	---	---	---	---	---	---	---	---	---	---	28	---	---
63,365	74,022	1,008	15,280	6,713	8,979	37,592	921	1,765	634	1,613	4,263	4,570	11,307	7,582	6,642	5,136
---	---	---	---	---	---	---	---	---	---	---	---	---	---	47	---	---
52,962	74,508				11,025	74,100				120,137	127,256				6,460	8,580
42,548	54,600	105,900	61,761	21,091	132,877	101,300	13,703	36,667	14,912	37,505	27,700	2,671	5,254	3,243	5,499	7,500
820,831	514,888	1,193,231	1,599,909	1,272,488	1,357,587	1,598,438	445,081	605,745	590,925	393,406	468,136	5,366	11,266	9,123	7,518	10,034
66,079	60,977	536,230	276,288	459,603	532,266	724,424	73,796	89,595	40,428	43,227	35,248	5,196	8,918	5,203	4,250	5,713
34,840	29,219	167,947	216,269	164,874	128,476	166,167	5,391	5,293	9,913	1,709	5,940	919	525	602	854	848
2,662	101	12,269	4,306	833	159	---	7,496	39,726	18,378	38,045	19,175	5,471	12,175	7,879	3,247	5,957
---	---	194	132	---	---	---	3,900	---	---	---	---	112	---	442	---	---
157,878	85,008				144,900	163,725				183,352	145,856				2,160	2,820
128	---	379	---	10,875	---	---	---	---	190	---	---	24	66	470	308	---
37,086	15,282	5,649	6,131	5,266	4,681	103	9,657	42,649	63,530	50,071	20,893	2,523	6,396	11,130	2,149	966
478	---	278	---	---	---	---	---	---	---	---	---	49	180	228	52	60
158,637	95,861	320,285	428,943	375,058	413,508	381,288	3,131	18,717	21,569	31,147	33,264	3,125	1,584	1,437	1,458	1,928
---	---	---	---	---	---	---	---	---	---	782	---	347	996	439	292	---
7,599	3,973	41,709	52,225	37,745	39,398	25,542	2,917	7,619	11,057	6,015	3,008	149	60	82	82	162
119,343	104,538				441,900	387,075				332,992	436,160				3,600	1,640
4,358	---	123	122	123	328	---	---	---	---	---	---	69	28	100	57	---
4,872	6,770	77	---	198	322	161	565	118	1,908	693	637	---	41	311	219	52
503	1,166	---	---	---	---	---	---	---	---	---	---	---	---	50	---	21
54,130	62,921	59,150	80,808	88,077	83,861	73,650	335	408	1,700	4,068	6,931	145	8	66	351	287
---	---	---	---	---	---	---	---	---	---	---	---	---	25	135	---	---
161,423	110,968	431,159	705,781	613,299	536,929	499,447	31,434	100,716	90,148	75,418	50,701	276	165	466	143	209
668,133	781,767				2,273,325	2,641,425				645,860	816,828				41,780	42,760
492	---	---	---	11	33	---	---	455	1,211	188	---	174	64	69	525	---
94	953	---	---	---	---	---	---	177	---	---	263	18	52	37	18	273
186	40	---	---	---	---	---	265	---	---	---	---	2	3	32	91	---
151	75	---	---	---	---	---	610	246	---	---	---	---	7	---	---	---
96,196	71,029	397,290	519,671	435,761	549,627	547,604	47,193	99,450	103,474	118,803	86,803	23,065	38,177	33,412	35,630	37,622
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STATES	MARKETS	CATTLE AND CALVES					HOGS					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
Indiana	Chicago				112,329	101,304				469,350	413,025				388,204	331,4
	Kansas City	---	---	16	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	5	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	86	98	185	168	1,004	---	932	5,866	5,592	574	142	664	2,292	1,388	-
	St. Paul	---	---	2	---	---	---	---	---	---	---	---	---	---	---	-
Wisconsin	Chicago				224,486	241,985				966,825	1,067,925				764,024	858,4
	Kansas City	101	357	24	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	6	---	---	44	40	---	---	---	---	---	---	---	74	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	81	34	60	269	396	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Paul	10,253	24,526	18,584	21,884	20,505	25,775	55,727	60,505	55,636	52,215	9,508	31,477	29,090	32,557	31,5
Michigan	Chicago				12,054	7,707				91,125	55,500				113,520	57,9
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Arkansas	Chicago				147	---				---	---				---	-
	Kansas City	590	1,113	2,082	---	---	1,357	5,259	7,709	---	---	601	714	2,561	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	132	---	---	---	---	---	-
	St. Louis	14,846	34,382	25,045	41,419	30,055	28,751	71,525	52,815	33,815	135,793	4,578	15,598	15,395	21,765	12,5
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Indian Terr.	Chicago				6,846	5,061				---	---				3,096	2,0
	Kansas City	95,473	115,184	123,716	203,421	149,635	31,047	33,913	45,579	60,240	129,800	1,620	4,550	953	2,960	3,0
	Omaha	---	---	---	197	36	---	---	---	---	---	---	---	---	4,075	-
	St. Joseph	12,049	28,718	32,338	42,446	28,575	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	267	190	3,009	---	---	---	---	-
	St. Louis	62,287	144,869	242,418	270,025	149,650	10,335	23,110	12,087	18,777	40,804	238	1,368	801	1,096	1
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Oklahoma	Chicago				1,722	8,652				3,525	1,875				---	1,5
	Kansas City	89,263	170,598	202,698	182,441	108,900	54,047	59,979	68,320	135,675	259,200	31,905	11,937	5,790	15,382	20,7
	Omaha	---	---	52	646	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	13,648	34,476	30,446	18,967	9,001	2,593	10,078	10,888	12,300	25,725	709	525	2,650	1,190	3,0
	Sioux City	---	---	---	784	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	15,854	45,643	30,369	14,778	19,044	320	6,012	2,887	4,698	28,947	---	---	---	172	4
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Texas	Chicago				73,794	52,941				300	---				4,128	2,7
	Kansas City	86,048	169,285	268,558	313,729	183,281	896	1,449	298	5,795	15,400	62,058	72,754	109,953	106,054	55,5
	Omaha	7,768	13,101	20,566	9,771	9,881	---	---	---	---	---	---	---	---	1,357	-
	St. Joseph	6,436	51,824	67,771	33,772	13,743	---	---	2,637	2,296	2,268	8,968	20,836	76,507	20,578	38,3
	Sioux City	30,068	46,970	51,096	21,020	325	---	---	---	---	---	---	---	---	---	-
	St. Louis	217,302	282,745	363,832	389,414	228,622	317	457	1,172	8,805	25,722	48,963	75,496	65,384	58,924	61,7
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Colorado	Chicago				3,759	3,843				---	---				84,108	218,4
	Kansas City	14,516	51,185	58,822	96,713	35,878	445	565	775	867	---	235,901	165,198	171,552	224,182	295,8
	Omaha	17,477	42,108	57,044	94,502	45,130	---	---	342	527	---	186,913	80,826	77,175	110,834	162,8
	St. Joseph	4,852	18,734	30,103	38,826	9,321	---	---	---	---	567	338,061	217,273	154,026	209,247	201,4
	Sioux City	1,513	---	---	844	1,250	---	---	---	---	---	---	---	---	282	1,0
	St. Louis	144	586	483	2,220	198	---	---	---	---	---	39,499	23,019	2,569	12,036	18,8
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-

		HOGS					SHEEP					HORSES AND MULES				
1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
18,329	101,304				469,350	413,025				388,204	331,444				5,480	4,860
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165	1,004	---	932	5,856	5,592	574	142	664	2,292	1,388	---	969	1,366	1,622	1,061	2,089
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4,486	241,983				966,825	1,067,925				764,024	858,452				7,140	6,060
---	---	---	---	---	---	---	---	---	74	---	---	27	558	28	---	---
44	40	---	---	---	---	---	---	---	---	---	---	---	---	---	1	10
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269	396	---	---	---	---	---	---	---	---	---	---	4	---	---	---	---
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1,884	20,505	25,775	55,727	60,505	55,636	52,215	9,508	31,477	29,090	32,557	31,684	17	5	78	78	51
2,054	7,707				91,125	55,500				118,520	57,964				760	1,140
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147	---				---	---				---	---				---	---
---	---	1,357	5,259	7,709	---	---	601	714	2,561	---	---	219	319	770	---	---
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---	---	---	---	---	132	---	---	---	---	---	---	---	---	---	---	---
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4,419	30,055	28,751	71,525	52,815	33,815	133,793	4,578	15,598	15,395	21,765	12,382	280	856	1,132	1,079	1,163
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2,846	5,061				---	---				3,096	2,064				20	20
2,421	149,635	31,047	33,913	45,579	60,240	129,800	1,620	4,550	953	2,960	3,000	353	680	889	801	2,400
197	36	---	---	---	---	---	---	---	---	4,075	---	---	---	---	---	---
2,446	28,575	---	---	267	190	3,009	---	---	---	---	---	---	---	---	---	---
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2,025	149,650	10,335	23,110	12,087	18,777	40,804	238	1,368	801	1,096	103	178	602	901	443	457
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2,722	8,652				3,525	1,875				---	1,548				60	---
2,441	108,900	54,047	59,979	68,320	135,673	259,200	31,905	11,937	5,790	15,382	20,700	571	2,419	3,717	2,190	4,660
846	---	---	---	---	---	---	---	---	---	---	---	5	---	---	---	---
2,857	9,001	2,593	10,078	10,888	12,300	25,725	709	525	2,650	1,190	3,041	10	113	---	133	237
784	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
2,778	19,044	320	6,012	2,887	4,698	28,947	---	---	---	172	452	1,037	1,755	844	277	488
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2,794	52,941				300	---				4,128	2,752				400	---
2,729	153,281	896	1,449	298	5,795	15,400	62,058	72,754	109,953	106,054	55,800	120	428	1,713	1,382	2,000
2,771	9,881	---	---	---	---	---	---	---	---	1,357	---	---	85	539	53	19
2,772	13,743	---	---	2,637	2,296	2,268	8,968	20,836	76,507	20,578	38,290	40	747	465	61	2
2,820	325	---	---	---	---	---	---	---	---	---	---	142	966	1,407	24	---
2,414	228,622	317	457	1,172	8,805	35,722	48,963	75,496	65,384	58,924	61,732	790	1,399	2,293	1,164	1,030
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2,789	3,843				---	---				84,108	218,440				1,500	460
2,723	35,878	445	565	775	867	---	235,901	165,198	171,552	224,182	293,896	1,050	3,750	3,200	2,391	2,800
2,502	45,130	---	---	342	527	---	186,973	80,826	77,175	110,834	162,552	438	1,089	1,898	1,970	1,416
2,325	9,321	---	---	---	---	567	338,061	217,273	154,025	209,247	201,495	307	687	651	255	1,746
2,344	1,250	---	---	---	---	---	---	---	---	282	1,037	---	27	---	110	324
2,220	198	---	---	---	---	---	39,499	23,019	2,569	12,036	18,581	2,657	5,160	2,508	789	1,986
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STATES	MARKETS	CATTLE AND CALVES					HOGS					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	1905	1904	1903	1902	1901
Wyoming	Chicago				38,325	20,286				---	---				120,572	116,6
	Kansas City	2,730	2,303	820	2,214	---	---	---	---	---	---	---	10,759	17,035	12,837	---
	Omaha	11,135	95,318	105,204	132,765	54,120	---	---	71	---	79	48,370	522,550	653,973	761,676	338,6
	St. Joseph	669	3,523	4,508	3,532	1,384	---	---	---	---	---	3,436	40,743	24,526	32,197	39,7
	Sioux City	3	453	569	603	625	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	4,015	2,265	2,245	4,1
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	6,831	---	---	---
Idaho	Chicago				573	1,995				---	---				207,776	135,7
	Kansas City	3,006	372	1,213	1,836	---	---	---	---	---	---	7,519	21,426	72,542	38,708	---
	Omaha	5,490	18,790	9,034	18,321	7,915	79	72	---	481	---	84,688	337,741	318,069	247,642	203,1
	St. Joseph	1,163	462	299	317	342	---	---	---	---	---	34,132	214,246	121,267	114,709	72,9
	Sioux City	---	---	66	---	---	---	---	---	---	---	---	231	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	2,309	13,617	4,779	5,300	9,2
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	511	---	---	---
Utah	Chicago				---	1,365				---	---				1,108	
	Kansas City	1,624	991	838	2,269	---	---	---	---	72	---	4,416	185,015	181,718	246,429	91,0
	Omaha	1,572	2,736	807	9,213	1,663	---	---	---	239	---	9,480	49,142	60,839	56,974	44,2
	St. Joseph	466	425	---	---	321	---	---	---	---	---	608	55,238	11,602	29,825	26,6
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	1,145	5,812	2,989	---	1,1
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Nevada	Chicago				---	---				---	---					
	Kansas City	1,168	---	---	68	---	---	---	---	---	---				5,504	
	Omaha	640	71	---	499	126	---	---	---	---	---	5,619	1,261	2,765	9,970	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	741	1,027	543	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	3,983	1,458	---	---	1,8
	St. Louis	59	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	3,432	532	---	---	
												---	---	---	---	
Oregon	Chicago				21	---				---	---					
	Kansas City	692	54	---	---	---	---	80	---	---	---				7,396	
	Omaha	1,445	1,030	---	1,074	72	---	---	---	---	---	---	312	4,920	3,202	
	St. Joseph	133	---	---	---	---	---	---	---	---	---	12,987	36,816	15,952	24,795	2,8
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	9,223	3,303	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	550	---	---	
												24,071	10,546	---	---	
Washington	Chicago				---	---				---	---					
	Kansas City	---	---	---	---	---	---	---	---	---	---				6,536	3,7
	Omaha	44	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	2,441	---	---	7,4
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
												19,169	3,545	43,280	---	
Montana	Chicago				132,006	58,590				300	150					
	Kansas City	1,035	144	25	1,773	---	---	---	---	---	---				326,456	168,9
	Omaha	3,394	11,246	8,562	22,220	2,159	---	---	---	---	---	1,972	5,600	4,706	1,291	
	St. Joseph	230	24	---	1,066	---	---	---	---	---	---	10,919	30,716	17,473	21,777	15,9
	Sioux City	---	721	131	---	---	---	---	---	---	---	4,566	5,815	---	1,097	2,1
	St. Louis	---	---	---	1,512	---	---	---	---	---	---	---	---	2,900	3,102	
	St. Paul	8,676	75,668	45,845	50,653	14,184	30	9	---	20	---	633	697	---	755	
												128,062	515,180	608,461	383,823	200,2
No. Dakota	Chicago				52,920	33,201				5,625	12,000				89,956	91,3
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	43	669	522	152	---	---	---	---	---	---	712	250	1,445	293	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	3,639	8,495	7,575	1,092	870	350	1,123	859	1,092	870	186	547	1,060	657	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	20,024	90,301	56,844	56,135	26,648	43,892	64,641	42,946	22,909	9,423	14,285	94,345	92,507	66,065	30,0

2

1919

HOGS							SHEEP					HORSES AND MULES				
1902	1901	7 Months 1905	1904	1903	1902	1901	1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
36,325	20,286				---	---				120,872	116,616				1,000	840
2,214	---	---	---	---	---	---	---	10,759	17,035	12,537	---	236	---	1,575	1,522	---
122,765	54,120	---	---	72	---	79	48,370	522,550	653,973	761,676	338,899	1,912	6,198	8,739	6,850	5,031
3,532	1,364	---	---	---	---	---	3,436	40,743	24,526	32,197	39,740	1,642	2,772	1,824	2,911	374
603	625	---	---	---	---	---	---	---	---	---	---	628	180	1,660	2,325	1,458
---	---	---	---	---	---	---	---	4,015	2,265	2,245	4,172	1,637	3,820	4,638	4,417	884
---	---	---	---	---	---	---	---	6,831	---	---	---	---	---	23	---	---
273	1,995				---	---				207,776	135,708				80	260
1,836	---	---	---	---	---	---	7,519	21,426	72,542	38,708	---	468	931	589	1,563	---
18,321	7,915	79	72	---	431	---	84,688	337,741	312,069	247,642	203,171	4,045	6,849	4,243	4,457	3,225
317	342	---	---	---	---	---	34,132	214,246	121,267	114,709	72,989	464	249	252	1,696	2,692
---	---	---	---	---	---	---	---	231	---	---	---	27	254	667	1,504	1,620
---	---	---	---	---	---	---	2,309	13,617	4,779	5,300	9,204	1,181	729	1,305	1,752	3,425
---	---	---	---	---	---	---	---	511	---	---	---	788	35	---	---	---
---	1,365				---	---				1,108	94,256				120	560
2,269	---	---	---	---	72	---	4,416	185,015	181,518	246,429	91,000	52	423	793	846	3,621
9,213	1,663	---	---	---	239	---	9,480	49,142	60,839	56,974	44,221	396	3,599	6,583	7,226	2,253
---	321	---	---	---	---	---	608	55,238	11,602	29,825	26,651	26	441	830	22	399
---	---	---	---	---	---	---	---	---	---	---	---	---	29	215	2,516	891
---	---	---	---	---	---	---	1,145	5,812	2,989	---	1,100	1,492	3,441	2,310	213	851
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
---	---				---	---				5,504	---				20	80
68	---	---	---	---	---	---	5,619	1,261	2,765	9,970	---	166	159	99	538	---
499	126	---	---	---	---	---	741	1,027	543	---	---	2,014	1,733	1,701	338	841
---	---	---	---	---	---	---	3,983	1,458	---	---	1,801	---	---	329	---	1,028
---	---	---	---	---	---	---	---	---	---	---	---	378	2	336	2,268	---
---	---	---	---	---	---	---	3,432	532	---	---	---	1,311	1,073	126	302	679
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
21	---				---	---				7,396	---				---	---
---	---	---	80	---	---	---	---	312	4,920	3,202	---	207	437	670	698	---
1,074	72	---	---	---	---	---	12,987	36,816	15,952	24,795	2,803	974	4,533	4,062	5,139	4,255
---	---	---	---	---	---	---	---	9,223	3,303	---	---	242	123	803	1,153	75
---	---	---	---	---	---	---	---	---	---	---	---	93	---	20	584	293
---	---	---	---	---	---	---	---	550	---	---	---	1,216	4,549	2,948	2,363	320
---	---	---	---	---	---	---	24,071	10,546	---	---	---	23	---	1,025	---	---
---	---				---	---				6,536	3,784				40	---
---	---	---	---	---	---	---	---	---	---	---	---	282	86	---	---	---
---	---	---	---	---	---	---	---	2,441	---	---	7,446	---	767	63	30	156
---	---	---	---	---	---	---	---	---	---	---	---	329	24	---	---	---
---	---	---	---	---	---	---	---	---	---	---	---	42	69	1,250	1,340	702
---	---	---	---	---	---	---	---	---	---	---	---	368	1,005	---	---	48
---	---	---	---	---	---	---	19,169	8,545	43,280	---	---	---	101	---	---	---
132,006	58,590				300	150				326,456	168,904				3,180	1,560
1,773	---	---	---	---	---	---	1,972	5,600	4,706	1,291	---	479	769	888	766	---
22,220	2,159	---	---	---	---	---	10,919	30,716	17,473	21,777	15,976	1,029	1,660	1,775	2,308	5,288
1,066	---	---	---	---	---	---	4,566	5,815	---	1,097	2,109	1,905	4,653	1,626	1,025	3,358
---	---	---	---	---	---	---	---	---	2,903	3,102	---	138	187	2,049	2,760	6,601
1,812	---	---	---	---	---	---	633	697	---	755	---	2,597	6,845	3,438	3,033	2,021
50,653	14,184	30	9	---	20	---	128,062	515,180	608,461	383,823	200,210	1,042	5,413	4,875	5,746	10,697
52,920	33,201				5,625	12,000				89,956	91,330				600	560
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	53	---
152	---	---	---	---	---	---	712	250	1,445	293	---	23	52	---	---	270
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
1,092	870	350	1,123	859	1,092	870	186	547	1,060	657	---	111	56	9	594	1,411
---	---	---	---	---	---	---	---	---	---	---	---	1	---	97	---	270
56,135	26,648	43,892	64,641	42,946	22,909	9,423	14,285	94,345	92,507	66,065	30,068	111	538	500	747	1,610

STATES	MARKETS	CATTLE AND CALVES.					HOGS.					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	190
Arizona	Chicago				---	---				---	---				516	-
	Kansas City	108	44	328	---	---	---	---	---	---	---	97,979	2,644	53,623	---	14,8
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St Joseph	---	---	---	---	---	---	---	---	---	---	24,189	1,393	6,754	961	7,1
	Sioux City	6,246	481	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	1,1
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
New Mexico	Chicago				1,512	---				450	---				1,720	-
	Kansas City	1,705	27,490	31,931	49,676	17,600	4,201	---	297	1,300	---	22,481	18,997	103,180	62,232	40,0
	Omaha	11,864	2,162	999	1,398	96	---	---	---	---	---	1,122	---	1,467	3,474	-
	St. Joseph	113	6,641	11,404	7,171	221	---	---	68	583	---	8,640	3,025	10,326	17,466	6,1
	Sioux City	13,652	2,595	12,745	5,616	715	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	299	---	---	---	---	---	---	---	644	4,562	4,980	2,480	3,6
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Kentucky	Chicago				9,429	---				6,375	---				37,324	-
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	1,547	3,130	5,137	6,178	5,143	18,772	45,511	13,656	31,887	32,369	7,346	13,656	15,383	15,079	12,8
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Tennessee	Chicago				819	---				---	---				26,141	-
	Kansas City	---	---	167	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	4,429	6,781	7,532	14,412	11,697	8,723	30,829	52,726	15,953	21,177	18,879	27,969	19,942	17,226	3,8
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Louisiana	Chicago				---	---				---	---				---	-
	Kansas City	---	59	685	---	---	---	---	---	---	---	761	256	1	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	1,283	2,312	5,907	14,745	2,599	---	---	30	44	53	---	117	---	160	4
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
Mississippi	Chicago				42	---				---	---				---	-
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	1,606	2,703	6,145	10,738	3,808	---	89	461	259	257	152	438	784	445	8
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
California	Chicago				---	---				---	---				---	-
	Kansas City	---	---	---	---	---	---	---	---	---	---	2,368	887	762	---	-
	Omaha	1,140	---	---	---	---	---	---	---	---	---	6,773	---	4,166	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
New Hampshire	Chicago				---	---				---	---				---	-
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	-

1020

1405d

HOGS.							SHEEP					HORSES AND MULES.				
1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
---	---				---	---				510	---				---	---
---	---	---	---	---	---	---	97,979	2,644	53,623	---	14,800	186	35	966	---	---
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
---	---	---	---	---	---	---	24,189	1,393	6,784	961	7,118	---	---	---	---	---
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1,512	---				430	---				1,720	---				---	60
69,676	17,600	4,201	---	497	1,300	---	22,481	18,997	103,180	62,232	40,000	404	1,573	1,121	1,249	---
1,398	96	---	---	---	---	---	1,122	---	1,467	3,474	---	195	---	---	490	---
7,171	221	---	---	68	583	---	8,640	3,025	10,326	17,466	6,161	---	305	140	53	---
5,516	715	---	---	---	---	---	---	---	---	---	---	29	82	531	---	---
---	---	---	---	---	---	---	644	4,562	4,980	2,480	3,514	107	381	313	124	695
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
9,429	---				6,375	---				37,324	---				540	1,380
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6,178	5,143	18,772	45,511	13,656	31,887	32,369	7,346	13,656	15,383	15,079	12,800	109	150	293	1,302	673
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819	---				---	---				26,141	---				40	---
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14,412	11,697	8,723	30,829	52,726	15,983	21,177	18,879	27,969	19,942	17,226	3,326	70	415	582	1,796	748
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---	---	---	---	---	---	---	761	256	1	---	---	---	4	63	---	---
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14,745	2,599	---	---	30	44	53	---	117	---	160	474	45	48	47	42	---
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42	---				---	---				---	---				---	---
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10,738	3,808	---	89	461	259	257	152	438	784	445	591	37	1	37	---	---
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STATES.	MARKETS	CATTLE AND CALVES.					HOGS					SHEEP				
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	19
South Carolina	Chicago	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
Alabama	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	160	583	---	---	---	---	120	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	86	189	---	
Georgia	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	3,149	---	---	
New Jersey	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
New York	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
Ohio	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	30	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	469	---	---	
Pennsylvania	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
West Virginia	Chicago															
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---	

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CALVES.			HOGS					SHEEP					HORSES AND MULES.				
OS	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
						1											
583					120				85	189				31	240		
									3,149				28	817	28		
													6		8		
													26		12		
									469				61	218	165		
													189	113	75		
														5			
													12				

STATES	MARKETS.	CATTLE AND CALVES.					HOGS.					SHEEP			
		7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902
Massachusetts	Chicago				---	---				---	---				---
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Canada	Chicago				---	---				---	---				---
	Kansas City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Omaha	---	---	13	---	---	---	---	---	---	---	---	---	---	---
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Paul	---	520	132	---	---	---	---	---	---	---	295	---	---	---
Mexico	Chicago				---	---				---	---				---
	Kansas City	---	692	---	---	---	---	---	---	---	---				---
	Omaha	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Joseph	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Sioux City	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	St. Louis	---	---	68	---	---	---	---	---	---	---	---	---	---	---
	St. Paul	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Driven in	Chicago				6,244	6,387				3,510	3,910				644
	Kansas City		18,876	15,392	22,807	25,972		38,081	31,609	37,565	51,424		15,129	16,645	15,959
	Omaha	9,904	12,604	11,847	13,775	14,337	27,040	34,474	32,547	36,829	39,263	12,666	44,334	46,268	32,315
	St. Joseph		23,393	33,755				38,040	22,519				11,049	13,917	
	Sioux City		9,776	12,397	12,229	17,474		13,053	11,522	15,489	24,570		2,127	643	1,578
	St. Louis		22,076	11,575				18,390	10,997				2,502	3,945	
	St. Paul	1,016	8,339				---	9,306				1,021	3,015		
Totals *	Chicago	2,060,445	3,520,684	3,704,299	3,193,306	3,213,220	4,676,256	7,238,746	7,325,923	7,895,238	8,290,494	2,316,112	4,504,630	4,582,760	4,515,716
@	Kansas City	970,056	2,163,471	2,137,118	2,279,160	2,126,575	1,477,298	2,227,170	1,969,381	2,279,337	3,716,404	738,974	1,004,099	1,151,730	1,154,084
∂	Omaha	493,172	944,192	1,071,177	1,010,815	818,008	1,521,417	2,299,627	2,231,067	2,247,428	2,414,053	849,122	1,754,365	1,963,763	1,742,539
/	St. Joseph	252,131	587,261	624,974	517,294	439,293	1,163,929	1,656,849	1,700,564	1,697,731	2,105,209	631,481	794,379	599,189	560,653
?	Sioux City	242,261	331,293	379,466	392,606	290,055	824,106	1,113,177	1,007,900	992,273	935,394	11,024	28,464	41,744	59,697
#	St. Louis	534,596	1,074,126	1,139,749	1,112,942	892,270	1,150,375	1,954,902	1,568,038	1,329,819	1,924,206	392,303	687,896	528,089	523,201
"	St. Paul	164,407	388,633	302,338	306,066	190,290	546,243	881,635	759,542	667,526	616,796	234,664	771,576	875,215	602,340

* Included in Receipts from Illinois
@ " " " " Missouri and Kansas
∂ " " " " Nebraska and Iowa
/ " " " " Missouri and Kansas
? " " " " Iowa and Nebraska
" " " " Missouri and Illinois
" " " " " Minnesota

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E AND CALVES.			HOGS.					SHEEP					HORSES AND MULES.				
1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901	7 Months 1905	1904	1903	1902	1901
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13	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
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132	---	---	---	---	---	---	---	295	---	---	---	---	---	---	---	---	---
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69	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
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	6,344	6,387				3,510	3,910				644	131				545	1,130
15,392	22,807	25,972		38,081	31,609	37,565	51,484		15,129	16,645	15,959	19,243		459	619	2,572	3,780
11,847	13,775	14,337	27,040	34,474	32,547	36,829	39,263	12,666	44,334	46,229	22,315	31,456	220	180	505	251	1,236
33,755				38,040	22,519				11,049	13,917				293	406			
12,397	12,229	17,474		13,053	11,522	15,489	24,570		2,127	643	1,578	5,724		107	145	735	477
11,575				18,390	10,997				2,502	3,945				13,168	12,112		
			---	9,306				1,021	3,015				21	9			
3,704,299	3,193,306	3,213,220	4,676,256	7,238,746	7,325,923	7,895,238	8,290,494	2,316,112	4,504,630	4,582,760	4,515,716	4,044,095	83,980	105,549	100,603	102,100	109,353
3,137,112	2,279,166	2,126,575	1,477,298	2,227,170	1,969,381	2,279,337	3,716,404	738,974	1,004,099	1,151,730	1,184,084	980,078	33,094	67,552	67,274	74,272	92,877
1,071,177	1,010,815	818,008	1,521,417	2,299,627	2,231,067	2,247,428	2,414,053	849,122	1,754,365	1,863,763	1,742,539	1,314,841	20,893	46,845	52,829	42,079	36,391
624,974	517,294	439,293	1,163,929	1,656,849	1,700,564	1,697,731	2,105,209	631,481	794,379	599,189	560,653	525,933	16,433	28,704	20,483	19,909	22,521
379,466	392,606	290,055	824,106	1,113,177	1,007,900	992,273	935,394	11,024	28,454	41,744	59,697	61,206	7,636	4,185	12,044	18,416	17,887
1,139,749	1,112,942	892,270	1,160,375	1,954,902	1,568,038	1,329,819	1,924,206	392,383	687,896	528,089	523,201	520,313	86,518	181,341	128,615	109,295	128,880
302,338	306,066	190,290	546,243	881,635	759,842	667,526	616,796	234,664	771,576	875,215	602,340	332,367	2,787	6,438	7,697	8,162	15,128

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YEAR 1901. 1408g

	Cattle & Calves	Hogs	Sheep	H.A.M.
Chicago Receipts	3,215,220	8,290,494	4,044,095	109,353
From Illinois	781,767	2,641,425	816,828	42,760
% of Total	24.33	31.86	20.20	39.19
Chicago Receipts	3,213,220	8,290,494	4,044,095	109,353
From Iowa	1,056,656	3,854,775	999,664	40,220
% of Total	32.88	46.50	24.72	36.77
Kansas City Receipts	2,126,575	3,716,404	980,078	92,877
From Kansas	1,149,273	2,046,864	264,700	37,500
% of Total	54.04	55.08	27.01	40.38
Kansas City Receipts	2,126,575	3,716,404	980,078	92,877
From Missouri	362,698	1,117,508	138,600	21,500
% of Total	17.06	30.07	14.14	23.15
Omaha Receipts	818,008	2,414,052	1,314,841	36,391
From Nebraska	514,888	1,598,438	468,136	10,034
% of Total	62.94	66.21	35.60	27.57
Omaha Receipts	818,008	2,414,052	1,314,841	36,391
From Iowa	109,581	806,312	31,587	1,774
% of Total	13.40	33.40	2.40	4.88
St.Joseph Receipts	439.293	2,105,209	525,933	22,581
From Nebraska	60,977	724,424	35,348	5,715
% of Total	13.88	34.41	6.70	25.37
St.Joseph Receipts	439,293	2,105,209	525,933	22,581
From Kansas	112,621	400,626	28,765	2,259
% of Total	25.64	19.03	5.47	10.00

Kenyons' Exhibit "B"
Vol 12, pp 1408

1024

14084

Kenyon's Exhibit C. Omaha.

RECEIPTS OF LIVE STOCK FROM IOWA.

Year Ending December 31, 1904-1903.

Railroad	Year	Cattle	Hogs	Sheep.
C M & St P	1904	16309	76912	2292.
	1903	14828	110351	4452
Wabash	1904	4974	20989	3529
	1903	7043	25850	2384
Union Pacific	1904	186	296	2251
	1903	230	502	3429
C & N W	1904	15080	88106	4635
"	1903	23174	135272	5362
C St P M & O	1904	627	114	127
"	1903	791	75	
C B & Q	1904	17336	68325	4382
"	1903	24016	93172	7859
K C St J & C B	1904	3063	6358	412
	1903	3262	7211	103
C R I & P	1904	18012	87921	7553
	1903	30176	125797	6335
Illinois Central	1904	8461	34300	2167
"	1903	11324	34898	4129
Chicago Gt Western	1904	8483	41064	1731
"	1903	1649	11503	1748
Total	1904	92531	424385	29079
"	1903	126493	544631	35801
Increase				
Decrease.		33962	120246	6722

1025

1408i

Kenyon's Exhibit D

PACKERS' PURCHASES AND DIRECT CONSIGNMENTS.
YEAR 1904-1903.

	Year	Cattle	Hogs	Sheep
Omaha	1904	95103	273451	96106
	1903	111388	264576	100335
Swift	1904	187885	463914	352381
	1903	208590	441631	361456
Cudahy	1904	182249	544576	242747
	1903	203757	525561	211087
Armour	1904	165531	574617	299711
	1903	178323	544257	270760
Total	1904	630768	1856758	990947
	1903	702058	1776025	963638

CONSIGNED DIRECT

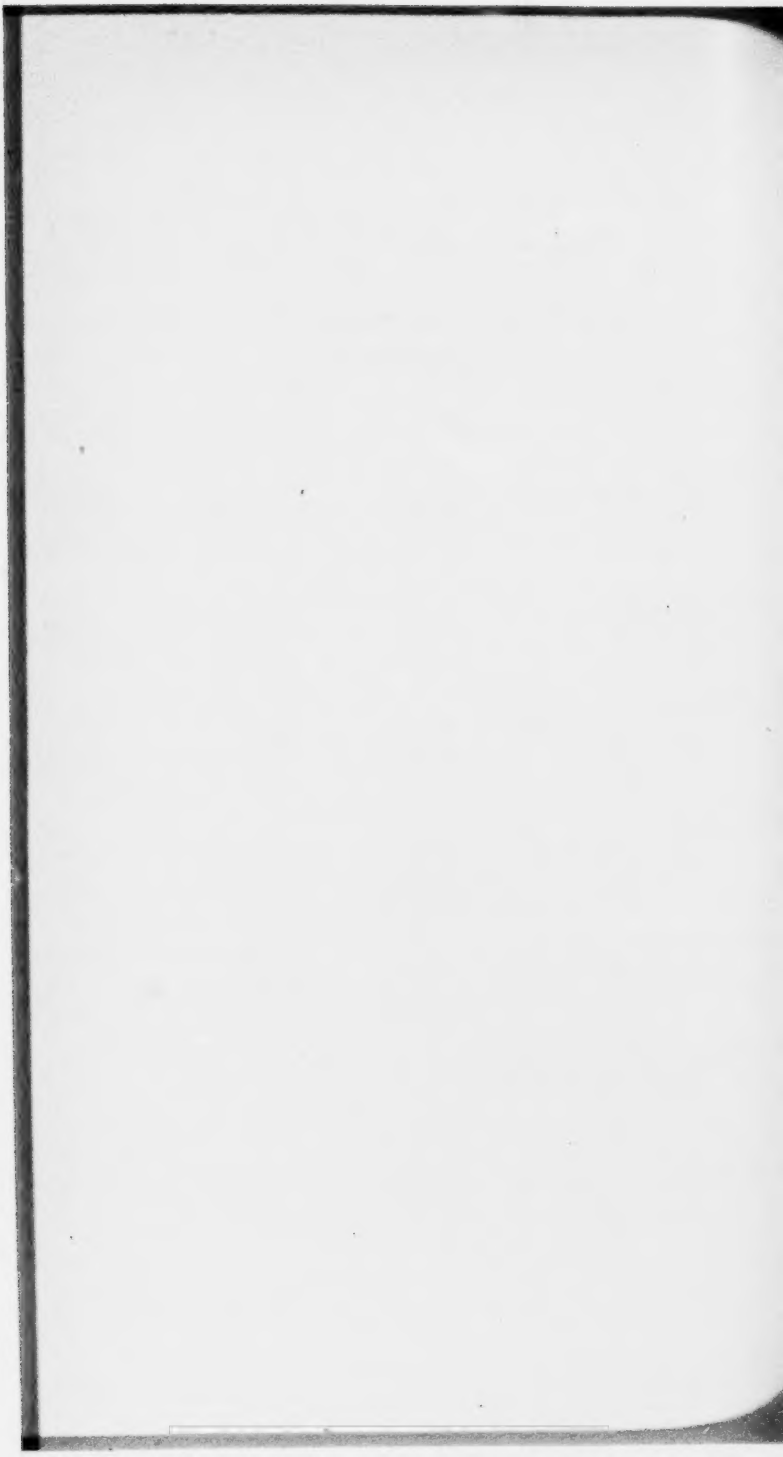
Omaha	K C	1904	1616		1101
		1903	1256		2658
	St Joe	1904	64	----	2990
		1903	2692	814	557
Swift	K C	1904	1776		2882
			191		2411
	St Joe	1904	1161		2841
			228		495
	Country	1904	1040	1534	
			3747	877	
Cudahy	K C	1904	10461	---	1853
		1903	12817	4274	13066
	St Joe	1904	---		
			36		
	Country	1904	1	---	103
		1903	1493	1269	4166
	Sioux Cy	1904	450	14995	338
		1903	----	14719	---
	Denver	1904	1230		205
		1903	---		---
	Ft Worth	1904	1080		
		1903			
Armour	K C	1904	477		1056
		1903	920		2154
	Sioux Cy	1904	3618	249377	---
		1903	16578	380579	90
	Country	1904		---	
		1903		952	
	Denver	1904	1398		
		1903	---		
Total		1904	24372	265906	13369
		1903	39988	403484	25597

Kenyon's Exhibit E.

14089.

LIVE STOCK CONSUMED BY VARIOUS PACKERS AT VARIOUS MARKETS.

	Cattle & Calves	Hogs	Sheep
CHICAGO			
Seven Months 1905	1268588	3319761	1841972
Year 1904	2175936	5612724	3142360
1903	2408530	6088369	3582651
1902	2256621	7142440	3683988
KANSAS CITY			
Seven Months 1905	605084	1442011	584187
Year 1904	1111284	2083020	731259
1903	1126458	1891708	775989
1902	1205599	2246303	724773
SOUTH OMAHA			
Seven months 1905	360524	1395017	539833
Year 1904	642277	2087605	815421
1903	735158	2177981	881359
1902	610281	2075743	815442
ST JOSEPH			
Seven months 1905	182279	1127610	481029
Year 1904	430298	1562340	509006
1903	434484	1577860	442717
1902	393213	1606055	419664
SIOUX CITY			
Seven months 1905	77555	639433	6756
Year 1904	71599	500008	6199
1903	73073	467351	16973
1902	91406	467351	16973
ST LOUIS			
Seven months 1905			
Year 1904			
1903			
1902			
ST PAUL			
Seven months 1905	61582	523405	95629
Year 1904	111823	810151	174600
1903			
1902			



1027

1408k

Kenyon's Exhibit F.

RECEIPTS AND DISPOSITION OF LIVE STOCK AT SOUTH OMAHA

Jan. 1st to Dec. 31, 1904-1903

	Year	Cattle	Hogs	Sheep
Sold to Packers	1904	630768	1856758	990947
	1903	702058	1776025	965162
Consigned Direct to Packers	1904	24372	265906	13369
	1903	39988	403484	25597
Forwarded, First Hands	1904	9816	821	102704
	1903	4510	103	79259
Forwarded, Not on Market	1904	25013	----	8837
	1903	35276	6	28821
Sold to Speculators, Feeders & Shippers	1904	254223	176142	638508
	1903	289345	51449	764924
Total Disposition	1904	944192	2299627	1754365
	1903	1071177	2231067	1863763
Total Receipts	1904	944192	2299627	1754365
	1903	1071177	2231067	1863763

Yours truly

General Manager.

W A P 35

1028

Kenyon's Exhibit G. 1408

FEEDER SHIPMENTS, VARIOUS MARKETS.

Jan. 1st to July 31, 1905-1904.

	Year	Omaha	Denver	Sioux Cy	Kansas Cy.
Nebraska	1905	42972	22589	26299	4889
	1904	36105	14092	15943	9618
Iowa	1905	42049	1076	41380	22374
	1904	36525	742	30646	26461
Kansas	1905	396	3613	----	89350
	1904	748	1164	----	77456
Missouri	1905	2842	289	175	87388
	1904	3486	27	121	106249
Illinois	1905	3184	1525	303	38518
	1904	3370	---	43	35836
South Dakota	1905	16155	21239	52393	----
	1904	4242	28338	41826	----
Colorado	1905	112	17503	---	----
		---	13891	---	---
Wyoming	1905	243	26679	---	---
	1904	239	31186	---	---
Other states	1905	3679	9402	14508	5612
	1904	7697	22135	17755	7529
Total	1905	111632	103915	135058	248131
	1904	92412	111575	105334	263149

1029

Kenyon's Exhibit Ga.

1408m

FEEDER SHIPMENTS OF VARIOUS MARKETS.

Year ending December 31,
1902-1901

Destination	Year	Omaha	Sioux City	Kansas City
Nebraska	1902	160298	41786	16789
	1901	115920	42249	31160
Iowa	1902	137841	81920	91027
	1901	76405	50020	95603
Kansas	1902	716		209497
	1901	1142	30	195167
Missouri	1902	16921	1549	307918
	1901	6224	343	164863
Illinois	1902	18225	861	122287
	1901	5894	203	55508
So Dakota	1902	15951	90850	
	1901	24100	60752	
Colorado	1902	2662		
	1901	4026	156	
Wyoming	1902	1485	107	
	1901	6112	180	
Other states	1902	11615	37078	46615
	1901	11165	16818	112461
Total	1902	365714	254151	794133
	1901	250988	170751	654752

Youts truly

General Manager.

1030

1408m

FEEDER SHIPMENTS, VARIOUS MARKETS.

Jan. 1, to Dec. 31, 1904-1903.

	Year	Omaha	Denver	Sioux Cy	Kansas City
Nebraska	1904	130,847	29,253	36,157	23,987
	1903	153,666	25,917	37,920	16,302
Iowa	1904	91,566	2,372	67,018	62,689
	1903	102,504	393	75,070	58,814
Kansas	1904	1,382	1,485		219,389
	1903	1,070	884		248,633
Missouri	1904	7,872	27	180	244,664
	1903	13,268	227	89	333,496
Illinois	1904	10,525	622	404	139,436
	1903	13,276	1,246	347	110,659
South Dakota	1904	4,618	35,809	57,085	
	1903	12,063	65,003	71,701	
Colorado	1904	26	21,776		
	1903	1,010	16,273		
Wyoming	1904	824	38,169	---	
	1903	1,081	44,176	314	
Others	1904	9,035	22,251	22,019	26,412
	1903	12,358	43,724	42,527	21,231
Total	1904	256,715	151,764	182,863	716,577
	1903	310,695	197,843	227,968	789,135

Kenyon's Exhibit H. Year 1904. 1408a

PERCENTAGE OF RECEIPTS PACKED AT VARIOUS MARKETS.

	CATTLE	HOGS	SHEEP
OMAHA			
Receipts	944192	2299627	1754365
Packed	642277	2087605	885421
Per cent Packed	68.02	90.78	50.47
KANSAS CITY			
Receipts	2163471	2227170	1004099
Packed	1111284	2083020	731259
Per cent Packed	51.36	93.52	72.82
CHICAGO			
Receipts	3526684	7238746	4504630
Packed	2176936	5612724	3142360
Per cent Packed	61.72	77.53	69.75
ST JOSEPH			
Receipts	587261	1656849	794379
Packed	430298	1562340	509006
Per cent Packed	73.27	94.29	64.07

1409 And thereupon the defendants, by their counsel, then and there announced that they rested their case.

And thereupon the complainant, the Interstate Commerce Commission, further to maintain the issues upon its part, introduced the following evidence in rebuttal:

H. L. WILSON, called as a witness on behalf of the Interstate Commerce Commission, in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. Where do you reside?
A. Osage, Iowa.
Q. What railroad is it on and how far is it from Chicago?
A. It is 340 miles from Chicago by the Illinois Central. I am not certain about the distance via the Chicago Great Western. We are on both lines.
Q. Is your place on the direct line from Missouri River to Chicago?
A. No, we are on the line from St. Paul to Chicago, on the Illinois Central.

The COURT:

Q. What roads are you on?
A. The Illinois Central and Chicago Great Western. We
1410 are on the line between St. Paul and Chicago on the Illinois Central.
Q. What is your business?
A. I am a farmer, feeder, shipper and an Editor.

Mr. COWAN:

Q. Are you acquainted with the live stock business in that locality?
A. Yes, sir, I think so.
Q. For how long have you been engaged in your present business, and to what extent are you acquainted with it?
A. I have been in the live stock business for 25 years or about that time.
Q. During the time you have been engaged in the business of—you have been engaged in the business of raising, feeding and shipping live stock?
A. Yes, sir.
Q. Do you raise all the live stock you feed, or buy them, and if you buy them where do you get them?
A. I buy them mostly. I feed a great many cattle and hogs and I also buy and ship.
Q. You will have to speak a little more distinctly.
A. I feed hogs and cattle and I also buy and ship without feeding.
Q. Do you buy any of those which you feed?
A. Yes, sir.
Q. Where do you buy them?
A. In the surrounding country mostly, sometimes in St. Paul.

1411 Q. To what markets do you ship the hogs and cattle?

A. I have shipped to nearly all the western markets and some eastern markets.

Q. What is the rate of freight on hogs and cattle from your place?

A. Our rate of freight is 24 cents on hogs and 23 cents on cattle.

Q. How long has it been so?

A. For a great many years, I don't know how long.

Q. Was it less at some previous time, and if so, when?

A. I don't think it was ever less than that.

The COURT:

Q. What County are you in,—what part of Iowa?

A. Mitchell County on the northern tier of counties.

Q. How far from Chicago or Sioux City?

A. 340 miles from Chicago. I am not certain about the distance to Sioux City, but about 160 miles, I think, or a little more than that. It is more than 160 miles.

Mr. COWAN:

Q. To what extent have you been shipping, frequently or infrequently?

A. I ship frequently a great many cars in a year.

Q. For the purpose of sale on the market?

A. Yes, sir.

Q. Do you consign to commission companies?

1412 A. When I ship to Chicago I consign to these commission men. I frequently sell hogs at Cedar Rapids or Waterloo and many other places.

Q. What is the method of doing that business?

A. At Cedar Rapids?

Q. Yes.

A. I usually sell in advance.

Q. By what method do you arrive at an agreement?

A. The Cedar Rapids packing house has certain grades that they pay certain prices for and another grade that they pay another price for. They have four grades and they have four different prices for them. When I sell a car of hogs to arrive at some future time, those hogs are graded and classified according to the quality of the hogs.

Q. How do you ascertain the price?

A. The price is named in—we are familiar with the prices in Cedar Rapids by wire every day if there is any change.

Q. Is there a market at Cedar Rapids that fixes the prices, or is it based on some other place?

A. Well, they base the market on Chicago.

Q. Is the Cedar Rapids price which is paid, the Chicago price or something less or greater, and to what extent is it less or greater?

A. It is usually about 15 or 20 per cent. below Chicago on certain grades.

Q. During what time of the year are the hogs bought for the Chicago market?

A. They buy at all times of the year.
1413 Q. You say it is usually 15 or 20 cents below the Chicago market?
A. That is the usual range in price.
Q. Is the price paid based on the Chicago market?
A. I think quite largely, yes. When Chicago is down they always go down.
Q. Who beds the cars for shipment?
A. Why, I always bed my own cars, or my men.
Q. What is the custom in Iowa, so far as you are acquainted with it, and what has it been with respect to the matter of bedding the cars?
A. The shippers bed the cars.
Q. Who furnishes the bedding?
A. The shippers.
Q. Can you state whether the railroads are at any expense in the matter of bedding cars from shipments from your part of the country where you are acquainted?
A. No, sir, not that I know of. I never saw any expense. They never furnish no bedding for us as far as our town is concerned.

The COURT:

Q. No sand?
A. Well, I will except one instance in that respect. About a year ago the Railroad company were running a gravel train past Osage up and down the road and there was a car that was damaged in some way, and it ran in the side track and was side tracked there. We asked the agent to unload the car and told him
1414 that we would use the gravel for bedding hog cars, and he did so, and that was the only exception that I know of.

Mr. COWAN:

Q. Now, in your experience out there at places aside from Osage, who furnishes the bedding?

Mr. DAWES: I object to that. It has not been shown that he has any experience at any other place.
The COURT: Find out whether he has had any experience.

Mr. COWAN:

Q. What observation have you had with respect to the matter of shipping cattle and hogs from other stations?
A. I have shipped live stock from 25 stations in Iowa.
Q. What are the principal ones?
A. Osage, Mitchell, St. Angus, Lyle, Orchard, Charles City, Little Cedar, Rice Falls, David, McIntyre, Elma, Pecora and Ossia. That is sufficient, I guess.
Q. After having answered that, state what is the custom about bedding the cars in the district where these stations are located, and where you are acquainted?
A. I have never seen an instance in all my career of 25 years wherein any one else bedded the car only the shipper, or some one for him.

Q. How is it with respect to the railroads having furnished the bedding?

1415 A. I never saw any bedding furnished only in this case that I mentioned.

Q. How many cars have you been shipping per year?

A. My shipments will run from 400 to 500 cars a year.

Q. Over what roads?

A. At the present time I am only operating on two roads, the Illinois Central and the Chicago Great Western, and not very extensively on either. I am not shipping much stock at the present time.

Q. Do they always furnish you cars which have been cleaned?

A. Not always, no.

Q. To what extent are the cars which are furnished you previously, cleaned, so that they are furnished to you already cleaned?

A. Well, probably half of the cars are fairly well cleaned and the other half *or*- not.

Q. Do you ever clean any of them?

A. Yes, sir.

Q. How many cars will a man clean in a day?

A. That depends upon the condition of the car.

The COURT: And the weather.

Mr. COWAN:

Q. Suppose it has been used for one trip?

A. For one trip?

Q. Yes.

A. He can clean a great many.

Q. About how many?

A. Well, 40.

Mr. SEVERANCE:

Q. One man?

A. Yes, sir.

Q. Summer or winter?

1416 A. Not frozen; if it was frozen he could not do that.

Mr. COWAN:

Q. Do they clean the cars in the winter when they are frozen?

A. I think not.

The COURT:

Q. What is your experience? What do you know about it?

A. I never undertook to throw out much frozen manure out of a car, if it was real well frozen.

Mr. COWAN:

Q. How much will the bedding weigh in a car which has been used simply for one trip?

A. How much will the bedding weigh?

Q. Yes. I mean the stuff that is in the car, that you clean out, if it has just been used for one trip?

A. Ordinarily from 500 to 1,000 pounds.

Q. You have been sitting here and have heard a number of statements made with respect to the very heavy weight of the bedding in the cars. How could heavy weight bedding occur in the cars? Would that occur on one trip, or would it have to be used over and over again?

A. Why, it should not occur on one trip. Ordinarily those cars with a large amount of manure are used for a year or two, as I understand it.

Mr. SEVERANCE:

Q. Do you mean that the manure has been in the car for a
1417 year or two?

A. That is what I said.

Mr. COWAN:

Q. How thick have you seen it in cars?

A. I have seen it a foot thick.

The COURT:

Q. Whose car was that?

A. Well, I could not tell, I do not recollect any special car.

Mr. SEVERANCE: They must belong to these private car lines. They have no friends.

The WITNESS: Well, as you mention, these private car lines, it often does occur that there is more manure in them than there is in the regular company cars. That is true.

Mr. COWAN:

Q. What is the average weight of the cattle you ship, per 36-foot car to Chicago?

A. I aim to get from 24,000 to 35,000 pounds.

Q. What is the weight of the hogs which you ship in the 36-foot cars?

A. About 17,500 to 17,800 pounds.

Q. In the course of your experience how much loss and damage have you collected, what claims have you put in for loss and damage?

Mr. SEVERANCE: I object to that, as immaterial.

The COURT: Well, lets see what he says.

Mr. SEVERANCE: What his particular experience has been——

1418 The WITNESS: I had a claim for a car of hogs lost once, or wrecked, a number of years ago. I got the reasonable value of the hogs.

Mr. COWAN:

Q. Do you sometimes miss the market that you ship for when you are shipping in?

A. Oh, yes, sometimes we are delayed.

Q. Do you put in claims for damages for every such shipment?

Mr. SEVERANCE: That is objected to, as entirely immaterial.

The COURT: I don't believe that we ought to go into that, Mr. Cowan. We would have to try every one of those cases. To make it valuable you would have to bring in everybody that ships on the road.

Mr. COWAN: I am not trying that particular claim. The reason I asked this question is this. Your Honor will remember that a number of gentlemen stated that every time they are late in getting in they were confronted with a claim for damages.

Mr. SEVERANCE: I think no one has so stated.

The COURT: They did not prove that any one of them were paid.

Mr. SEVERANCE: Oh, yes, they stated that, but they did not state that this man had ever made a claim.

Mr. COWAN: I think it is proper to show by actual ship-
1419 pers that it is seldom that claims are put in of that kind.

Mr. SEVERANCE: What would you establish by that, your Honor?

The COURT: Now, you wait. When you have got the Court with you, you had better not talk.

Mr. SEVERANCE: I saw the Court was thinking and I thought he was wavering.

The COURT: Don't you worry about that. Wise men change their minds. Others sometimes do not. The objection is sustained. Now, go ahead.

Mr. COWAN:

Q. What is the character of the stock yards at those various shipping points?

Mr. DAWES: What various shipping points?

Mr. COWAN: That he has already mentioned.

A. I could describe the condition of the stock yards at Osage or Little Cedar or David or Lyle. Those are the only points I have been at recently.

The COURT: Well, describe them.

A. Osage, the Illinois Central has a yard there with eight pens, and a scale and a receiving yard, and the Great Western have a stock yard with four covered pens and two open pens and a small receiving yard and a scale. Little Cedar has four pens and David has two pens. McIntyre has four pens, I think.

1420 Q. Did you look over the statement made by Mr. Daly giving the value of the yards and grounds of the various stock yards on the Illinois Central, introduced yesterday?

A. Yes, sir.

Q. Are you acquainted with the cost of lumber and labor and the value of construction of pens and fences and buildings and things of that kind in your locality?

A. Yes, sir, somewhat.

Q. What, in your opinion, is the value of the stock yards; you may mention some of them that were mentioned by Mr. Daly.

Mr. DAWES I object to that, unless he confines his opinion to the four yards that he says he knows something about.

Mr. SEVERANCE: I object. He has not shown himself qualified to give an opinion.

The COURT: Objection overruled.

Mr. SEVERANCE: May I ask him a few questions? I want to make an objection to his competency?

The COURT: I think not, you can cross-examine.

Mr. SEVERANCE: The testimony is not competent and I desire to ask a few questions to show that.

The COURT: No matter whether it is, it will be in.

Mr. DAWES: Does your Honor overrule my objection, also?

The COURT: Yes. He may answer.

1421 Mr. SEVERANCE: I would like an exception to the ruling of the court refusing to permit me to examine as to the competency of the witness.

To which ruling of the Court the defendants, and each of them, by their counsel, then and there duly excepted.

The COURT: Go ahead and answer.

A. The stock yard at Osage, the Illinois Central stock yard, is the best yard that I have described at the four stations. The reasonable value of the Illinois Central stock yard, in my opinion would be $1,500, including the scale. The reasonable value of the ground would be less, the ground that it occupies, would be less than $100.

Mr. LYNDE:

Q. How much does it occupy?

A. It occupies a space of ground about twice the space of this court room.

Q. How many acres?

A. I never measured it, but I estimate that $100 would be a strong price for it.

The Great Western stock yard at Osage is composed of four yards, and $600 would be a very good price for it, including the scales.

The Little Cedar Stock yards are somewhat smaller and their value would not exceed $400.

The David stock yards is somewhat smaller still, and their value would not exceed $350.

1422 The Lyle stock yards,—there are two stock yards there,—and the value would not exceed $400, including the scales.

Mr. COWAN:

Q. How is it at Orchard?

A. I haven't been at Orchard recently, but I understand that they made some improvement there since I have been there.

Q. In what does the expense consist in the maintainance of these yards at these various places?

Mr. SEVERANCE: I object to that, on the ground that the witness has not shown himself qualified.

The COURT: He has shown that he is a farmer and a shipper, and something else, and an Editor.

Mr. SEVERANCE: Well, being an Editor that might help some.

The COURT: Answer the question.

The WITNESS: Maintainance by the Railway company?

Mr. COWAN:

Q. Yes.

A. It consists in keeping clean where they are cleaned, and keeping them in repair where they repair them.

Q. Now, in your observation from shipping from these yards, you must see what is done in the way of repairs. What does it take to keep those stock pens in repair, what sort of work does it take, and what does it consist of?

Mr. SEVERANCE: The same objection.

The COURT: A man that is a farmer and a feeder and a shipper in that business all the time, knows something about stock
1423 yards.

Mr. DAWES: But not in repairing fences?

The COURT: I will let him answer.

(The question was then read.)

A. Every once in a while a board will be broken or a post may be broken, and when they get enough posts and boards broken so that they will not hold the stock, the railway company usually sends a man along and he repairs them, he puts in a board or he puts in the post.

Mr. COWAN:

Q. What would it take to keep them in repair per year, per annum?

Mr. DAWES: I object to that.

The COURT: Objection overruled.

Mr. DAWES Note an exception.

(To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.)

A. That would depend entirely on the circumstances. I could not state a figure.

Mr. COWAN:

Q. Well, would it be great or small?

Mr. DAWES: I object to that.

The COURT: Objection sustained.

Mr. COWAN:

Q. What will it cost to put in a post or put on a board?

1424 Mr. SEVERANCE: I object to that on the ground that the witness has not shown himself qualified to give an opinion.

The COURT:

Q. Did you ever nail any boards on?

A. I have your Honor, and put posts in, too.

Q. Do you know about the price of lumber and nails out there and labor?

A. Yes, I do.

Q. Have you had experience in building stock yards or repairing them?

A. I have.

Q. And buying and selling and building fences?

A. Yes, and I have bought and sold stock yards, too.

(The question was then read.)

A. A post will cost probably 20 cents or thereabouts, depending on the size of the post.

Mr. DAWES: You are not going to give the different sizes of the posts.

A. Posts are not of the same size unfortunately, no more than men are.

Mr. COWAN:

Q. What amount of labor does it take to put in a post or nail on a board?

Mr. SEVERANCE: I object to that on the same ground.

The COURT: Objection overruled.

A. Putting in a post requires digging a post hole and simply digging a hole and putting in a post and tamping it in there
1425 and nailing on the boards.

Mr. COWAN:

Q. What would be the outside figure for the maintenance of one of those stock yards for a year, so far as repairs to the yard are concerned?

Mr. SEVERANCE: The same objection.

The COURT: Objection overruled.

Mr. DAWES: The question is so indefinite that granting that this man is qualified to the most eminent degree as an expert, the question of Mr. Cowan is too vague. The stock yards vary according to his own estimate from $400.00 up to $1200.00. Can't we have a little more definite direction to the witness?

The COURT: The more indefinite it is the better it is for you.

Mr. DAWES: I think we are entitled to have testimony which is indefinite, excluded.

Mr. COWAN:

Q. Take the Osage yard, first.

A. The Osage stock yards has had little if any repairs of late years. The Osage stock yards is practically new, the greater portion of it is. There is some old lumber in it but it is lately built. There was an improvement made however in the Osage stock yards which cost some money.

Q. I am asking now about the cost of making the repairs
1426 on the stock yards aside from the matter of teaming?

A. There was also some work in the Osage stock yards on the well and wind-mill within the last year which might aggregate $25.00 or $50/00.

Q. What do you mean by "aggregate," putting in the well and the wind-mill?

A. No, repairing the pump and the water system that they have there.

Q. What I am trying to get at is what it amounts to per year aside from the matter of cleaning, to maintain these stock yards in the condition of repair for the transaction of the business, not adding to them but what it would cost for repair?

Mr. SEVERANCE: The same objection.

The COURT: Objection overruled.

A. When a stock yards is new it don't take anything to maintain it, practically nothing. When a stock yards gets old it takes lumber and posts to repair that yard.

Mr. LYNDE:

Q. Like anything else it wears out, doesn't it?

A. Yes, it wears out.

Mr. COWAN:

Q. How long does it take them to wear out?

A. Well, the Great Western stock yards at Osage, was built, I think 14 years ago, and it is there yet.

Q. What condition of repair is it in?

1427 The COURT:

Q. 14 years. What has been the amount of annual repairs?

Mr. SEVERANCE: I object to the Court's question on the same ground.

A. Well, in the last 14 years I would not think——

Mr. LYNDE: What do you know about it, not what you think.

A. I have to guess.

The COURT: He will answer my question first.

The WITNESS: I want to tell the court that I have to guess.

Mr. DAWES: I object to that then.

The COURT: Yes, if you have to guess.

The WITNESS: I would say $10.00 or $15.00 a year.

Mr. SEVERANCE: Your Honor admits the guess?

The COURT: Not exceeding $10.00 or $15.00 a year.

Mr. SEVERANCE: I thought your Honor told the witness he could not answer that.

The COURT: No, I did not.

Mr. SEVERANCE: I desire to object to the witness being allowed to give a guess, and I move to strike the guess out.

The WITNESS: I said "estimate" did I not?
The COURT: The motion to strike out is overruled.

Mr. COWAN:

Q. Take these other similar stock yards that you have men-
1428 tioned and name any one of them and state what the amount of repairs would amount to, per annum?
The COURT: If you know what it has amounted to?

Mr. COWAN:

Q. That is if you know what it has amounted to, state it. If you don't know what it has amounted to, make an estimate if you have an opinion as to what it would amount to.
Mr. LYNDE: Or a guess will do just as well.
The WITNESS: The repairs at Little Cedar have been small. I have not been there enough to be able to make a close estimate on that.
Mr. DAWES: But you know that they are small.
The WITNESS: Likewise at David the repairs have been small.
Mr. COWAN: Well, I am asking you for an estimate as to how much it would require.
The COURT: He don't seem to know and he don't seem to be inclined to try to tell, Mr. Cowan.
The WITNESS: It is not that I object to telling, but I really don't know.

Mr. COWAN:

Q. You have been looking at these yards and you have seen them and shipped from them?
A. I ship from those yards occasionally.
Q. Haven't you any idea what it takes to keep the stock
1429 yards in repair?

Mr. SEVERANCE: I object to the witness being cross examined any further by counsel.
The COURT: Objection sustained.

Mr. COWAN:

Q. Is the stock yards at Osage a more expensive yard than these other places you have mentioned?
A. Yes sir.
Q. Is it more expensive to keep in repair than others, on account of its size?
A. Yes sir.
Q. How long have you known the stock yards to last?

Mr. SEVERANCE: I object to that as immaterial in this case.

The COURT: Yes, in that form. I think that is a little indefinite.
Mr. COWAN: Stock yards in this particular locality.
The COURT: He has known this other one fourteen years.
Mr. COWAN: This man is acquainted with them and I am asking him now in respect to the yards that we have been talking about.

Q. How long do they last, Mr. Wilson?
A. One stock yard there has been there 20 years. That is the oldest stock yards that I know of.
Q. How long is it good for yet?
A. Well, I could not say.

1430 Mr. SEVERANCE: I would like to preserve an objection to this.
The COURT: Yes.
Mr. COWAN: What condition is it in?
A. Pretty fair condition.
Q. At what place is that stock yards?
A. That is at Osage.
Q. Now, how long had these other stock yards been in that you have mentioned?
A. The stock yards at Little Cedar and David and McIntyre, they were built the same time the Osage was on the Great Western railroad and those have been there 14 years.
Q. What condition are they in?
A. Pretty fair condition. Excuse me, the David stock yard was built since then, several years later.
Q. You have heard testimony here with respect to the matter of meat trains, and the speed of meat trains and trains carrying meat and packing house products and live stock. What in your experience and observation is the relative speed and time of the trains in which dressed meats and packing house products are carried and the trains in which the live stock are carried.

Mr. SEVERANCE: I would like to have that confined to some one road.

The COURT: That must be for the roads of the defendants.
1431 Mr. SEVERANCE: As to the road that I represent, Mr. Stickney stated that they were moved in the same train on the Great Western and consequently that question ought to be applied to some other road than that one.
The COURT: Well, we will see what he says about it.
Mr. COWAN: This witness may have seen the trains otherwise than Mr. Stickney sees them.
The COURT: It must be since this injunction. We will not go back of that. Since the spring of 1902 and it must be on the roads of some of these defendants. Now with that understanding you may answer the question.

Mr. COWAN:

Q. Put it since 1902 over the roads that you do business with, naming the roads in Iowa leading to Chicago.

Mr. SEVERANCE: I make the further objection that this witness has not shown himself possessed of any information in reference to packing house trains or dressed beef trains. He has not shipped any dressed meats and it would only be a casual observation of the trains running by.

The COURT:

Q. What experience have you had with both kinds of trains?
A. My experience has been limited in the last two years. I have had some complaint from my men.

Mr. LYNDE: Well, we don't care for that.

Mr. COWAN:

1432 Q. Do you ship live stock on these trains?
A. I ship on these trains, yes, but I have not been with the live stock but little in the last two years.
Q. You know when your live stock starts and when it get- in, do you not? What is your answer?

Mr. DAWES: I object. The court, I understood to exclude that question.
The COURT: He has asked him what experience he has had.

A. I have had very little experience.

The COURT: That don't qualify him very well.

Mr. COWAN:

Q. It is said here that the live stock shippers are satisfied with the rates of freight on their live stock and with the relation of the rates on packing house products and dressed meat.
A. Yes?
Q. What do you know about that, is that a fact or not?

Mr. DAWES: I object to that so far as——
The COURT: The objection is sustained except as to himself.
Mr. DAWES: I object to the particular inquiry as to himself. The testimony has been here that no complaints have been brought to the railroad companies. If this man can testify to a particular complaint on his part brought to the attention of the railroads, in reference to particular rates, why then I can see how that would be com-
1433 petent in rebuttal but unless the question is directed to that end, I object to it as incompetent.
Mr. COWAN: I would just like to call the Court's attention to a point that was made all through this case; it was testified to that the shippers in Iowa were perfectly satisfied with the rate.
The COURT: The evidence was that there had been no complaints.
Mr. COWAN: As to the other statement, if they will agree to strike that out of the record, the other statement, I won't ask the question.
The COURT: I will sustain the objection to this and pass on the other questions as they arise.
Mr. COWAN: I think if it is in the record, if your honor please, that these gentlemen have stated that the Iowa shippers are satisfied, certainly I ought to be able to have a chance to show that they are not.
The COURT: They claimed that there had been no complaints. If there have been complaints, why bring them in.
Mr. SHAVER: The object of the defendant in showing that there

have been no complaints was to show that the rates are satisfactory. They draw that inference.

Mr. DAWES: You can deny the fact, but not the inference by testimony.

The COURT: I think you had better show the complaints.

1434 Mr. COWAN:

Q. What do you know with respect to the matter of whether or not there have been complaints made with regard to rates and the relation of rates?

Mr. SEVERANCE: He should only be questioned with reference to the complaints made by himself. I object.

The COURT: I sustain your objection. Ask him what he knows.

The WITNESS: I have made complaints myself.

Mr. COWAN:

Q. How is that?

A. I have complained to our local agent and the traveling freight agent himself about the rates.

Q. That is about the amount of the rates?

A. Yes sir.

Q. Of what rates?

A. Of our road, the Illinois Central Railroad and the Great Western Railroad.

1435 Q. You have been paying these rates for a number of years and are acquainted with them?

A. Yes, sir.

Q. State in your opinion whether they are too high or too low?

Mr. SEVERANCE: I object to that, as incompetent. He is not qualified to give an opinion on that.

The COURT: It is too broad; the objection is sustained. He can make the comparison if you want him to between the two kinds of rates. He may state his opinion the same as the rest have.

Mr. COWAN:

Q. Take the rate on cattle which you pay from Osage and your other shipping points in the amounts you have named, 23½ cents to Chicago——

A. 23 cents on cattle.

Mr. DAWES:

Q. 24 cents on hogs?

A. 24 cents on hogs.

Mr. COWAN:

Q. What is your opinion in respect to that rate?

Mr. SEVERANCE: I object to that, as incompetent. This witness is not an expert on the question of rates. There is no foundation for his giving his opinion.

The COURT: We have taken the opinion of the other side, men

that were freight agents, and men that were superintendents of cars and all sorts of things.

1436 Mr. SEVERANCE: May I suggest to your Honor that this so-called superintendent of cars has been a traffic man and has been in the railway business for twenty years.

The COURT: Well, this man has been in this business 25 years.

Mr. SEVERANCE: No, this man never built a car, never ran a railroad in his life, and knows nothing about the cost of running a railroad or the costs of cars in which the traffic is transported.

The COURT: That is a question for you to argue.

Mr. SEVERANCE: Still, your Honor, it goes to the competency of the evidence.

The COURT: Objection overruled.

(The pending question was then read.)

A. I think it is too high.

The COURT:

Q. Now, why?

Mr. SEVERANCE: I preserve the same objection.

A. I compare the rate on cattle and hogs from Osage to Chicago with the rate on similar freight from Chicago to the east.

Mr. DAWES: What do you mean by "similar freight"?

A. Cattle or hogs from Chicago east to eastern points and compare it with the dressed beef from Missouri River points to

1437 Chicago, and it is entirely too high compared with the other.

Mr. COWAN:

Q. Have you made any inquiry to ascertain what rate you could get for dressed meat to ship from your place to Chicago?

A. I have.

Mr. SEVERANCE: I object to that, as immaterial.

Mr. COWAN:

Q. That is, have you made inquiry of the Railroad freight agent or of any representative of any one of these railroads?

Mr. SEVERANCE: I object to that, as immaterial.

The COURT: It is simply a question of whether he has ever made an inquiry.

Mr. COWAN: Yes.

The COURT: Objection overruled.

A. I have made inquiries, yes.

Mr. COWAN:

Q. Where?

Mr. SEVERANCE: The same objection.

Mr. COWAN:

Q. And of whom?

The COURT: The same ruling.

A. At Osage and Waterloo, both.

Mr. COWAN:

Q. Of whom did you make the inquiry?
A. Both the Illinois Central agent at Osage and the Great Western agent at Osage, and the Waterloo inquiry was made by the
1438 Illinois Central agent at Osage.
Q. For what purpose?
A. To ascertain the rates on meat; I thought of shipping some.
Q. In carloads or less than carloads?
A. Carload lots, yes, sir.
Q. What information did you get in regard to it?

Mr. SEVERANCE: The same objection. The published tariff is conclusive.

The COURT:

Q. When was it?
A. One year ago and this summer also, both years.

Mr. COWAN: It is material if they show a higher rate from there than they do to the Missouri River. The packer gets the lower rate. I want to ask him what they quoted the rate at.

The COURT: How will that help us to decide this question as to whether the rate of 20 cents is a discrimination against live stock?

Mr. COWAN: It is only the case in certain instances, when the shipper proposes to kill his stock, that rate is not given.

The COURT: The objection is sustained. I don't see how it affects the question.

Mr. COWAN: I desire to ask that question for another reason, that I desire to follow it with a question as to what reason the
1439 railroad agent gave for the higher rate on the dressed meat than the live stock.

Mr. SEVERANCE: You cannot hold these defendants for the remark made by some country agent.

The COURT: I cannot see now how it would do any good.

Mr. COWAN:

Q. What will the cattle dress out, do you know?
A. Cattle? They will dress about 48 to 62 or 63 per cent. meat.
Q. How much do hogs dress out?
A. A hog will dress out with his head on, about 80 per cent.

The COURT:

Q. How?
A. Eighty per cent.

Mr. COWAN:

Q. Has the live stock tonnage in your part of the country increased or not in the last few years?

A. It is constantly increasing, the live stock tonnage in the northern part of Iowa.

The COURT: I did not understand the answer.

A. It is constantly increasing, the live stock tonnage in the northern part of Iowa.

Q. Is that true of both cattle and hogs?

A. Yes, more probably in cattle than hogs, but not much more.

Q. You have been having plenty of hogs for a good while?

1440 A. Yes, sir.

Mr. COWAN:

Q. Do you ever bed with sand?

A. Yes.

Q. Where do you get it?

A. Well, I get it at the river if I don't happen to find some along the side track.

Q. You mean you haul it yourself?

A. Yes.

Q. Are you acquainted with the stock yards along the line of the Chicago Great Western through Iowa; and if not, between what points are you acquainted with the stock yards?

A. Well, I only know the stock yards on the Chicago Great Western, and outside of those I have named,—outside of those that I have named I only know them by going by them on the train, and that is not a very close knowledge.

Q. In the stock yards which you have named, are they somewhat similar or are they dissimilar, on the average, to the stock yards which are generally used by the railroads throughout the State?

Mr. SEVERANCE: That is objected to, as incompetent.

The COURT: Objection sustained.

Mr. COWAN:

Q. To the extent of your knowledge of the stock yards in the state, how do these that you have named compare with them?

Mr. SEVERANCE: The same objection.

The COURT: The same ruling. That is too indefinite.

1441 Mr. COWAN: What is the Court's ruling?

The COURT: His knowledge is a little too indefinite.

Mr. COWAN: Do you know whether stock cars are used in the shipment of other things than live stock in their movement westward?

A. Yes, sir, I know they are.

Q. Do you know anything about to what extent they are used?

A. Oh, I could not state to what extent, exactly.

Q. To what uses are they put except for live stock?

A. They are often used, in our territory, for hauling coal and lumber and oil and posts, or something of that kind.

Q. Do you know whether the trains in which dressed meat is carried run faster than the trains in which live stock is carried?

A. Not of my own knowledge, only by what I have heard.

Q. How much claims have you collected, on the average, per car load shipped, in your experience in shipping?

Mr. SEVERANCE: I object to that, as immaterial.

Mr. COWAN: It is very material, I think, to show by somebody else besides the railroad people, the risk, what the risk amounts to. You can never treat these things with exactitude. None of the railroad witnesses' testimony should have been admitted had I objected strenuously to it, some parts of it.

The COURT: How many witnesses would you require to
1442 make this amount to anything? The railroad side of it swore to the whole business, that is, wherein it affected hundreds of thousands of people. To contradict that you have got to bring in the great proportion of those hundred thousand people, and that you cannot do.

Mr. COWAN:

Q. Do you present claims for damages in every case in which you miss the market by delay?

Mr. SEVERANCE: That is objected to, as immaterial.

The COURT: The same ruling.

Mr. COWAN: Note an exception to the ruling.

To which ruling of the Court the complainant, by its counsel, then and there duly excepted.

The COURT: I don't suppose exceptions are necessary. This is sort of a chancery proceeding, anyway. This Court is pres-ming that you consider only competent evidence.

Mr. COWAN: That is, after the evidence is in?

The COURT: I am willing to give you plenty of room here, when I can see that it is at all material or competent. I desire, however, to limit it when it does not seem to be material.

Mr. SEVERANCE: I understand your Honor stated we need not note every exception.

The COURT: Oh, yes, you need not do that.

Mr. COWAN:

Q. What rate do you have to pay to Cedar Rapids from
1443 the places where you ship?

A. Twelve and a fraction cents. I am not certain of the fraction, about twelve and three-quarters, I think.

Q. What rate do you have to pay if you ship to Omaha?

A. I am not certain about the Omaha rate, I have not shipped to Omaha of late years.

Q. Who pays the freight on the live stock, the packer to whom you ship and sell at Cedar Rapids, or yourself?

A. The packer pays it and takes it out of the gross receipts, the gross amount paid for the carload.

Q. Do you buy any feeders on the Missouri River market?

A. Not often, I often sell them there.

Q. What time do you load at Osage, for the purpose of reaching, say, Monday's market in Chicago?

A. We load at eight o'clock in the morning.

The COURT:

Q. Sunday morning?
A. Sunday morning, and reach Chicago at seven o'clock Monday morning.

Mr. COWAN:

Q. Do you come on a regular train or a special?
A. A regular train to Waterloo. They make them of special trains in Waterloo sometimes.

The COURT:

Q. Is there a packing house at Waterloo?
A. A small one, yes.

1444 Mr. COWAN:

Q. What other freight is carried, if any, in the train carrying your live stock?
A. It carries all freight; it is a regular train, we ship on a regular freight train.
Mr. SEVERANCE: That is as far as Waterloo, you mean?
A. That is as far as Waterloo, yes, sir.

Mr. COWAN:

Q. Then, after leaving Waterloo, is it always a special stock train, or part of the time is it mixed?
A. I believe they call that train No. 9 or No. 7. I have forgotten which. Sometimes there are five or six number sevens and sometimes only one.
Q. Explain the manner of setting the cars at the loading chutes? How is that done, how do you set your cars?
A. The custom of the Illinois Central is to push the cars above the chute, and there is a slight grade where the loading chute is.

Mr. LYNDE:

Q. Are the chutes in the stock yards?
A. Why, certainly. They would not be any use anywhere else. The Railway company sets the cars at that chute and the shippers push them down there and load them, as a rule.
1445 Q. Do the Railway companies use engines or crews *doe* the purpose of setting the cars for loading?
A. The Great Western road is better about that than the Illinois Central. We are at the end of a division on the Great Western and when they bring out an engine I refuse to push the cars myself and they send them around.
Q. That is at Osage?
A. Yes sir.
Q. How is it at other points where there is no switch engine, where there is no division point?
A. Why the men who load the cars are in the habit of setting them.
Q. Is that the same in winter as summer?

A. Yes sir, unless occasionally at Osage, they have a special train there, in that case they have to have an engine because the men cannot handle it.

Mr. DAWES: This question was so broad that the answer would seem to apply to all points.

The COURT: He meant the other points that he knew about.

Mr. DAWES: I think the answer or question ought to be limited to the knowledge this gentleman has.

The COURT: Your answer is about the yards you know of?

A. All I am testifying about is these particular yards I have named a while ago. I don't include the whole state of Iowa.

Mr. COWAN:

Q. Now what is the custom at other stock yards which
1446 you have named, where you are acquainted with the method of doing the business on which you ship, and the particulars about setting cars?

Mr. LYNDE: I understood him to have answered that.

The COURT: He said they set them themselves.

Mr. COWAN:

Q. That applies to other yards as well as the Osage yard?

A. That applies to all the yards around there that I do business with.

The COURT: He said the Osage yard was better than the others?

A. Yes, that is the end of the division and when an engine comes out to get a car we make them set them.

Q. Is there any feeding en route to the market at Chicago shipping from your part of the country?

A. No, practically none.

Q. When you do have to stop to feed, for any reason, what is charged for the feed at the feed yards?

A. The price is quite strong; I couldn't exactly say what it is.

Mr. LYNDE: I move that be stricken out.

The COURT: The motion is sustained.

Mr. COWAN: For hay, what is it?

A. Well about 100 is what I paid for the last I paid for.

Mr. DAWES: If your Honor please I protest that the gentleman be confined to what he knows.

The COURT: You moved to strike it out; the motion is sustained.

1447 Mr. COWAN: Well he paid it in the case of hay.

The COURT: He doesn't know anything about it in the last three or four years.

Mr. COWAN: It becomes important in this: There has been a statement made about the expense of feeding, and I want to show that these feed yards are self supporting; they charge a profit on the hay which makes every one of them more than self supporting.

Mr. SEVERANCE: I think you better prove that by direct testimony, make them produce their books and show what they buy and sell.

The COURT: Put another question.

Mr. COWAN: If we could get the price of hay and see what it is per car, it would save time.

Mr. SEVERANCE: No, it takes longer if you have so many witnesses.

The COURT: Ask a question; go ahead.

Mr. COWAN:

Q. How many bales are fed to the car?

A. How many bales?

Q. Yes?

A. I didn't understand that question.

Q. How many bales of hay are fed to the car?

The COURT: In shipping to Chicago?

Mr. COWAN: When you are shipping to Chicago, if you stop to feed for any reason?

A. I have not stopped in transit for several years with cattle.

1448 Q. Then I will not ask you any more questions about it.

Cross-examination by Mr. BAXTER:

Q. Mr. Wilson you mentioned certain stock yards of the Illinois Central Railroad with which you are familiar. I wish you would state again, if you have not already done it, or if you have already done it, what is your estimate of the cost of constructing and equipping each of those yards and name them?

A. I named two yards on the Illinois Central railroad, I think if I remember rightly. I said the reasonable value of the Illinois Central railroad stock yard at Osage.

Q. The question is the cost of constructing and equipping the buildings, and wind mills and things if that sort?

A. The cost?

The COURT: The cost of construction?

A. The original cost?

Mr. COWAN: Yes, sir.

A. That was not the way I intended to answer.

The COURT: I know, but he is asking you now.

Mr. BAXTER: I am asking you now.

A. I would estimate the cost of the construction of the Illinois Central Stock yards at $2000 originally.

Q. At what point is that?

A. On the Illinois Central Railroad, the stock yards at Osage at $2000.

1449 Q. Does that include all wind mills and wells?

A. That would include the well, wind mill, scale and scale house.

Q. Side track?

A. No, I am not talking about side-tracks; I am talking about stock yards.

Q. Now the other stations.
A. The other was Lyle, I think I estimated that $400 or $350.
Mr. SEVERANCE: That is not the cost?
A. You want the cost of construction?
Mr. BAXTER: I want the cost of construction.
The COURT: Original?
A. In that case it might be $400 to $450.

Mr. BAXTER:

Q. Now what is your estimate as to what it cost to keep each of those yards in repair and to maintain them in proper condition during the calendar year 1904?
A. 1904, ten dollars for Lyle and $25 to $50 for Osage.
Q. You said that you had made some complaints to the agent of the Illinois Central Railroad in relation to the rates on live stock being too high; do I understand you correctly?
A. I have, yes sir, in a certain way.
Q. Will you state the name?
Mr. DAWES: You did in a certain way?
A. Yes sir.
Mr. BAXTER: Will you state the name of that agent, where he was stationed and when you made the complaints, and if they were in writing or not?
1450 A. I didn't make it in writing, no.
Q. Well, will you give us the name of the agent and when you made the complaint?
A. I complained to D. W. Logan, the Illinois Central agent at Osage, a year ago about the rate on live stock being too high compared with the rate on dressed meat from western points.
Q. Are you engaged in the business of slaughtering dressed beef?
A. I was already to engage in that business a year ago but I could not get a rate at Osage that was any where near what the Missouri River rate was on the same article and I complained to the agent for that reason.
Q. Did you want to ship your product in the dressed form?
A. I wanted to slaughter cattle and ship them in dressed.
Q. What was the ground of your objection if you wanted to ship the product? Did you object because the product rates were too low and you wanted to ship on those rates?
A. They quoted me 40 cents from Osage when I knew they were getting an 18 or 19 cent rate from Western points, that was the foundation of my complaint.
Q. You didn't complain then that the rate was too high, that is too high of itself, but it was too high as compared with the rate on the same product from somewhere else; is that it?
A. I complained to the agent at Osage that the rate on dressed meat from Osage was too high.
Q. As compared with what?
1451 A. As compared with the rates on dressed meats from Missouri river points. We are a great deal closer to Chicago than they are.

Q. Then your complaint was not that the rate on the product was too low as compared with the rate on the live animal?

A. No I didn't make any complaint on that comparison, it was too high in comparison with the rate on the live animal from Osage.

Q. Well, you said a while ago that the packer pays the freight and takes it out of the gross receipts, what do you mean by the term gross receipts, the amount coming to you?

A. We send a car of hogs to Cedar Rapids and sell them at 5 cents a pound. If they weigh 17,000 pounds they bring $850., and the packer figures them up at $850 and takes out the freight out of the $850 and sends us the balance.

Q. Then the man who ships the stock into the market there pays the freight, the packer advances it and afterwards takes it out?

A. He takes it out of the shipper of the live hogs, yes sir.

Q. That is what I want to get at; he pays the freight. That is all.

Examination by Mr. SEVERANCE:

Q. Mr. Wilson, what year were those stock yards at Lyle built?

A. I don't know.

1452 Q. How many thousand feet of lumber are there in them?

A. I could not tell you that.

Q. What was the price of lumber at the time they were built?

A. The price of that lumber, the reasonable market value——

Q. No, no, at the time they were built?

A. I could not tell you.

Q. How many days' work were put in in building them?

A. I could not tell you that, no sir.

Q. What was the price of labor at that time?

A. Labor up there?

Q. I mean skilled labor. You say you don't know when it was. Of course you don't know the price.

A. I don't know when they were built.

Q. No, I see. How much of last year, 1904, did you spend in Lyle?

A. I have been there a few times, that's all.

Q. Well, how many times?

A. 1904?

Q. Yes sir?

A. I have been there several times.

Q. In 1904? How many times were you in that city, in 1904?

A. Not very many times.

Q. Well how many?

A. I could not tell you.

Q. Five?

A. Perhaps.

Q. All day long?

A. Possibly and possibly not.

Q. Possibly not all day and possibly not as many as five days in the whole year?

A. Possibly not as many as five days.

1453 Q. You don't know what was being done to those stock yards during the other 360 days of the year?
A. I haven't the remotest idea.
Q. That is what I thought. That same testimony would apply to these other stations, wouldn't it where you say you have seen Stock yards?
A. I live at Osage.
Q. Outside of Osage.
A. I have been in the station of Little Cedar, David and McIntyre more than in Lyle.
Q. When were the Great Western Stock yards built at Osage?
A. They were built in 1891.
Q. How many thousand feet of lumber is in them?
A. I could not tell from here at this distance.
Q. What was the character of lumber in those stock yards worth in 1891 in Osage?
A. About $13 a thousand.
Q. By whom were they built?
A. By the Winona & Southwestern Railroad.
Q. Built by the Railroad Company with their own men, not built under contract, I mean?
A. I think not; I don't remember.
Q. Do you know?
A. Not for certain, no.
Q. You do not know whether they were built by the construction company that built the Winona & Southwestern road, or by the railroad, do you?
A. No, I do not.
Q. And do you not know what was paid for them?
1454 A. No sir.
Q. You do not know what they cost?
A. No sir.
Q. How many cattle are shipped at the Lyle market per annum?
A. How many are shipped at Lyle?
Q. Yes?
A. I could not say.
1455 Q. Do you ever ship hogs to the packing house at Austin?
A. Sometimes.
Q. Where from?
A. From Osage, sometimes.
Q. And from any other points?
A. I think not.
Q. How is that?
A. I think not.
Q. There is no charge for commissions or anything of that sort at Austin, is there?
A. No sir.
Q. What you get is net?
A. Certainly.
Q. Less the freight?
A. Certainly.
Q. And that is also true of Cedar Rapids, is it not?

A. Yes sir.
Q. There has never been any extensive slaughtering of either cattle or hogs at Osage, has there?
A. Only for local consumption, I guess.
Q. Just ordinary village slaughter house, that is all isn't it?
A. Yes sir.
Q. No packing houses there?
A. No.
Q. How many car loads of hogs do you ship per annum Mr. Wilson?
A. Sometimes 100 and sometimes 500.
Q. Well, say 1904?
A. Probably 150, I never counted them up.
Q. How many car loads of cattle?
A. Probably 50 out of the 150.
Q. Nearly all of them from Osage?
A. Some from Staceyville and some from Lyle, possibly.
1456 Q. What proportion was from Osage?
A. There is more from Osage than any other one point.
Q. Isn't there more from Osage than from all other points?
A. In 1904?
Q. Yes, and this present year too as far as you have shipped?
A. The present year I have not shipped very many loads outside of Osage. Last year I shipped more outside of Osage than I have this year.
Q. You are in some other business are you, besides live stock?
A. I am a farmer and feeder.
Q. And editor of a paper?
A. Editor of a paper there.
Q. Editor of a paper in Osage?
A. Yes sir.

The COURT: Call your next witness.
Mr. SEVERANCE: Just a minute, your Honor.

Q. Did you ship to exceed a half dozen cars of stock during the year 1904, from any town other than Osage, Iowa?
A. Yes sir.
Q. How many more than half a dozen?
A. I could not tell you.
Q. Well, give me—you have given your guesses here pretty freely, give us one on your own business?
A. I would estimate I probably ship 40 from one other station.
Q. Forty?
A. Forty, yes sir, maybe not quite so many, maybe a little more, probably 30 from the second station.
1457 Q. From what stations were they shipped?
A. Staceyville.
Q. How many?
A. I had more live stock at Staceyville than any other point outside of Osage.
Q. What road is that on?

A. That is on the Illinois Central.
Q. What other place?
A. I shipped from Orchard in 1894.
Q. 1904 or 1894?
A. 1904.
Q. What road is that on?
A. The Illinois Central.
Q. How many did you ship from Orchard?
A. I could not tell you.
Q. To what points did you ship?
A. I shipped to Chicago and Cedar Rapids, anywhere, I could not give you the details.
Q. You shipped generally anywhere?
A. Wherever I felt like shipping to, wherever there appears to be the best market.
Q. There are times you regard markets other than Chicago the best market?
A. There are, certainly.
Q. In spite of this situation which you complain of?
A. The rates are so high to Chicago, we have to do so.
Q. That is the reason you ship to other places?
A. That is one reason, yes sir.

1458 Examination by Mr. LYNDE:

Q. What proportion of your shipments are to Chicago, from Osage?
A. In cattle shipments nearly all to Chicago.
Q. How much of hogs?
A. Hogs, I shipped during the present year, more hogs to Cedar Rapids than to Chicago.
Q. You said for certain grades at Cedar Rapids, they paid about the same prices as Chicago prices?
A. I didn't so state.
Q. I mean less the freight charges; didn't I understand you to say so?
A. On some grades, they are closer to the Chicago market than they are on the other grades.
Q. What do you mean by "closer"?
A. The price at Cedar Rapids is closer to the price at Chicago on some grades of hogs than it is on other grades of hogs.
Q. Yes, I understand, but what do you mean by "closer"?
A. Closer?
Q. Yes, give us the figures.
A. Five cents is closer than ten cents on that line.
Q. Do you mean five cents more or five cents less?
A. Cedar Rapids is lower than Chicago, of course.
Q. Yes, how much?
A. It varies.
Q. On the higher grades where it is nearest the Chicago prices, what is the difference?
A. The highest grade at the highest time I ever saw?

1459 Q. Well, in your experience, yes.
A. I have seen a time when, on some grades Cedar Rapids was as high as Chicago.
Q. In full.
A. In full, very seldom.
Q. Well, take your general experience.
Mr. DAWES: When was that?

Mr. LYNDE:

Q. Yes, when was that?
A. I could not tell when that was but I have seen that occurrence.
Q. Take your general experience, what is the difference?
A. Ordinarily Cedar Rapids would pay about 15 cents per hundred below Chicago on the same grade. For instance T. M. St. Clair & Company of Cedar Rapids would pay $4.85 cents for their premium grade of hogs at a time when Chicago would pay $5.00 for the same class of hogs.
Q. I see. Do you ship to Sioux City?
A. Not often.
Q. Omaha?
A. Very seldom, I haven't shipped to Omaha for a year.
Q. How far are you from those two points?
A. I am on the north line of Iowa.
Q. I know, what is the distance?
A. I could not say.
Q. Now, about this bedding which you, yourself put in these cars; you say you use sand, do you?
A. In bedding cars for hogs, sometimes I use sand and sometimes I use cinders.
1460 Q. What depth do you put in a car?
A. I don't put any depth at all.
Q. What do you mean by that?
A. All that is necessary for me in bedding a car of hogs, if I have a clean car is to throw sand enough on the bottom so the hogs will not slip, that is all the sand that is necessary to bed a car.
Q. How much is that?
A. That would run from three to five hundred pounds.
Q. How much in depth?
A. In depth, it wouldn't have any depth.
Q. Oh, it must have some depth Mr. Wilson.
A. Well, a very slight depth, the depth of one grain of sand is sufficient for the depth as far as that is concerned.
Q. Well, how about your cattle, what do you do with them?
A. A well bedded car of cattle requires about 500 pounds of good straw or prairie hay is better.
Q. Do they use sand in those cars at all?
A. I never use sand in cattle; I don't like it.
Q. That don't have any depth?
A. Well, that will have a depth, yes, that will be a foot deep.

Examination by Mr. DAWES:

Q. May I ask a question.

The WITNESS: Yes sir.

1461 Q. I understood you to say that the weight of the bedding of a hog car was about 500 pounds?

A. The weight of the bedding?

Q. 500 to a thousand, of the bedding, did I understand you right?

A. The weight of the bedding in a hog car?

Q. I didn't mean to misquote you, I understood you to say that a car before it had been cleaned, would contain from 500 to 1000 pounds of bedding and refuse and so on?

A. A cattle car, yes.

Q. A cattle car you also stated, a man could clean 40 of those a day?

A. Yes sir.

Q. That is from 10 to 20 tons, one man with a shovel can clean out?

A. I will clean 40 cars myself.

Q. That is you will clean 20 tons with a shovel?

A. Yes sir, 20 tons with a shovel, out of a car.

Q. That is all. You can get good wages around here.

OSCAR STRIBLING, called as a witness in behalf of the petitioner, having been first duly affirmed, testified as follows:

Direct examination by Mr. COWAN:

Q. State your name.

A. Oscar Stribling.

Q. Where do you live?

A. Dayton, Iowa.

1462 Q. Where is that in Iowa?

A. That is 59 miles northwest of Des Moines, on the road to Fort Dodge, on the M. & St. L.

Q. How far from Chicago?

A. About 417 miles by way of the Rock Island.

Q. What is the rate of freight on cattle?

A. 23½ cents.

Q. On hogs?

A. The same.

Q. What business are you engaged in?

A. Farmer.

Q. Do you ship cattle and hogs?

A. I do.

Q. How often?

A. Oh, on the average three or four times a year.

Q. Who beds the car in which they are shipped?

A. I do.

Q. Who furnishes the bedding?

A. I furnish it.

Q. Who cleans the cars?

A. Sometimes they are cleaned, and sometimes they are not, if they are not cleaned and I think they need it, I clean them myself, if I don't I let them go without.

Q. How much does the bedding and refuse in a car weigh where it has just been used on one trip, when you clean it out?

The COURT: What kind of a car, now, cattle car or hog?

Mr. COWAN:

Q. Well, take cattle?

1463 A. Well, that is a pretty hard question to guess at, I never weighed it. I would judge about 1000 to 1200 pounds.

Q. How long does it take you to clean a car?

A. It depends on how deep the "refuge" is.

Q. Well, state about how long it generally takes?

A. Well, I should think an ordinary car, I shipped the other day one car load, if I cleaned it out, I think it would have took two or three hours, but I let it go without. But the average would take from an hour to an hour and a half, I would want that to clean a car myself.

Q. How is it with a car that has just been used one trip?

A. Oh, I think one hour would be sufficient.

Q. How many pounds of cattle do you ship for a 36 foot car?

A. From twenty three to twenty four thousand pounds.

Q. Do you go with your stock?

A. Sometimes. Most always with cattle, not always with hogs.

Q. Have you an opinion as to whether those rates which you pay are too high?

Mr. DAWES: We object your Honor, of course.

The COURT: Find out what he knows about it, the objection is sustained.

Mr. COWAN: Well, I don't know any way he knows except he pays the freight, he says he ships and pays the freight, I

1464 don't know any way to qualify him, he isn't a railroad man.

The COURT: I don't think his opinion would amount to anything unless you show he has investigated the matter, or compared the rates in other neighborhoods and on other railroads.

Mr. COWAN:

Q. Have you made any investigation with respect to the rates?

A. I have not.

Q. In what sort of trains do you ship, stock trains or mixed with other freight?

A. Well, that questions, I would have to answer that by saying that we ship out of our town on a regular stock train, if we get out on Sunday morning, but if we come any other time it is on a local.

Q. A local that runs every day?

A. Yes, it runs every day.

Mr. DAWES: Entirely stock, or just a local mixed train?

A. A local stock train Sunday morning, to Perry, that is a stock

train and then we get on the main line of the Chicago, Milwaukee & St. Paul.

Q. Do you mean this train you ship on has other merchandise, what you call a local train, is it a mixed train or a stock train?

A. Yes sir, it is just a local freight train.

Q. That local train runs every day for regular business?

1465 A. It runs every day.

Q. That is on what railroad?

A. The M. & St. L., Minneapolis & St. Louis.

Q. How far do you go until you strike the main line of road that you come to Chicago on?

A. Twenty-five miles to Perry.

Q. What number of cars are usually carry- on that stock train every Sunday?

A. Well, now, that is another question that I will have to answer by saying, that they carry from—they come down from Ruthven over that road and pick up what cattle or hog cars there is to Valley Junction; some drop off at Grand Junction for the Northwestern, some at Perry for the Milwaukee, and some go on to Valley Junction for the Rock Island. We can ship over any one of those three roads. Sometimes they have ten cars, sometimes only three or four, and sometimes a dozen, sometimes more.

Q. When you strike the road that you come here on, what sort of a train do you come in?

A. From there on?

Q. Yes.

A. A mixed train part of the way and then a stock train the rest of the way.

Mr. LYNDE:

Q. From what point is it made a stock train?

A. From Savanna, I believe, is the town at the River, isn't it?

Q. Yes.

1466 A. We come from Perry to Savanna on a mixed train almost always, not always, but most always.

Mr. COWAN:

Q. And all sorts of freight, you mean?

A. Well, they have box cars, and cattle cars, I suppose they have freight in them, some of them have, and some of them are empty.

Q. What are the sizes of the stock trains they run on the main line, as you observed them?

Mr. DAWES: He is not on the main line, as I understand it.

Mr. COWAN:

Q. On the Milwaukee, after he gets on the main line?

A. I think from 50 to 60 cars.

Mr. LYNDE: Loaded stock cars?

A. The last train I cam- in on at Savanna, when we got into Savanna, I think it had 53 or 54 cars.

Q. Well, coming into Savanna, it is a mixed train you said?

A. Yes sir.

Q. How many stock cars then?
A. Well, I could not say, about 20 I should judge.
Q. Do you know how many of the other cars were loaded or empty?
A. No, I don't.

Mr. COWAN:

Q. Now, in the stock trains coming out of Savanna, how many?
A. I could not tell because it was dark, I didn't count.
Q. Well, in your observation how many cars were there
1467 in a train?
A. Well, coming from Rock Island a time or two, at Rock Island, I have counted as high as 60 and 65 cars of stock. Coming over the Milwaukee, I don't know, I never counted.

The COURT:

Q. On one train?
A. On one train, yes sir.

Mr. SEVERANCE:

Q. One engine?
A. One engine. That was from Rock Island in, you remember, not the other side.

Mr. COWAN:

Q. Who pays for the bedding, who furnishes the bedding for bedding the cars at the stations where you ship?
Mr. SEVERANCE: He already stated that, and said he furnished it.
The COURT: He has answered that. You said, you furnish your own bedding?
A. Yes sir.
Q. And furnished the straw or hay?
A. I always furnish hay and sand both, I never had any furnished me yet.

Cross-examination by Mr. DAWES:

Q. This 60 car train you spoke of, you have never seen any other trains that compared in length to that on the Rock Island?
1468 A. On the Rock Island the other side from Des Moines, in from Valley Junction?
Q. No; I am talking of trains of stock cars, loaded.
The COURT: Loaded stock cars with cattle and hogs?
A. I was just saying from Valley Junction, they brought as high as 35 or 40 to Blue Island, or Rock Island, I mean, across there at that little town where the Division Station is, I never can think of it.
The COURT: Moline.
A. Moline, this side of Moline, they doubled up the train and I have seen as high as 60 or 65 cars.

Mr. DAWES:

Q. On how many occasions have you seen that?

A. On two different occasions.
Q. You say you come in, you ship how many times a year, three or four times a year?
A. An average of three times a year.
Q. Do you always come in yourself?
A. I come in with the cattle, but not with hogs.
Q. Your three or four times a year includes cattle and hog shipments?
A. Yes, I just ship my own feeding.
Q. How often have you been in over any of the roads within the last four years?
A. Well, I have been over the Rock Island road five times.
Q. In the last four years?
A. In the last three years.
1469 Q. In the last three years?
A. And over the Milwaukee road only twice. I never came over any other road.
Q. On the Rock Island road when you observed these 60 cars in a train, how long ago was that?
A. Last April. I left home the 7th of April.
Q. The seventh of April and arrived here the next day?
A. And arrived here the next morning?
Q. Yes, at eight?
A. I think I am right on that, yes it was the 7th of April, I shipped my cattle.
Q. 1904?
A. 1905, last spring.
Q. This year, 1905?
A. Yes sir.
Q. What rate of speed did they make coming in with that train do you know?
A. From Rock Island do you mean?
Q. Yes.
A. Well, we left Rock Island in the evening at about eight or nine o'clock and was here the next morning at six o'clock, or seven.
Q. You came in on time?
A. Yes sir.
Q. To the market you expected to make?
A. Yes sir, we were on the market.
Q. Where were you when you counted those cars, were you on the siding?
A. When we got up to——

Mr. COWAN: Bureau Junction, is that the place?
Mr. DAWES: I don't mean the station.

1470 A. I was standing at the side of the engine when they started out, and they pulled up past me to get on the caboose.
Q. So you saw the entire train?
A. Yes sir.
Q. The entire train passed you then?
A. Yes sir.
Q. And you examined each one and saw it was a loaded car?

A. I didn't examine them only just as I saw them go by it was light enough so I could see.
Q. You were confident they were all loaded?
A. Yes sir.
Q. And what was the load, cattle or hogs?
A. Both.
Q. About half and half?
A. I would not like to say how many, I never counted.
Q. How many cars did you have on that train?
A. I had two load- of cattle and one of hogs.
Q. Now, to what extent are hogs shipped, or cattle from your station, are you the only shipper there?
A. No, I just ship my own feeding. There is a buyer there, there is several men shipping, about 300 loads a year.
Q. Are there stock yards there?
A. Yes sir.
Q. How large?
A. Three pens and an alley, and then a small pen where they run them off the scale.
Q. How many cattle are shipped from that place a year, estimate it?
A. Well, that is pretty hard to tell.
Q. Well, I don't mean accurately?
A. I should judge 50 to 60 car loads.
1471 Q. A year?
A. Yes sir.
Q. Cattle and hogs both?
A. No, cattle. The shipper will ship an average of one or two car loads of hogs a week the year around.
Q. That means the whole market, the whole town?
A. Yes sir, all the hogs; the farmers ship their own cattle, they don't hardly ever sell them, they ship them themselves.

Examination by Mr. SEVERANCE:

Q. You don't know whether that train ran through to Chicago as a solid train, did you see it when you came in here in the morning?
A. Well, we came in on the train; I have no knowledge that there was any change.
Q. You saw it in the morning, saw the whole 65, did you say?
A. I didn't count them in the morning when we got here.
Q. Well, how many cars did you see, 65?
A. I said there was 60 or 65, and one hauled 53 that I know of.
Q. And when you got to Chicago in the morning, there was still this long train?
A. Yes sir, but I didn't count them.
Q. Last April?
A. April 7th.
Mr. LYNDE: Regular 36 foot cars?
1472 A. I don't know, I don't think they were.
Q. Those you had?
A. Yes sir, mine.

Q. How did the others seem to compare?
A. Most of them about the same.
Q. They looked about the same?
A. They have three sizes of cars.
Q. As far as you remember, about the same cars that you had?
A. Yes sir, a good deal the same.

Mr. DAWES:

Q. Will you be kind enough to tell me in reference to the bedding, you say you furnished your own bedding?
A. Yes, sir.
Q. Sand or straw?
A. I always have——
Q. The sand for hogs and straw for cattle?
A. Hay for cattle.
Q. Where do you get your sand?
A. Well, the last few times that I had any sand put in the cars, I hired the draymen in town to go down to the creek close by and haul it up.
Q. Do the railroads keep any supply of sand there?
A. They have not for three or four years. There was some sand there three or four years ago but there has been none there lately.
Q. And three years ago, you got your supply from the railroad?
A. I didn't *sgip* any hogs then, I never used a pound of sand that the railroad company furnished.
1473 Q. But you know that there is no sand there now at this particular station?
A. I know there it not, wasn't when I left home.

Mr. SEVERANCE: May I ask Mr. Wilson one question that I overlooked. Just sit there where you are.

Mr. WILSON, recalled by and examined by Mr. Severance, testified as follows:

Q. You said you sometimes use sand and sometimes cinders for bedding, where do you get the cinders?
A. Gather them up around.
Q. Around where?
A. Around the side track, wherever I can find them.
Q. They belong to the railroad company?
A. Yes sir.

JAMES DELANEY, called as a witness in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. What is your name?
A. James Delany.
Q. Where do you live?
A. Marengo, Iowa.
1474 Q. What is your business?
A. Farming and stock business.

Q. For how many years?
A. About twenty-five.
Q. On what railroad?
A. I am now on the Rock Island, main line.
Q. How far from Chicago?
A. Two hundred and seventy miles.
Q. Do you ship hogs to Chicago?
A. Yes sir.
Q. Who beds the cars?
A. Well, I have bedded them myself.
Q. At your own expense?
A. Yes sir.
Q. Who furnished the bedding?
A. I do.
Q. What do you bed with?
A. In the summer time it is sand, generally.
Q. In the winter-time, hay or straw?
A. Hay or straw, yes sir.
Q. Do you haul the sand yourself?
A. I have it hauled, yes sir.
Q. Have you ever been paid anything for doing that?
A. No sir.
Q. Do the railroads ever offer to bed them for you?
A. No sir.
Q. How much do your cattle weigh per car that you ship in?
A. Oh, from 22 to 26 or 27 thousand pounds.
Q. And your hogs?
A. From 15 to 18 thousand.
1475 Q. How many cars have you shipped in ten years?
A. Well, that is pretty hard for me to tell.
Q. Approximately?
A. Probably I have averaged 50 a year in the ten years, I don't buy as much as I feed.
Q. During that time have you ever received any pay for loss or damage.

Mr. DAWES: I object to that your Honor.

Mr. COWAN: I think that is very material, your Honor, to show that there has been no risk in shipping for ten years, 50 cars a year, there is no risk to him, and I think it is material to show he has received no damage.

The COURT: Well, I think it is a waste of time, the evidence of the railroad companies said they were subject to that, they made an effort to have them delivered in the morning, they didn't make any statement how much damage they paid.

Mr. DAWES: Yes, we gave definite figures, I can't remember the exact figures. The testimony will show, but Mr. Crosby testified on behalf of the Burlington Road that they paid so much money.

The COURT: For delays?

Mr. DAWES: Yes, sir.

Mr. SEVERANCE: Mr. Stickney testified that they paid some twenty-

four odd thousand dollars for delays. It wouldn't prove any-
1476 thing to show that this man had never had any. If Mr. Stickney had testified that he paid money to this witness, or if Mr. Crosby had testified he paid money to this witness, then it would be proper to introduce the witness on the stand to deny that statement, but the fact he has not received, or has not put in a claim, whether he justly had a claim or not, or that he has not been paid any money, does not prove anything, or does not tend to prove or disprove anything.

Mr. COWAN: I am not trying to prove that they didn't pay out money, they did, but they talk about the risk, and here is a many that shipped for ten years, and shipped 50 cars a year, 500 cars in that time, if he has been paid an nominal amount, or nothing, it is important as showing the risk is certainly a very slight one, going over a period of ten years.

The COURT: The objection is sustained.

Mr. COWAN: They doubtless picked out the biggest year they have got, we know the disposition of mankind.

The COURT: Well, I will sustain the objection.

Mr. COWAN:

Q. Do you know anything about the relative speed at which the trains run which carry meat over the lines of the railroad which you patronize in your shipments from Marengo to Chicago and
1477 the live stock trains, which is the faster and which is the slower train?

Mr. SEVERANCE: I object to that until a foundation has been laid.

The COURT: Find out what he knows about it.

The WITNESS: All I know about that is, I bought stock in Omaha, I bought stock feeders in Omaha to ship to Marengo and the Commission man tried to get them on to a meat train so I would get a faster run home, that is all I know.

Mr. SEVERANCE: That is immaterial, that is not a train to Chicago.

Mr. COWAN:

Q. Have you made any comparison of the rates made, any study or investigation of the question of the amount of rates you are paying, so as to form any opinion with regard to whether they are too high or too low?

A. I never have myself; I haven't paid any attention to what the dressed meat paid.

Q. What was the size of trains in which you shipped your light stock to Chicago?

A. Well, a mixed train, the mixed train from my place to Rock Island, it is made up of a stock train generally—sometimes there is some dead freight on it, but not often. If they have got enough stock to put on, and I have had them tell me there——

Mr. DAWES: I object now, only what you know if the Court please.

1478 A. I don't know myself, I never counted.

The COURT: Everybody can tell what other people told them here.

Mr. COWAN:

Q. Who told you?
A. Some railroad man.
Q. In charge of the train?
A. Yes sir, that they have 60 or 75 cars.

Mr. LYNDE: I want to object to any statement made to him.

The COURT: Wait a minute, one counsel at a time and the witness at a time, when the witness *is* has answered the question, make a motion to strike it out. I object to your interfering with the witness, three of four counsel at once, and there are a dozen counsel here. We must have order in the regular way.

Mr. SEVERANCE: On the suggestion of the Court, I move to strike out the answer.

The COURT: Are you through with that answer?

The WITNESS: Yes, sir.

The COURT: Well, the motion is overruled.

Mr. DAWES: I wish to be entirely courteous, as your Honor knows, to the Court but I would suppose that we had a right to object in an orderly procedure to the question- as they are put, rather than that the question should be answered.

The COURT: Not to interrupt the witness.

1479 Mr. DAWES: I didn't mean to do that, I apologize to the Court.

The COURT: No apologies are necessary but there are a large number of counsel here, and you are all anxious about your different clients, of course, and the better way is for one person at a time, one counsel at a time, one examiner at a time, and one witness talking, only one person talking, and that being the witness.

Mr. SEVERANCE: I don't understand your Honor denied my motion to strike out because I didn't get around to object in advance.

The COURT: No.

Mr. SEVERANCE: But on the ground that the question is properly answered.

The COURT: I would not be too technical on all of these mattees, there is a good deal going in here that if you objected to it, and we stopped and studied it, would not go in. In this sort of a case, it is the duty of the Court to hear all sorts of evidence. I am willing to hear almost anything that don't take up too much time.

Mr. COWAN:

Q. In your experience for ten years as to the size of the trains that live stock is carried in, that they are increasing or diminishing in point of the number of cars carried?

A. Well, it has increased.

1480 Q. Has your country developed so as to produce more shipments and more business for the railroads or not?

A. It has.

Q. Is it still increasing in the volume of its business?

A. Well, I think so, it is holding its own, it is not going back any.

Cross-examination by Mr. BAXTER:

Q. You were asked awhile ago about rates, have you ever made any complaint to any railroad official that the rates on packing house products were less than the rates on the live stock?
A. No sir, I never did.

Examination by Mr. LYNDE:

Q. Do you ship to Chicago?
A. Most always to Chicago, yes sir.
Q. Do you come with your shipments yourself?
A. Not always; I have shipped some to Davenport.
Q. What, cattle or hogs?
A. Hogs.
Q. What is there at Davenport, a slaughtering house?
A. Slaughtering house, yes sir; there used to be one there, I guess there is one yet.
Q. What was the title of it?
1481 A. The Tri-City Packing Company.

Mr. SEVERANCE:

Q. How far do you live from the Mississippi River?
A. About 85 miles.
Q. What is the rate to Chicago from your place?
A. I think it is 21 cents, I am not sure now.
Q. That is on both cattle and hogs?
A. Both cattle and hogs, I think it is the same rate sir.
Q. You never shipped to Cedar Rapids?
A. Yes. Well, I have not from Marengo, no; but then I know what the rate is to Cedar Rapids.
Q. You have shipped hogs to Cedar Rapids?
A. I have not from Marengo but I have on the other road, from Blairstown, on the Northwestern.
Q. The movement of live stock from your region is all toward Chicago, practically, isn't it?
A. On the main line of the Rock Island it is, not on the Milwaukee.
Q. Where does the Milwaukee carry stock?
A. It runs east of us about six miles.
Q. I say where do they carry stock?
A. To Ottumwa and Cedar Rapids.
Q. To the packing houses there?
A. Yes sir.
Q. Can you give me the date you were at Rock Island and saw this train you were informed contained 75 cars of loaded live stock?
A. I don't think I could.
Q. Can you give me about the date?
A. Well, I was there in July?
1482 Q. Of this year?
A. Yes sir.
Q. Was that the time?

A. Well, it was this year I am pretty sure. I was there most every month, July, June and May.
Q. Can you tell me any of the dates in those months, take July for instance, were you there after the Fourth of July?
A. It was after the Fourth of July, yes sir.
Q. About how long after?
A. Well, I have no way of telling now, but I was in in July, I don't know whether it was July, or June or May that I was told this.
Q. But you saw this train and were told that in one of these months?
A. I didn't count the cars, I just asked the railroad man how many cars were on that train.
Q. How many of them were loaded?
A. I supposed they were loaded, they looked to me as though they were loaded.
Q. Do you know whether they were or not?
A. No, I don't, no sir.
Q. Were they all stock cars?
A. All stock cars, yes sir.
Q. The train was moving east?
A. Yes sir.
Q. One engine?
A. Yes sir.
Q. Were you on the train?
A. I got on the train, yes, sir.
Q. And went to Chicago with it?
A. Yes sir.
1483 Q. What time did you leave Rock Island?
A. Eight or nine o'clock in the evening.
Q. What time did you arrive in Chicago?
A. About seven, I think.
Q. What is the distance, do you know?
A. 185 miles.
Q. How much?
A. 185 miles, I think.
Q. Do you know how many times you stopped during the night?
A. I don't know anything about it.

Mr. COWAN:

Q. Have you any knowledge in regard to the cost of lumber, construction, labor and the like, so that you could give the value of the stock yards?

Mr. DAWES: I object; there has been no testimony whatever relating to the cost of the stock yards on the Rock Island road, and this would rebut nothing.
Mr. COWAN: Didn't Mr. Gower make a statement?
Mr. DAWES: I may be mistaken, maybe he did.
Mr. SEVERANCE: He should be asked as to his business, rather than to be asked the general question what he knows.
Mr. COWAN: He told what his business was, he has been shipping for ten years.

Q. You are acquainted with the stock yards there, are you?
A. Yes sir.
Q. You know the size of them, how they appear and have known them for years?
1484 A. Yes sir.
Q. What is your opinion as to the value of those stock yards.

Mr. DAWES: I object to that.
The COURT: The objection is sustained.

Mr. COWAN:

Q. Did you ever build any stock pens?
A. I have built them on the farm, yes sir.
Q. And used lumber of the same character in their construction?
A. Yes sir.
The COURT: Well, give your judgment.
A. My judgment on the stock yards, I would not know what to gove.
Mr. DAWES: He says he would not know anyway.
(Witness excused.)

1485 JOSEPH COX, a witness called on behalf of the petitioner, being first duly sworn testified as follows:

Direct examination by Mr. COWAN:

Q. Where do you live?
A. I live at Boone, Iowa.
Q. How far is that from Chicago?
A. 340 miles.
Q. What business are you engaged in?
A. Engaged in farming, stock raising, stock feeding and shipping, that is shipping of my own stock.
Q. How long have you been engaged in that business?
A. Well at that point about three years and a half; I moved there three years ago east March.
Q. Where did you live previous to that time?
A. I lived at Gibson City, Illinois.
Q. How many cars of live stock did you ship from Boone or elsewhere in Iowa to Chicago?
A. I think I have shipped 24 cars out of Boone, and shipped six cars into Boone.
Q. Do you frequently come with your shipments of live stock to Chicago or not?
A. Yes sir.
Q. Do you ship for others besides yourself?
A. Well I have bought parts of loads of hogs from other parties and put them with my hogs and I bought one load of fat cattle that I shipped.
Q. Do you ship altogether from Boone?
A. Yes sir.

1486 Q. What time do you load there in order to reach Chicago say for Monday's market?

A. For Monday's market we load there Sunday morning, between 7:30 and 9.30 o'clock.

Q. How do you come to load at that hour?

A. Well, the first few years I was at Boone I patronized the Milwaukee and they could not get their engine up from Madrid earlier than that time for to get the stock or they didn't do it, I was as late as 9:30 going out of Boone one Sunday morning as I remember.

Q. Is there a regular train comes by and takes your stock?

A. The main line of the Milwaukee does not reach Boone, it is a stub, but they run their engine over there on Sunday for to get the stock, just carry a way car over and pick up whatever stock is to be taken out, and they take it back to Madrid and put it in their regular trains.

Q. Take it back to what place?

A. Madrid.

Q. Is that on the main line?

A. The main line from Chicago to Omaha.

Q. Who beds the cars?

A. I bed the cars.

Q. Who furnishes the bedding?

A. I furnish the bedding.

Q. What is the weight of the bedding, if you have a fresh car and you ship your load of stock in here to Chicago and unload them, what is the weight of the bedding, manure and stuff remaining in the car?

Mr. SEVERANCE: If he knows, if he has ever weighed it?

1487 A. I think that in different weather that the weight of the bedding would vary, I think in sunshiny or windy weather it would not be half so heavy as in misty rainy weather, I think that would have to be estimated in two different ways.

Q. Well what two different ways do you estimate it?

A. Well I would say in dry, windy weather, you mean after the stock had been unloaded out of the car?

Q. Yes?

A. Well, I would think from five to seven hundred pounds.

Q. And in wet weather?

A. I would think from ten hundred to twelve hundred pounds.

Q. What do you use for bedding, sand or straw or hay?

A. I use straw altogether for everything because it is the cheapest.

Q. Do you know the custom with respect to bedding and who furnishes it? at other stations than Boone?

A. At other yards in Boone?

Q. Yes, other than Boone?

The COURT: Other than Boone, other cities?

A. No, I do not.

Mr. COWAN:

Q. How long does it take you to come from there to Chicago?

A. Well I have had very good luck coming from there. I think

I have made some trips in about 20 hours, while 22 hours was consumed at other times. I have known other parties to be on the road longer than that.

1488 Q. What is the general time, what time do you expect to get here, when you leave there in the morning?

Mr. SEVERENCE: That is immaterial what he expects.

The COURT: What time is he due here?

Mr. COWAN:

Q. What time would you be due here?

A. Now this last year I shipped over the Northwestern and their time to leave, the train that we are supposed to load for is 7:30. And I think that train is due at the Stock yards at 5:30 in the morning.

Q. What size trains are these trains that carry live stock with which you come?

A. Well, the trains vary in size, I think from 30 cars to 45.

The COURT: Loaded with live stock?

A. Well I could not say as to being all live stock; I have frequently asked the conductor how many cars he had in the train. I remember one night that I came into Savannah and I asked the conductor as we came in there how many cars he had on the train and I think he told me — had 47 cars in there.

The COURT: That was coming into Savanna or coming from Savanna to Chicago?

A. Into Savanna.

The COURT: That was a mixed train?

A. A mixed train; there were box cars, I don't know whether they were loaded or not.

1489 The COURT: We don't care about that.

Mr. COWAN: Now in a stock train coming out of Savanna in here?

A. I had inquired as to that.

Mr. DAWES: I object to that your Honor unless it is his observation.

The COURT: The objection is sustained.

Mr. COWAN:

Q. Have you been told by conductors in charge of the train?

A. Yes sir.

Mr. DAWES: I object.

The COURT: The objection is sustained.

Mr. COWAN:

Q. Did you notice yourself to see how many cars you had in your train?

A. No, I would not have no way of knowing.

Q. What do your cattle weigh per car that you ship in here?

A. I usually load from 22 to 26,000 pounds in a car.

Q. That is a 36 foot car?
A. Yes sir.
Q. Now what has been your experience with respect to speed of trains, do you know whether there are meat trains carried on the line of road you come over?
A. Yes sir, there has been meat trains.
The COURT: Do you mean separate trains entirely of meat?
A. Well I don't believe they are entirely separate trains, but they are called meat trains.
Q. In which meat is carried?
A. They are called meat trains.
1490 Q. Have you come on them?
A. I remember, if the Court will permit——
The COURT: Yes, make it short.
A. I remember of an occasion where I bought cattle in Kansas City to ship to Boone, and the commission man there told me he would do all he could for me and tried to get my stock on a train as I had a long trip ahead of me and I got it on a meat train.

Mr. DAWES: I object, your Honor. That is merely a suggestion similar to that made before, that they would tell him they would try to get the car in a good train.
The COURT: Yes, sustained.
Mr. COWAN: What I want to ask about is the speed of meat trains.

The COURT: Well do you know the speed of meat trains?
A. Well, the speed of that train from Kansas City to Marion Iowa was about 14 hours as near as I can get it.
The COURT: How far is it?
A. I don't know how far it is but I know it is a fast train.
Q. You don't know, then let it go.
Mr. DAWES: How far is it from Boone to Chicago?
A. Three hundred and forty miles they tell me; I never measured.

1491 S. J. WHEELER, a witness called in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. What is your name?
A. S. J. Wheeler.
Q. Are you engaged in the farming, and cattle and hog business, and shipping to the market?
A. Yes sir.
Q. At what place?
A. Well, farming and feeding stock.

The COURT:

Q. Where?
A. Boone, Iowa.

Mr. COWAN:

Q. And have you been shipping to this market, Chicago?
A. Yes sir.
Q. How often do you come?
A. Well, I was buying stock in Boone for about eighteen months.
Q. But I asked you how often you came to Chicago on the train to bring your product?
A. Probably three or four times a year.
Q. How often did you ship?
A. In the last two years or about eighteen months, when I was buying stock in Boone, I suppose I shipped about one or two loads a week, probably two loads a week.
Q. Who bedded the cars?
1492 A. I bedded the cars, or had it done.
Q. Did you furnish your own bedding?
A. Yes sir.
Q. What was the weight of that bedding after your cattle are unloaded out of the cars, what was the weight of the bedding and manure?
A. Six or seven hundred pounds.
Q. In your experience of coming to Chicago on the live stock trains, do you know whether you passed meat trains on the road or they passed you, going in the same direction?
A. From Boone to Chicago?
Q. Yes.
A. Well, I don't remember whether any meat trains ever passed us or not, I remember coming from Omaha to Boone with stock and there was a meat train passed us at Carroll.
Q. Have you ever come on a meat train yourself?
A. No sir.
Q. You don't know anything about the relative speed of the train then?
A. No sir.
Q. I said, do you know anything about the relative speed of the train?

Mr. SEVERANCE: He said "no."

Mr. COWAN:

Q. What about the sizes of the trains in which the live stock is carried, which comes here to Chicago?
A. Well, I have shipped from Jordan, there is generally a mixed train comes down from Boone and gathers up stock from
1493 there on to Clinton, and from Clinton on in it is a stock train, hauls stock.
Q. How many cars *is* usually in those stock trains?
A. Thirty-five or forty cars I should judge.
The COURT: Did you ever count them?
A. No, I never counted them, I don't know anything only what the trainmen told me.

Mr. COWAN:

Q. What other places do you ship from except Boone?
A. I shipped from Jordan.
Q. What is the custom there with respect to the bedding of the cars?
A. Well, we bed our own cars.
Q. What do you put in the cars in the case of cattle shipments?
A. Straw and hay.
Q. Is the business on the increase in that vicinity?
A. Well, I think it has been, yes sir.
Q. Why don't you ship to Missouri River?

Mr. SEVERANCE: I think that is immaterial.
The COURT: The objection is overruled.

A. Well, Chicago is a better market.

Cross-examination:

Mr. BAXTER: You spoke of a meat train passing a stock train, I understood you were on the stock train.
1494 Mr. SEVERANCE: On a mixed train, he said.
Mr. BAXTER: I thought he said the meat train passed stock trains.
Mr. SEVERANCE: He said a meat train passed a mixed train, that is right isn't it?
The WITNESS: Yes sir.
Mr. DAWES: What road is Jordan on?
A. The Northwestern.

Mr. LYNDE:

Q. When was it you were told at Clinton as to this trainload of thirty five or forty cars?
A. By the trainmen after we got on at Clinton.
Q. I know, but when was this?
A. Why, last May, I think, the last shipment I made.
Q. Give me the date as near as you can?
The COURT: Can you fix the date so that he can look it up.
A. Why, I think it was the last of May.

Mr. LYNDE:

Q. Between the 20th and the 30th, would you say, of this year?
A. Yes sir, this year.
Q. As to these weights, did you ever weigh a car after it was unloaded here in Chicago?
A. No sir.
Q. Do you see the car after it is unloaded at Chicago?
A. Yes sir, sometimes.
Q. Where do you see it?
1495 A. I wait to see my cattle unloaded.
Q. What?
A. I have waited to see the cattle unloaded.

Q. Well, did you pay any attention to the car at that time; you were interested in the cattle, weren't you?

A. Nothing more than to look in at the cattle.

Q. You know the car is there and see the cattle are taken out and you don't know from any actual experience what the weight is, of the contents of the car, do you?

A. Well, I know how much bedding I usually put in.

Q. Well, you don't know as to any weight, or anything about it?

A. No, I never weighed any.

Q. That is right, isn't it?

A. I never weighed any.

Q. That is all.

Whereupon an adjournment was taken until the following day, Friday, September 28, 1905, at 10 o'clock a. m.

1496 FRIDAY, *September* 29, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon —— CROSBY, resumed the stand for the purpose of correcting his evidence as transcribed, having been duly sworn, testified as follows:

Mr. DAWES: If your Honor please, without interrupting the orderly procedure, your Honor will recollect that I called attention to certain discrepancies in the testimony as transcribed and the statements made by Mr. Crosby on the stand. He has indicated all of those and I do not think it will take over five minutes to correct them.

Direct examination by Mr. DAWES:

Q. In looking over your testimony you have indicated that you found some statements as transcribed which do not conform to your statements upon the witness stand. Be kind enough to point them out as quickly and briefly as possible.

A. At page 123 I am reported as having said, that the minimum weight on a 36-foot car is 32,000 pounds. It should be
1497 22,000.

Q. 22,000 pounds?

A. 22,000 pounds, yes sir. At page 130, on the question of rates on rags, the weight as stated is 60,000 pounds. It should be 50,000 pounds. At page 131 in regard to the approximate reduction; I am made to state that the reduction to our company would be $19,276.00. It should be $191,276.00. At page 141 in regard to the expenses of handling live stock at St. Paul, I am made to state that where the minimum charge of $10.00 for handling less than ten cars of range cattle,—it should be that the minimum charge is $10.00. It should be a minimum charge of $10.00. At page 148 in answer to the inquiry "Name the lines which compete from Nebraska City," I am made to state "The competition is mostly with the roads which can form a line from Omaha to Chicago." It should be, "The competi-

tion is with the Missouri Pacific, which can form a line by combination with any railroad from Omaha to Chicago." Page 154, in answer to the inquiry, "What amount of business moves on those roads to South Omaha," I am made to say, "There is a considerable distance moved." It should be, "There is a considerable movement." At page 156, in reply to the inquiry, "You ship from the Black Hills territory" and so forth, I am reported as saying, "No sir, the
1498 business that wants to come to Chicago has to go via Omaha." It should be, "The business that wants to go to Chicago direct does not have to go via Omaha." Page 157, the last inquiry on the page, I am made to say, that from Southwestern Missouri river points in the year 1905, there were shipped to and through the Mississippi river gate-ways, 808,067 of fresh meat and packing house products. It should be for the fiscal year ending June 30th, 1905, 808,067 tons of fresh meat and packing house product. Page 158 in answer to the inquiry "How much of each," after the figure 349,846, should come the word "tons" to indicate what is meant. Page 161, in answer to the inquiry, "So it did not embrace then the cattle rate, but it embraced the tonnage charge" etc., after the word "minimum," the word "even" should be stricken out and the sentence should read, "That is the minimum in case the actual rate was not greater." Page 163, in answer to the inquiry, "Now at Omaha and from such places you have a line," etc. After the figure 3783, it should read "Cars of packing house product and fresh meat." Page 175, the inquiry was in answer to Judge Baxter's question, etc. The answer as reported is "The packing house product and fresh meat comes to us practically an unknown quantity." It should read, "Comes to us practically as a known quantity." Page 183,
1499 the inquiry is "No, per car." And after I say, "That would only be $9,000.00, but if" etc., "thirty or forty or fifty" should be thousand dollars, to indicate what it refers to. Page 184, in answer to the inquiry, 'Well, in the case of Nebraska City, that is something that you have to pay." The answer as reported is, "We may have to pay but competition forces us to pay that." The answer should be, "We pay nothing at Nebraska City. At other points we do, but we have to pay it, competition forces us to." Page 193 the inquiry is, "Now, there is another proportional rate," etc. The question is, "Now ther- is another proportional rate that is shown up on live stock originating at the Missouri river destined to points east of the Indiana and Illinois state line. Do you know of any such shipment being made by way of Chicago?" The answer should be, "Yes, very frequently eastern packers or eastern buyers will go to the Missouri river and buy a certain class of live stock that will be shipped to territory east of the Indiana and Illinois state line or for export, and those rates based on the Missouri river." Page 195, "Now the proportional rate on dressed meat and packing house product of 18½ cents Missouri river to Chicago, is the rate on which most of the shipments are made, is it not?" The answer should be either that
1500 or 13½ cents to the Mississippi river when destined east of the Indiana and Illinois state line." Page 204, "What is the rate to St. Paul generally on class goods and commodities, to the Mis-

souri river from Chicago?" The answer should be, "The first class rate, for example, between Chicago and St. Paul is 60 cents between Chicago and the Missouri river, it is 80. There is no fixed relation between the two." Page 208, "I thought it to have been very well determined that the Missouri river basis of rates on wheat had been ultimately established as a primary rate," etc. The answer should be, "No the difference in the rate is only 3 cents. What is understood to be the normal proportional rate on wheat from the Missouri river to the Mississippi river is 9 cents and 12 cents to Chicago. Page 211, the last question. "All those rates" etc. The answer should be, "In reference to the Minneapolis & St. Louis railroad, for example, they do not compete for live stock although they do for the product." Page 212, "None of these roads compete for the live stock with each other?" The answer should be, "All of those routes compete, because they can form a through line with their connections but shippers prefer usually the direct route." Page 215, the answer to the last question on 214 should read, "Well, the fact of their being composed of several carriers does not alter the situation.

1501 Take the general adjustment of rates between the Missouri river and Chicago and territory west of the Missouri river, the through rates on the combination on the Missouri river, as a rule are less whether the lines are composed of half a dozen railroads, or whether it is only one, two or three." Page 216, "Has there ever been a time when the packing house rate was based on strawberries or *vice versa?*" The answer should be, "No, there are a great many rates not based on the packing house rates or the beef rates." Page 218, "What are the average earnings per ton per mile on all commodities including live stock?" The answer should be, "I have forgotten the figure, but I have since obtained it and it is eighty six one hundredths of one cent per ton per mile for the fiscal year ending June 30th, 1904." Page 276, the name of the station there should be "Villisca."

Mr. COWAN: I just want to inquire while you are on the stand if you have made up the statement of the train consists.

A. That has not been completed yet.

Q. When will it be completed?

A. I think it will be completed in a very few days.

Q. When it is completed I would like you to bring it and the train conductors' reports for examination in connection with it, so we can have it for examination

1501*a* GEN. EX. 9.

Statement to be Added to Testimony of Mr. Crosby.

The Chicago, Burlington & Quincy Railway Company has kept a record of the time consumed in the transportation of live stock; that is, the time consumed by all trains carrying live stock from and through St. Paul to Chicago, from January first up to date, which record shows an average of the time consumed, the average speed per hour of the trains for each day, with a statement showing the number

of cars of live stock in each train, and the average number of cars per train. The record shows that in only four or five instances, did the average speed run lower than fifteen miles per hour, and in no case more than thirty one miles per hour, with an average of seventeen miles per hour for the entire time, and of all trains.

The average number of cars of live stock per train was twenty-five. There were other cars of both dead freight and empties in many of the trains, but a statement thereof is not shown. The average gross tonnage handled per train was estimated at 1023 tons.

The average slow freight rating of the engines used in this service is rated at 1640 gross tons.

The percentage of the gross tons handled, to the slow freight rating, 62.38 per cent.

There is no record which covers strictly east of the Missouri River movement, but there is a record showing the speed in a similar manner during the same period, of all trains carrying live stock from the range country in South Dakota, Wyoming, Montana and western Nebraska.

This shows a greater variation in the time and in speed made, which is necessarily due to the longer distance hauled and
1501*b* the varying grades of the different divisions of the road and great variety of equipment and freight carried.

This record shows average number of cars of stock per train 23, average gross tons handled per train 1279, averaged rating for engines on basis of slow freight tonnage, 1664 tons, percentage of gross tons handled to slow freight rating, 76.88 per cent. general average of miles per hour, 17.9.

These averages are made for the days, and the averages per train on different divisions show that over some divisions, train ran 12 or 14 miles per hour, and over another division, 25 miles per hour, and even in one or two instances, over 31 miles per hour, but the general average is as stated.

The records of the Chicago, Burlington & Quincy Railway Company, show that during the calendar years 1903 and 1904, that railroad handled 253,660 cars of live stock and that it paid claims incident to this business, amounting to $99,436.15, making an average of thirty nine and two tenths cents per car. From the records of same railroad during the calendar years 1903 and 1904, it handled 66,227 car- of dressed beef and packing house products, and that Company paid claim- incident to this business during the same period, amounting to $45,836.72 making an average of seventy-three cents per car.

The amount paid for loss and damage to fresh meat and packing house products, was divided as between the lines east and west of the Missouri River, as follows:

Lines East of the Missouri River	$40,836.40
Lines West of the Missouri River	5,000.32
	$45,836.72

The amount paid for loss and damage to live stock, was divided as follows:

1501c	Lines East of the Missouri River	$77,514.66
	Lines West of the Missouri River	21,921.49
		$99,436.15

The loading by cars of live stock is divided as follows:

	(1903)	(1904)
On lines West of the Missouri River	45,776	46,949
On lines East of the Missouri River	76,771	84,164
	122,547	131,113

The showing as to total number of cars of live stock is not absolutely correct, for the reason that when shipments cross the Missouri River via the various Markets, they are not counted twice, once as being loaded into Missouri River, and counted again when forwarded east. It is impossible to say to what extent this is done, without making and exhaustive analysis of the business. This fact would increase to some extent the average amounts per car for damages on live stock shipments.

Attached hereto are copies of several Conductors' reports taken at random, showing the consist of the trains handled by them. These reports show gross weight of cars and contents, also weight of freight. Some Conductors in making reports showing live stock, have used estimated gross weight of thirty tons per car, which is really in excess of what it should be, as cars and contents would not average over twenty five tons, but this is against the Company for the reason that it shows we are hauling a greater tonnage than we really are, and the engine is not hauling as great tonnage as it should; as illustrated in case of train No. 90 of October 13th, 1904, Conductor Swain: he reports 26 cars of live stock at thirty
1501d tons each. Weight should be 25 tons, difference of 130 tons between tonnage as reported and actually hauled, which shows a still greater failure to approach the engine rating.

(Endorsed:) Filed Oct., 14, 1905, Marshall E. Sampsell, Clerk.

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Burlington Route

Form 2108.

REPORT OF CARS IN TRAIN NO. 74 E4

VIA

X LEAVING Ottumwa AT 12 05 P M 4/13 1905

X ARRIVING Galesburg AT 9 P M 4/13 1905

1501 2

ENGINES	NUMBERS	FROM	TO	ENGINEERS
G	97	780	706	Sutherland
	1912	—	163	Benson

Brakemen: R Brown, F E Barton

Conductor: W P Kilpatrick

KIND / WAY	ALL CARS EXCEPT AT RIGHT — INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS — CONTENTS	WEIGHT IN TONS — FREIGHT		MOVEMENTS — FROM	MOVEMENTS — TO	CONTENTS — X FOR EMPTIES	BILLED FROM	FINAL DESTINATION	REMARKS
B			140756	B	10	1	1	—	—	Sprd		Gl	
-			150285	B	14	1	1	—	—	Sprd		Gl	
-			274332	-	30	13	3	—	—	Castle		W Hyde	
-			627444	-	30	13	3	-	-	Sprd		Gl	
-			615734	-	30	13	4	-	-	Eggs		W Hyde	
-			1478?	-	16	9	5	-	-				
-	Ua Pac	61356		-	30	13	6	-	-	Brick		"	Ind Harbor
-	"	61315		-	30	13	7	-	-	"		"	" "
-	"	61433		-	30	13	8	-	-	"		"	" "
-	"	61918		-	30	13	9	-	-	"		"	" "
B			796533	B	46	20	10	-	-	Cobbles		Gl	
F	A&T	53		F	28	23	11	-	-	Gluey		W Hyde	
F	ARK	62033		-	28	15	13	-	-	Meat		"	
-	"	57733		-	28	15	13	-	-	"		"	
B	C M & St P	66693		B	32	16	14	-	-	Hides		"	
F	N C	72641		F	32	14	15	-	-	Meat		Gl	Ind Hr
-			389044	-	31	11	16	-	-	Butter		"	
B	C M & St P	44183		B	36	18	17	-	206	Mixed		"	
-	M & St L	60979		-	30	15	18	-	-	"		"	
F			291444	F	26	13	19	-	163	Eggs		W Hyde	
-	Ind Kans	60721		-	30	13	20	-	-	"		"	
-	Ill Cent	54886		-	30	10	21	-	-			Gl	
B	C M & St P	44144		B	36	18	22	-	206	Mixed		"	
B	Erie	99184		-	53	36	23	-	-	Silos		"	
-	C B & Q	22957		-	50	33	24	-	-	Wheat		"	
B			233251	B	36	14	25	-	163	Eggs		"	
-	Ark	6220			30	11	26	-	-			"	
-		22			30	11	27	-	-			"	
B	SP	58411		B	48	31	28	-	-	Sash		"	
-	"	70714		-	52	33	29	-	-	Doors		"	
F	M & St L	518		F	26	11	30	-	-	Meat		"	
-	ARK	45855		-	32	14	31	-	-			SJJ	
-		24665		-	40	17	32	-	-			"	
-	M & St L	11122		-	26	12	33	-	-	Stockyds		"	See Gl
-	ARK	86300		-	36	13	34	-	-	Meat		"	
-	M & St L	518		-	32	14	35	-	-	"		"	
-	M & St L	14055		-	31	11	36	-	-	Pipe		"	
-	ARK	2217		-	32	10	37	-	-			"	
-	N C	73411		-	33	10	38	-	-	Meat		13	
-	ARK	78277		-	35	15	39	-	-	Eggs		"	
B	Can	91112			15		40	-	-	X		Gl	

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Tr No _____ Date _____ 190 _____ 15018 Conductor.

Kind	All Cars Except at Right: Initials	Numbers	C. B. & Q. Numbers	Kind of Billing	Tonnage: Gross	Tonnage: Fr'gt		Movements: From	Movements: To	Contents: X For Empties	Contents: Fr'gt Det. Billed From	Destination	Remarks
T	Cons	44189		L	48	35	41	280	163	Scrap	0		
B	Sou Rem	22249		E	34	22	42	–	–	Lead	3200		
–		30101		L	35	20	43	–	–	Feed	–		
–			26093	E	27	13	44	–	–	Hides	1800		
–			95816	–	48	30	45	–	–	C Meal	1805		
R	ARL	8701		T	23	9	46	–	–	Meat	131		
F	LSMS D	36303		L	26	12	47	–	206	Grader	37		
B	Gn	73052			15		48	–	–	X	3296		
–		30660			17		49	–	–	X	–		
–	Sa Cent	02288		L	43	28	50	–	–	Corn	3200		
–			27735	–	47	22	51	–	206	–	206		
–			31364		14		52	–	–	X			
–			96754		19		53	–	–	X			
–			95176	E	29	10	54	–	–	Tiss	CR Tot		
–	Ny Ch R	58107		T	25	15	55	–	–	Mds	206		
–	SCS Sol	9512			14		56	–	–	X	–		
–	BRP	2021			14		57	–	–	X	–		
–			1852	E	38	22	58	–	163	Wheat	1800		
–	Sil Sw	10716		L	45	30	59	–	206	Corn	0		
S			62055	S	30	13	60	256	163	Cattle	2753		
–			66176	–	30	13	61	–	–	–	–		
–			15233	–	25	11	62	262	179	–	3370		
–			16970	–	25	11	63	–	–	–	–		
–			68392	–	30	13	64	233	163	Hogs	Usy		
–			65509	–	30	13	65	225	–	Hogs	–		Feed Gr
–			61333	–	30	13	66	215	–	Hogs	0		
R	MDT	9371		T	26	6	67	206	–	Eggs	333		
–	SRL	10951		–	25	5	68	–	–	–	–		
B			92193	–	26	8	69	–	–	Mds	0		
R			39322	–	23	3	70	–	–	–	–		
–	Eur	61085		–	30	10	71	–	–	Eggs	–		
B			18703	–	30	14	72	–	–	–	13		
S	SSE	60136		S	30	12	73	–	–	Hogs	–		
–	Sor C	1839		–	30	13	74	–	–	Cattle	Usy		
–			66246	–	30	13	75	–	–	Hogs	–		
–			62438	–	30	13	76	–	–	Cattle	–		
–			65381	–	30	13	77	–	–	Hogs	–		
–	Sa Ct	06398		–	30	13	78	179	–	–	–		
–	–	06432		–	30	13	79	–	–	–	–		
							80						
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Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Burlington Route

F 11.05 300M

REPORT OF CARS IN TRAIN NO. 70

VIA

Form 2108.

1501y

LEAVING Onelow AT 7:10 P M 4-3 1905

ARRIVING Otta AT 12:55 A M 4-4 1905

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1984	393	280	Campbell

C H Sutton
C E Mowery
Brakemen.

H L Lewis
Conductor.

KIND WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	WEIGHT IN TONS FR'GHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14588		23			393	280				
Q	CGW	1710		F	24	12	1	–	–	Mdse		206	14-30=1402
–	OTS	20881		–	24	12	2	–	–	–		280	14-20=1060
–	MrO	5679		G	34	21	3	–	371	Corn		0	
–			4698	–	31	20	4	–	–	–		–	
–			10773	–	33	21	5	–	–	–		–	
–			1435	–	33	21	6	–	–	–		–	
–			4789	G	27	16	7	–	–	–		–	
–			9937	–	34	21	8	–	–	–		–	
–	KC	1276		–	27	16	9	–	–	–		–	
–	MKT	1362		–	53	33	10	–	–	–		–	air
–			18474	G	34	21	11	–	–	Wheat		–	
–			26621	–	46	32	12	–	–	Corn		–	
S			60164	–	30	11	13	–	280	Hogs		US yds	
–			62949	–	30	11	14	–	–	–		–	
–			60998	G	30	11	15	–	–	–		–	
–			15104	–	25	11	16	–	–	–		–	
–			62690	–	30	11	17	–	–	–		280	
–			16327	–	25	11	18	–	–	–		–	
–			52044	G	30	11	19	–	–	Sheep		0	
–			75679	–	30	11	20	–	–	–		–	
–			52081	–	30	11	21	–	–	–		–	
–			50020	–	30	11	22	–	–	–		–	
–			52093	G	30	11	23	–	–	Hogs		Kankakee	
–			50135	–	30	11	24	–	–	–		–	
–			15212	–	25	11	25	–	–	–		US yds	
–			16111	–	25	11	26	–	–	–		–	
R			39203	F	31	12	27	–	–	Butter		0	
–	ARL	8765		–	34	11	28	–	–	Meat		Kankakee	
–	–	7795		–	33	10	29	–	–	–		–	
–	–	9697		–	34	11	30	–	–	–		–	
–	NCLC	7047		–	33	10	31	–	–	–		Hammond	
–	ARL	3426		F	34	11	32	–	–	–		Kankakee	
–	–	8060		–	35	12	33	–	–	–		–	
–	–	7335		–	34	11	34	–	–	–		–	
–	–	7215		–	33	10	35	–	–	–		–	
–	–	13085		–	33	11	36	–	–	–		–	
–	FRL	0150		F	33	10	37	–	–	–		Hammond	
–	NCLC	7396		–	33	10	38	–	–	–		–	
–	FRL	0948		–	34	11	39	–	–	–		–	
–	NCL	7812		–	33	10	40	–	–	–		–	

Dram in Charge
Kay Lawrence Kl at Demuth Crossing (Stopped)

Patented May 5th, 1903

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Tra' No _____ Date 4- 3 1905 H L Lewis 15012 Conductor.

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	TONNAGE GROSS	TONNAGE FRIGHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
R	N C L C	9775		T	33	10	41	393	280	Meat		Fremont	air
-	-	7143		-	33	10	42	-	-	-		-	-
-	-	7123		-	33	13	43	-	-	-		-	-
-	-	4602		-	33	10	44	-	-	-		Fairbanks	-
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Patented May 5th, 1903. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1087

Burlington Route

F 11.05 200M

REPORT OF CARS IN TRAIN NO. 70

VIA

Form 2108.

LEAVING Creston AT 7 28 P M Apl 5 1905

ARRIVING Ottumwa AT 11 48 P M Apl 5 1905

1501

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1987	393	280	A Hart

J H Ketcham

J E Miller — Brakeman.

C J Strong — Conductor.

KIND / WAY	ALL CARS EXCEPT AT RIGHT: INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS: GROSS	FRIGHT		MOVEMENTS: FROM	TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14599					393	280				
Q			23077	J	20	6	1	-	-	Mdse		206	
-	C G W	7146		-	16	3	2	-	-	-		280	
-			29509	-	24	9	3	-	-	-		296	
-	C M & St P	40424		E	33	15	4	-	-	Trees		Waterloo Wis	
-			27762	-	45	30	5	-	-	Goats		0	
R			39231	J	31	11	6	-	-	Eggs		-	13-27-1251
			39426	-	31	11	7	-	-	-		-	
-	C St P M & O	8104		-	26	7	8	-	-	Mdse		-	
-	M D T	11426		-	30	10	9	-	-	Dr Poultry			
-	A R L	4022		-	38	15	10	-	-	Meat		KK Kee	
-	-	7790		-	35	12	11	-	-	-		-	
-	-	9669		-	34	14	12	-	-	-		-	
-	-	8650		-	32	9	13	-	-	-		Quincy	
-	-	8055		-	34	11	14	-	-	-		KK Kee	
-	-	6992		-	26	3	15	-	-	-		206	
-	-	9310		-	30	7	16	-	-	-		163	
-	P D S	2321		-	43	20	17	-	-	-		Hammond	
-	N C L C	9247		-	34	11	18	-	-	-		-	
-	-	7571		-	33	10	19	-	-	-		-	
-	H R L	01137		-	33	10	20	-	-	-		-	
-	-	01171		-	34	11	21	-	-	-		KK Kee	
-	A R L	8730		-	33	10	22	-	-	-		-	
-	-	8363		-	33	10	23	-	-	-		-	
-	-	9967		-	34	11	24	-	-	-		-	
-	-	13144		-	34	11	25	-	-	-		-	
-			39204	-	34	12	26	-	-	Eggs		0	
-	N Y D L	13589		-	31	11	27	-	-	-		Hammond	
S	Mather	1218		S	30	13	28	-	-	Cattle		US Yds	
-			75584	-	30	13	29	-	-	Sheep		-	
-			50281	-	30	13	30	-	-	-		-	
-			50091	-	30	13	31	-	-	-		-	
-			52019	-	30	13	32	-	-	-		-	
-			50300	-	30	13	33	-	-	-		-	
-			52108	-	30	13	34	-	-	-		-	
-			75799	-	30	13	35	-	-	-		-	
-			50174	-	30	13	36	-	-	-		-	
-			52084	-	30	13	37	-	-	-		-	
-			52098	-	30	13	38	-	-	-		-	
-			52142	-	30	13	39	-	-	-		-	
-			50233	-	30	13	40	-	-	-		-	

Patented May 5th, 1902.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Burlington Route

F11 05 200M

REPORT OF CARS IN TRAIN NO. 70

VIA

Form 2108.

LEAVING Galesburg AT 845 A M 10-7 1905

ARRIVING Chicago AT 545 P M 10-7 1905

1501 j

ENGINES	NUMBERS	FROM	TO	ENGINEERS
H&S J	581	163	37	Chitty
Q	1916	163	4	Pearsons

D H Dratty
W A Bates
Brakemen.

J M Burke
Conductor.

KIND / WAY	ALL CARS EXCEPT AT RIGHT: INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS: GROSS	FR'GHT		MOVEMENTS FROM 163	TO 4	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14537										
F			89096		14		1	✓	37	X			
✓	C Jol	11942			12		2	✓	✓	X			
✓	D L W	37057		J	32	17	3	—	—		Flour		N Y N K
F			89317		14		4	—	—	X			
✓		19361		D	30	17	5	—	—		Lyon		Chgo
B			21434	✓	29	17	6	—	83		Plaster		Mendota
✓	G T	8561		T	30	11	7	—	—		Wagons		3249
✓			24939	✓	21	6	8	—	—		Mdse		83
✓			4756	J	34	20	9	—			Hides		Chgo
✓	H&S J	10003		D	36	20	10	—	—		Seed		P Whole
✓	C&W	36990		✓	35	20	11	—	—		—		
✓			20239	✓	33	20	12	—	—		Rye		Chgo
✓	No Pac	36191		✓	49	34	13	—	—		Wheat		
✓			27071	J	29	14	14	—	—		Lime		T E I
R	SRL	661		✓	31	11	15	—	—		Meat		Chgo
B	H&S J	10233		D	31	13	16	—	—		Stoves		Can Pac
✓	G T	3794		✓	16	2	17	—	—		Cstgs		G T Ry
✓			95423	J	43	25	18	—	—		Hides		Erie
✓			29477	✓	32	17	19	—	—		Flour		Pen Co
R			39186	✓	33	11	20	—	—		Meat		U S Y
B			29407	D	35	20	21	—	—		Wheat		Chgo
R			93779	✓	35	20	22	—	—		—		
✓	C B T C	2078		J	30	10	23	—	—		Meat		B & O
✓	N C L	4536		✓	33	13	24	—	—		—		U S Y
B	L S M S	D 24692		✓	32	16	25	—	—		Mdse		Chgo
✓	G T	12351		✓	28	10	26	—	—		—		—
✓			10766	✓	23	8	27	—	—		—		—
R	P D S	1223		✓	30	10	28	—	—		Meat		U S Y
✓	A R L	9644		✓	31	11	29	—	—		—		—
✓	—	9605		✓	31	11	30	—	—		—		—
✓	H K L	0262		✓	30	10	31	—	—		—		—
✓	N C L	4515		✓	30	10	32	—	—		—		—
B	H&S J	7319		D	45	20	33	—	—		Wheat		Chgo
R			38209	J	30	8	34	—	—		Mdse		—
✓	A R C C C	8064		✓	33	11	35	—	—		Meat		U S Y
B			60243	S	30	30	36	—	—		Hoses		Pa C
R			38200	T	33	11	37	—	—		Meat		U S Y
✓			39057	✓	33	11	38	—	—		—		—
✓			39320	✓	33	11	39	—	—		—		—
✓			39284	✓	26	5	40	—	—		Mdse		Chgo

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Train No. _____ Date Dec 11 1904 J M Burks 1501 R Conductor.

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	TONNAGE GROSS	TONNAGE FREIGHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
F	Wil L	18435		F	24	4	41	Ind	Chgo			Chgo	
-	-	-	37450	-	29	6	42	-	-			-	
B	Bur	70767		D	45	28	43	-	-			-	
-	Sil L	43254		-	49	30	44	-	27			Aurora	
L			32900	-	43	27	45	-	-			Oakford	
-			41511	-	40	20	46	-	-			Medill	
-	Van Zane	76877		D	26	9	47	-	-			Cayuga	
I	W L	27999		-	15		48	-	-	X		B & Q	
R			92963	-	25		49	-	-			Oakford	
R	Ill 6	26275		I	30	10	50	-	13			Mak	Chgo
B			9335		30		51	-	37	X		Dyera	
-	Erm	27063		D	40	23	52	83	-			Oakford	
-	CRI N J	33651		-	40	25	53	-	-			Aurora	
C			80349	-	73		54	-	-			Coal	1462
C	Rock	5216		-	45		55	-	-			-	
Q			29590	-	22	17	56	-	-			Ottpe	1498
S	W L	76990			45		57	-	-	X		B & Q	
R	Lm	96688		D	27	15	58	-	-			Chg	Oakford
-			29794	-	25	10	59	-	-			Strand	
-			21661	-	30	15	60	-	-			Stony	Aurora
C	Ill 6	93426		-	58	43	61	-	-			Coal	-
C	-	94601		-	58	40	62	-	-			-	-
R	W L	43188		-	15		63	-	13	X			C J
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Patented May 8th, 1900. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

8 Burlington Route

F11 05 200M

REPORT OF CARS IN TRAIN NO. 90

VIA

Form 2108.

LEAVING Galesburg AT 9 30 P M Feb 12 1904

ARRIVING Chicago AT 8 30 A M — 14 1904

1501 C

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1931	163	4	Ludwig

J N Cram

J D Gullstrand — Brakemen.

C H Swain — Conductor.

KIND WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	WEIGHT IN TONS FR'GHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14501					163	4				
S			62037	S	30	13	1	—	52	Cattle		52	
-	QOKC	1721		-	30	13	2	—	—	—		—	
-			61745	-	30	13	3	—	4	Hogs		US Hog	
-			17711	-	25	11	4	—	—	—		—	
-			61539	-	30	13	5	—	—	Cattle		—	
-			15277	-	25	11	6	—	—	—		—	
-			16220	-	25	11	7	—	—	—		—	
-			65012	-	30	13	8	—	—	—		—	
-			65722	-	30	13	9	—	—	—		—	
-			62063	-	30	13	10	—	—	—		—	
-			65099	-	30	13	11	—	—	Hogs		—	
-			66257	-	30	13	12	—	—	Cattle		—	
-			62502	-	30	13	13	—	—	—		—	
-	MSE	12363		-	30	13	14	—	—	—		—	
-	DSE	1558		-	30	13	15	—	—	—		—	
-			65531	-	30	13	16	—	—	—		—	
-			66167	-	30	13	17	—	—	—		—	
-			66228	-	30	13	18	—	—	—		—	
-			62552	-	30	13	19	—	—	—		—	
-			62817	-	30	13	20	—	—	—		—	
-			15442	-	25	11	21	—	—	Hogs		—	
-			16840	-	25	11	22	—	—	—		—	
-			62851	-	30	13	23	—	—	—		—	
-			61790	-	30	13	24	—	—	—		—	
-			65184	-	30	13	25	—	—	—		—	
-	MSE	16066		-	30	13	26	—	—	—		—	
-			60073	-	30	13	27	—	—	Cattle		—	
-			15201	-	25	11	28	—	—	Hogs		—	
-		839	2	-	25	11	29	—	—	—		—	
-			15047	-	25	11	30	—	—	—		—	
-			15559	-	25	11	31	—	—	—		—	
-			62284	-	30	13	32	—	7	—		0	Omaha P Co
-			65170	-	30	13	33	—	—	—		—	
T	UTL	5398		D	15		34	—	—	X		—	
B			23823	-	34	20	35	—	—	Paper		—	
-			27740		15		36	—	—	X			
-			27891		15		37	—	—	X			
-			23305		15		38	—	—	X			
-			29057	D	37	22	39	—	—	Lumb		0	
-	CBS	61460		-	33	38	40	—	—	Cement		—	

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

9 Trr' No _____ Date Oct 13 1904 P H Swan 1501m Conductor.

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	TONNAGE GROSS	TONNAGE FRIGHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X	CONTENTS FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
T	UTL	1535		W	15		41	163	7	X			0	
B	MRT	7533		-	24	10	42	-	95		Hay		-	
C	M&O	13791		-	50	35	43	-	7		Lumber		-	
B			21754		15		44	-	-	X				
-			29712		15		45	-	-	X				
-			28378		15		46	-	-	X				
S			16603	S	25	11	47	7	4		Hogs		USY	
-	CCCC	376		-	30	13	48	-	-		Cattle		"	
-	SWS	2427		-	30	13	49	-	-		-		-	
-			15564	-	25	11	50	-	-		-		-	
							51							
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Patented May 5th, 1903. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1092

10 Burlington Route — F 11-05 200M

REPORT OF CARS IN TRAIN NO. 6 Form 2108.

VIA ASY 1

LEAVING Galesburg AT 6 30 P M 10/8 1904

ARRIVING Chicago AT 7 30 A M 10/9 1904

1501 W

ENGINES	NUMBERS	FROM	TO	ENGINEERS
6	1929	163	4	W Ellis

Brakemen: A B Lodge, C A Trial

Conductor: C E Smith

KIND / WAY	ALL CARS EXCEPT AT RIGHT — INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS — GROSS	NET		MOVEMENTS — FROM	TO	CONTENTS — X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
			140114					163	4				
10			290258	L	40		1			Cattle		Chicago	
6			85937	-	57		2			Coal		-	
10	MKT	41275		-	36		3			Cattle		-	
10	M-N	60998		-	43		4			Oats		-	
-			273581	-	43		5			Brick		-	
6			869756	-	59		6					-	
10		10 x 86		-	44		7		117			-	
-			393738	-	45		8		4			-	
-	D S A	36651			16		9			X		-	
-	CM	427220		L	51		10			Feed		-	
1	UPL	87156			16		11			X		-	
10		99900			16		12			X		-	
10	Sa e	081886		L	33		13			Hay		-	
-	-	048900		-	36		14					-	
-	-	019644		-	40		15			Oats		-	
-			347440	-	46		16			Barley		-	
-			240341	-	46		17			Feed		-	
10	CCCSL	3538		-	45		18			Seed		-	
10			192216	-	25		19			Sand		-	
-			772940				20						
-	CCCSL	96809					21						
10			982215	S	33		22	163	7	Meat		Ushy	
10			207216	L	36		23			Bran		-	
1	UPL	61622		L	33		24			Sand		Ushy	
10			381492	-	33		25			Meat		-	
-			348240	L	33		26			Wheat		.0	
-			349246	-	46		27					-	
-			304024	-	45		28					-	
-			277465	-	46		29					-	
3			615337	S	30		30		4	Cattle		Ushy	Ans. Ushy
-			616011	-	-		31					-	
-			662869	-	-		32					-	
-			617310	-	-		33					-	
-			606447	-	-		34					-	
-			658644	-	-		35					-	
-			661775	-	-		36					-	
-			616633	-	-		37					-	
10	ARL	8359		L	33		38			D Mail Car		Ft Dutch	
5	ARL	77641		-	21		39		37	Empty		Ushy 37 Chgo	
5	ARL	17900		S	30		40		7	Mules		Ushy	Ans. Ushy

Patented May 5th, 1903. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Train No _____ Date Oct 8 190 4 C E Smith Conductor. 15010

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	CONTENTS LOADED	CONTENTS EMPTY		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
S	GN	12000		S	25		41	163	7	Hgrain		USY	
H		64558		H	23		42	–	–	Feed		a	
LO	LOT	760		LO	30		43	–	–	Coalley		–	
R	MOP	106946		R	28		44	–	–	Bbl		–	
Ms	CMW	89776		–	16		45	–	–	Whisk		–	
–	LO	80373		–	23		46	–	–			–	
R	FYE	18429		–	36		47	–	–	Oranges		–	
LO	LOF	5466		LO	31		48	–	–	Coalley		–	
R			387655	R	27		49	–	–	Bbl		–	
USY			765714	S	30		50	–	67	Stock		USY	
–			620736	–	30		51	–	–	–		–	
–			620831	–	30		52	–	–	–		–	
–			60294	–	30		53	–	–	–		–	
–			620736	–	30		54	–	–	–		–	
–			601233	–	30		55	–	–	–		–	
S			616738	–	30		56	–	7	Horses		–	
–			154869	–	25		57	–	–	Hogs &		–	
–			617833	–	30		58	–	–	Cattle		–	
–			628016	–	30		59	–	–	–		–	
–			164097	–	25		60	83	–	Horses		–	
–			628100	–	30		61	–	–	–		0	
							62						
							63						
							64						
							65						
							66						
							67						
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Patented May 8th, 1900.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1094

Burlington Route

F 11-05 200M

REPORT OF CARS IN TRAIN NO. 74

VIA

Form 2108.

LEAVING Quincy AT 11 A M 10-6 1904 1501 p

ARRIVING Galesburg AT 5 30 P M 10-6 1904

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1739	2900	163	Parson
–	1927	2900	163	Pierson

Martin
Westphal
Brakemen.

O O Arnold
Conductor.

KIND WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	FR'GHT		MOVEMENTS FROM	TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14601					2900	163				
R	MRT	4125		D	35		1	–	–	Kegs		Q	
T	SvL	6103		J	32		2	–	–	Tallow		USY	
R	MDT	10593		–	30		3	–	–	Eggs		888	
–	BCSS	360		–	34		4	–	–	Meat		USY	
–			38278	–	33		5	–	–	–		–	
–			38093	–	34		6	–	–	–		–	
–	MRD	1746		–	36		7	–	–	–		13	
–		1800		–	32		8	–	–	–		USY	
–			39352	–	36		9	–	–	–		–	
–			39420	–	37		10	–	–	–		–	
–			39470	–	34		11	–	–	–		–	
T	SvL	6034		–	32		12	–	–	Lard		–	
L			62539	–	30		13	–	–	Mules		–	
–			61669	–	30		14	–	–	Cattle		1408	
–			65534	–	30		15	–	–	–		–	
–	MHC	60619			30		16	–	–	–		–	
–	MSC	16371					17	–	–	–		–	
–			61067		30		18	–	–	–		–	
B			33941	D	30		19	–	–	Spelter		131	
R			38195	J	31		20	–	–	Meat		USY	
B	UP	67590		X	40		21	–	–	Flour		Q	
–			21061	X	30		22	–	–	–		37	
–	SuC	22223		X	48		23	–	–	–		–	
R	ANL	8836		J	32		24	–	–	Poultry		JJJ	via 95
L			66313		30		25	–	2828	Cattle		3370	
–			65211		30		26	–	–	–		–	
–			62703		30		27	–	–	–		–	
C			84652		20		28	–	–	X			
–			84413		20		29	–	–	X			
B	UP	68006		D	38		30	–	2839	Flour		2839	
J	UTL	5265			15		31	–	163	X		0	
–	–	8587			15		32	–	–	X		–	
–	–	4500			15		33	–	–	X		–	
–	–	4053			15		34	–	–	X		–	
							35						
							36						
							37						
							38						
							39						
							40						

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1095

Burlington Route

F11 /5 200M

REPORT OF CARS IN TRAIN NO. Ex 1/76 Form 2108.

VIA

LEAVING Hamburg AT 10 55 A M 10-12 1904 15018

ARRIVING Creston AT 4 30 P M 10-12 1904

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1166	8142	444	Kirtt
–	1756	444	393	A Johnson

Kirkinbaugh
W J Booty
Brakeman.

J M Jay
Conductor.

KIND WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	WEIGHT IN TONS FR'GHT		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			14035					8142	393				
S			66441		30		1	–	–	Cattle		Hammond	
–			65122		30		2	–	–	–		–	
–			66011		30		3	–	–	–		–	
–			61239		30		4	–	–	–		–	
–			60039		30		5	–	–	–		–	
–			60229		30		6	–	–	–		–	
–			65043		30		7	–	–	–		–	
–			61373		30		8	–	–	–		–	
–			66083		30		9	–	–	–		–	
–			65069		30		10	–	–	–		–	
–			65267		30		11	–	–	–		–	
–			62232		30		12	–	–	–		–	
–			60097		30		13	–	–	–		–	
–			61030		30		14	–	–	–		–	
–			65501		30		15	–	–	–		–	
–	QOKC	1746			30		16	–	–	–		–	
–			66366		30		17	–	–	–		–	
–			66025		30		18	–	–	–		–	
–			61865		30		19	–	–	–		–	
–			62587		30		20	–	–	–		–	
–			62724		30		21	–	–	–		–	
–			65246		30		22	–	–	–		–	
–			61147		30		23	–	–	–		–	
–			61842		30		24	–	–	–		–	
–	Hicks	1713			30		25	–	–	–		–	
–			66415		30		26	–	–	–		–	
–			62440		30		27	–	–	–		–	
–			61222		30		28	–	–	–		–	
–	QOKC	1644			30		29	–	–	–		–	
–		~~1644~~	65487		30		30	–	–	–		–	
–			65687		30		31	–	–	–		–	
–			60234		30		32	–	–	–		–	
–			65063		30		33	–	–	–		–	
–			61437		30		34	–	–	–		–	
–			62152		30		35	–	–	–		–	
–			66368		30		36	–	–	–		–	
–			~~62950~~				37						Badower
–			61159		30		38	8142	393	Cattle		Hammond	
–			62501		30		39	–	–	–		–	
–			62076		30		40	–	–	–		–	

Patented May 5th, 1903. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1096

Burlington Route

F 11-05 200M

REPORT OF CARS IN TRAIN NO. 70

VIA

Form 2108.

LEAVING Ju Jayaha AT 12 P M 10-10 1904 1501N

ARRIVING Creston AT 6 P M 10-10 1904

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1536	a 20	393	J Hawkes
–	1604	478	–	Diffenbaugh

W Wilson
C E Wood
Brakeman.

T Allen
Conductor.

KIND / WAY	ALL CARS EXCEPT AT RIGHT: INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS: LOAD	WEIGHT IN TONS: FR'GHT		MOVEMENTS: FROM	MOVEMENTS: TO	CONTENTS: X FOR EMPTIES	BILLED FROM	Final DESTINATION	REMARKS
			212					a 20	393				
B			954		11		1	–	478	X			
–			11506		11		2	–	–	X			
C			87237		15		3	–	–	X			
–		2393			10		4	–	–	X			
–			17176		10		5	–	–	X			
–			7729		10		6	–	–	X			
–	QOKC	5061			13		7	–	–	X			
R	FGE	17453		J	30		8	–	393	Apples		Chicago	
–		17886			39		9	–	478	Oranges			C.B.-Cmbd
B			23805	–	28		10	–	393	Crude		Minneapolis	
–	MDT Co	8010		–	26		11	–	393	Mdse		Chicago	
–			31892	–	21		12	–	–	–		–	
–	CNA	8978		–	26		13	–	–	Hops		–	
–	Nor Pac	57156		–	36		14	–	–	Oleomar		Rock Isld	
S			62635	S	30		15	–	–	Horses		Hunter Ton	Town
R	ARL	9250		J	31		16	–	–	Meat		US Yds	Alex
–	HRL	6962		–	31		17	–	–	–		–	apks
–		01184		–	31		18	–	–				
–	CRL	3482		–	35		19	–	–	–		Kankakee	C C
–	–	3088		–	33		20	–	–	–		–	–
–	–	3778		–	33		21	–	–	–		–	–
–	–	3041		–	33		22	–	–	–		–	–
–	–	3177		–	33		23	–	–	–		–	–
–		6558		–	35		24	–	–	–		US Yds	A Co
–	SRL	10557		–	32		25	–	–	–		Pomeroy	S C
–	CRL	3641		–	33		26	–	–	–		Kankakee	C C
–	–	3344		–	31		27	–	–	–		–	–
–	–	3462		–	31		28	–	–	–		–	–
–	–	3601		–	34		29	–	–	–		–	–
–	–	3171		–	34		30	–	–	–		–	–
–	–	3889		–	31		31	–	–	–		–	–
–	–	3493		–	35		32	–	–	–		–	–
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							37						
							38						
							39						
							40						

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1097

Burlington Route

F11 05 200M

Form 2108.

REPORT OF CARS IN TRAIN NO. X

VIA

LEAVING Ottumwa AT 9:55 P M Oct 8 1901

ARRIVING Galesburg AT 3:55 P M Oct 9 1901

1501

ENGINES	NUMBERS	FROM	TO	ENGINEERS
Q	1931	380	163	Fenlaw

W H Eastman — Brakeman.

H C Fox

G E Tracey — Conductor.

KIND / WAY	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BILLING	WEIGHT IN TONS GROSS	WEIGHT IN TONS TARE		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	BILLED DESTINATION	REMARKS
			14533					380	163				
W			20371	J	34	10	1	—	—			Mdsn	
"	WABC	8685		9	18		2	—	206	X		2753	
"			134666	-	33	20	3	—	—			Wheat	3200 Reduce
"	Erie	88999		-	15		4	—	—	X		C	0
"			20081	-	15	30	5	—	—			Corn	3200
"			9386	-	41	26	6	—	—			Wheat	0
"			71207	-	40	26	7	—	—			Corn	0
W			42401	-	19		8	—	—	X			163
W			19969	-	33	20	9	—	—			Corn	0
C	Wabash	5198		-	15		10	—	—	X			38
W			78777	-	46	31	11	—	—			Corn	0
"	C&W	1534		-	45	30	12	—	—			"	"
"	NYCH	58791		-	44	30	13	—	—			"	"
C	NKS	4a198		J	26	6	14	—	163			Mdse	163
"	SFRd	8730		-	33	19	15	—	—			Oranges	0
"			38076	-	38	18	16	—	—			Lard	3200
"	ANDG	10824		-	38	18	17	—	—			"	"
"			38064	-	38	18	18	—	—			"	0
"			31206	-	29	19	19	—	—			"	3200
"			99323	-	34	10	20	—	—			Mdse	"
"	MKT	5724		-	37	17	21	—	—			Lard	WDY
"	"	5803		-	37	19	22	—	—			"	"
"		5518		-	38	18	23	—	—			"	"
"	MKnH	6023		-	34	12	24	—	—			Mdse	222 Ref
"			38306	-	36	14	25	—	—			"	"
S			67113	S	30	11	26	—	—			Hogs	WDY
"			61376	-	30	11	27	—	—			"	"
"			17876	-	25	9	28	—	—			"	"
"			61225	-	30	11	29	—	—			"	"
"			62875	-	30	11	30	—	—			"	"
W			95714	-	30	11	31	—	—			Empty	180
S			62880	-	30	11	32	—	—			Hogs	WDY Reg F
"			61905	-	30	11	33	—	—			Cattle	"
"			68153	-	30	11	34	—	—			"	"
"	CRI	1871		-	30	11	35	—	—			"	"
"		1683		-	30	11	36	—	—			"	"
"			61526	-	30	11	37	—	—			"	"
"			60212	-	30	11	38	—	—			Hogs	"
"			62816	-	30	11	39	—	—			"	"
"			15037	-	25	10	40	—	—			Cattle	"

Patented May 5th, 1903.

B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

Train No. _____ Date 4-8 190_____ E E Tracey Conductor. 15012

KIND	ALL CARS EXCEPT AT RIGHT INITIALS	NUMBERS	C. B. & Q. NUMBERS	KIND OF BALLAST	TONNAGE GOING	TONNAGE RETURN		MOVEMENTS FROM	MOVEMENTS TO	CONTENTS X FOR EMPTIES	BILLED FROM	DESTINATION	REMARKS
R			190851		26	16	61	Pla	Ha	Coal S		179	
B		14	"		22	8	62	—	206	Mdse		206	
—			490		16	4	63	206	163	—		7753	
R	WQ	13478			25	5	64	"	"	Eggs		9	
B			93071		25	17	65	"	"	Mdse		1806	
R	WR	20788			19	9	66	"	"	Mdse		163	
—			21021		20	5	67	"	"	Mdse		87	
—			26828		20	5	68	"	"	Mdse		163	
—			92374		22	4	69	"	"			0	
R		13014			25	5	70	"	"	Eggs		222	Empty
—	WQ	9580			25	6	71	"	"	"		"	"
—	RO	12469			32	17	72	"	"	Mdse		"	"
—	WR	11278			25	5	73	"	"	Mdse		"	"
—	Erie	61434			25	5	74	"	"	Eggs		"	"
—	WR	9871			26	6	75	"	"	"		"	"
							76						
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Revised May 8th, 1906. B—Box. S—Stock. C—Coal. F—Flat. Fn—Furniture. R—Refrigerator. T—Tank. M—Maintenance of Way.

1502 but not for filing. You mean the report of the conductors that handled those particular trains?

Q. From which you make up the statement?

A. That will be quite an undertaking again. We will have to go all through those reports again.

Q. Haven't you got the reports selected out from which you are making the statement?

A. I think not. I think they are getting up the report from some special form of report which they call, "A wheel report."

The COURT: I guess that is all, Mr. Crosby.

E. P. RIPLEY, called as a witness on behalf of the complainant in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. COWAN:

Q. Will you please state your name?

A. E. P. Ripley.

Q. In what business are you engaged?

A. President of the Atchison, Topeka & Santa Fe Railroad.

Q. How long have you held such position?

A. Nearly ten years.

Q. Previous to that time, were you in the railroad service?

A. Yes sir.

1503 Q. In what way and with what department and for what roads and for what length of time?

A. Five years previous to that Vice President of the Chicago, Milwaukee & St. Paul. For twenty one years prior to that, in various positions on the Chicago, Burlington & Quincy.

Q. In the course of that railroad experience have you become acquainted with the matters pertaining to the operation of railroads, the expenses, the earnings, the traffic and the rates and the various matters pertaining to the business of a railroad company?

A. I hope so, I think I can say yes.

Q. That experience has had to do with the traffic and transportation between the Missouri river and Chicago as well as other sections of the country?

A. Yes sir.

Q. What in a general way are the districts of country geographically speaking, which are served by the Santa Fe Railway and some of the prominent points commercially?

A. The Santa Fe Company has a straight east and west line between Chicago and San Francisco. It has a straight north and south line between Kansas City and Galveston with numerous branches, in all about 9,000 miles.

Q. You operate in the states of Illinois, Iowa, Missouri,

1504 Kansas, Indian Territory, Oklahoma, Texas, Colorado, New Mexico, Arizona, and the state of California?

A. Yes, and a little in Louisiana.

Q. In the business there is embraced practically all classes of

POOR COPY

traffic which is transported within the districts which I have mentioned?

A. All classes.

Q. Included in that traffic is the transportation of live stock and packing house products, dressed meats, between the Missouri river and Chicago and in other parts of the country to which those classes of traffic go?

A. Yes sir.

Q. From your knowledge and experience, are you able to state the relative cost of the service of transporting dressed meats and packing house products between the Missouri river and Chicago?

Mr. SEVERANCE: That will be answered yes or no.

A. I think so.

Mr. COWAN:

Q. What is that relative cost per car load or ton or hundred pounds whichever way you care to make the statement, between Kansas City and Chicago?

A. I have caused to be made——

Mr. DAWES: If your Honor please, we object to testimony along this line on the ground that it is not rebutting testimony. The complainant was required to make his case in any way he saw
1505 fit. He made it by the introduction of the finding of the Interstate Commerce Commission establishing these particular facts. Establishing the fact of the cost of carriage based upon that relation of the two commodities. We met that by proof to the contrary. Now, it is clear to me, it seems clear that this does not rebut our testimony, but it is evidence which Mr. Cowan should have introduced in chief.

The COURT: Objection overruled.

To which ruling of the court the defendants and each of them then and there duly excepted.

A. I have caused to be made a statement showing what we consider to be the relative cost for the transportation of dressed beef, packing house product and live stock per car, from the Missouri river to Chicago. I made that statement in three ways.

That is to say, I have first taken the entire cost, meaning by the cost everything that enters into the operation of a railroad including the interest on its debt, including all its general expenses incident to its operation, upon the theory that all business ought to contribute towards those items.

I made a second statement showing the relative cost based upon our expenses exclusive of our taxes and of our interest. I
1506 have made a third statement based wholly upoj the mere movement expense, that is without any regard to our general expenses and upon the theory that our general expenses remain the same whether we take either or both classes of business or not.

Q. Mr. Ripley, before you proceed to explain that statement, I desire to ask if the relation of rates between the two commodities, or more specifically, between these two commodities, is properly

to be based alone upon the cost of service, and if not, state what factors should be i-cluded in the relation of rates between two commodities like packing house products and dressed meat on the one hand and live stock out of which it is produced, on the other?

A. That is a very large question and a complete answer to it will, perhaps, involve more of a disposition on that subject than the court cares to hear.

Primarily, one princip*le* rule which should govern in the making of all rates is what the business will bear. I don't mean by that all that the business can bear or all that can b- extorted from the business, but what the business will bear having regard to the value of the service to the shipper, which includes the value of the commodity transported; second, the cost to the railroad company and third, the relation of the goods, which are the most valuable
1507 to those which are the least valuable.

It becomes necessary to bring all of those considerations to bear upon the judgment that is exercised in the making of rates where the carrier has complete control of t-e rates; but that rule or that method, which is the proper way, is of course, entirely set aside at times by reason of necessity. It is entirely set aside when competition enters into the case where it is not a question of what ought to be but what you can get.

All of those things should be taken into account in the making of rates, but they frequently are not. There never has been a time when the cattle rates brought anything like their fair proportion of the general expenses of a railroad company, in the way of revenue. The cattle rates are a relic of the days when the country was open and when the cattle could be driven to market quite as cheaply as they could be taken by rail, although not quite so quickly.

The result of that has been that, from time immemorial, ever since railroads were built in this western country, the cattle rates have been low in proportion to the rates on other commodities, and although conditions have changed and the country has be-
1508 come cut up into farms and it is no longer, and has not been possible for many years to drive the cattle, yet it has not been possible to advance the rates and make them what they should be as compared with the rates on other commodities.

Q. When you speak of rates on other commodities, do you mean packing house product and dressed meat?

A. The packing house product and dressed meat has been a later development and the rates on those articles have been made not upon any theory of rate-making and not by the railroad companies, but by the shippers. That is to say, the influence of competition has been such and the concentration of the business in few hands has been such that they have been able to dictate terms to the railroad.

Q. Now you may state, Mr. Ripley——

The COURT: Have you finished your answer to the other question?

A. I think so. The question was a long one, and there may have

been some point that I overlooked but I think that practically answers it.

Q. The first part of that question was whether the basis of the rate was the value of the carriage. Now what do you say about that, yes or no? The cost of the carriage, what it costs you to get it there?

A. If I understand the question it is whether the cost is
1509 a prime factor or a principal factor on the part of the railroad in determining the rate which should be made. Is that the question?

Mr. COWAN:

Q. Yes, that was embraced in the question.

A. I cannot say that cost is the prime factor. I am inclined to think it is not. Of course, it would be exceedingly unwise to cast the question of cost aside in the consideration of any one rate, but so large a portion of the expense of the railroad remains fixed whether the business is large or small, that it is very often the case that business of a low class and which cannot be moved at all except at very low rates, is moved at less than the average cost upon the theory that it will not add to that cost or general expense and that it will pay a small profit over and above the mere cost of the transaction itself.

In other words, having the plant and having all of the facilities and having an administrative staff, it is better probably to take certain business at less than the average cost, rather than not to move it at all. Another reason for that is, that the movement of those commodities very often stimulates industries of other kinds, various collateral industries, and in that way conduces to the benefit of the carrier.

Q. Are rates made or have they ever been made with a view
1510 to the production of an equivalent profit on each commodity or class?

A. It is impossible to do that. No, I think the rates have always been made with reference to the value of the service to the shipper, rather than the cost to the railroad.

Q. Now, Mr. Ripley, you may explain from the statement you have, the items which you first mentioned pertaining to the cost of the service in transporting dressed meat, packing house products and live stock, relatively, between Kansas City and Chicago, giving as you go along such reasons and explanations as you please.

A. Does your question pertain to the dressed meat?

Q. Dressed meats and packing house products on the one hand and live stock on the other?

A. In the case of dressed meat, I have taken the average weights as given, as ascertained and given by the Interstate Commerce Commission in its report in the case which is under discussion.

I have taken a net weight of 21,000 pounds and a gross weight of 97,000 pounds, the latter, the 97,000 pounds including the weight of the empty car returning, between Kansas City and Chicago, via our line (which is the shortest), a distance of 458 miles.

The cost of the Kansas City terminals, that is our general
1511 expenses at Kansas City, the general terminal expenses, is
$6.80 a car, that is the average of all business taken in and out of Kansas City.

Q. I could not quite hear?

A. The terminal expense in Kansas City of handling our business, the amount that it costs us per car to handle our business, the yard expenses there on all business taken in and out, is $6.80 per car.

The cost of transporting property, the average cost for transporting all property over our Missouri Division, which embraces the line from Kansas City to Fort Madison is two mills and twenty five one hundredths per ton per mile.

Q. Will you please speak louder?

A. I will repeat that. The cost of transporting all business over our Missouri Division, which extends from Kansas City to Fort Madison is two and twenty three one hundredths mills per ton per mile, which, applied to this weight makes $23.15.

The cost on our Illinois Division, which brings it from Fort Madison to Chicago, 237 miles, is two mills, which makes the cost of transporting that car $22.99.

Our Chicago terminals, the average of expense in Chicago on all cars in and out is $5.74, so that the total operating expense is $58.68. That is the actual cost to us of hauling a car of dressed beef from Kansas City to Chicago; but, included in that, in our general cost
is the item of car repairs and, as much as this business is
1512 moved in cars belonging to others, which are repaired by others, I have deducted that.

I have allowed six and four tenths mills per car mile. That is more than it would cost us ordinarily, but happens to be what it costs our company last year when our expenses were abnormal. I deduct therefore from the $58.60, $5.86 leaving the net cost to us $52.82. Then I add one cent mileage per car per mile, which is paid to the owner of the car and which adds to that sum $9.16, making the total operating expense $61.98.

I add to that the switching which we are obliged to pay in Kansas City, in order to get the car, which is $4.00. I add for interest and taxes on our own railroad, $1.77 per car mile which amounts to $16.21 and makes the total transportation cost $82.19.

The COURT:

Q. How much?

A. $82.19. The revenue on that car at 20 cents per hundred pounds, 21,000 pounds of dressed beef, is $42.00, and the deficit is $40.19.

The second calculation takes into account only the operating cost and the result of those figures is that the expense is $65.98 and the revenue still remains $40.00, making the deficit only $23.98.

The third statement takes into account only the movement cost
without any regard to any of our general expenses, any of
1513 our fixed expenses or any of our interest the bare movement cost, based upon 55 per cent. of our operating expenses which

is as near as we can get it. That is, we figure our total expense, of our total expense 55 per cent. applies to the actual movement. The result of that shows a total expense of $39.19 and a total revenue of $42.00, which leaves a profit of $2.81.

Mr. BAXTER:

Q. How much did you say?

A. $2.81. In other words, it leaves us $2.81 per car or that business would contribute $2.81 per car towards paying our interest, our taxes, and our general expenses of all descriptions.

In the case of the cattle, I have also taken the same basis that I have named, the gross weight and the net weight as averaged by the Interstate Commerce Commission in its report. Of course, taking it on the one, it is only fair to take it on the other. I find on that the result to be, under the first method, that is taking all of our expenses, I find the total transportation cost to be $64.77; the revenue to be $46.00 and the deficit $18.77. Under the second method I find the total operating cost, leaving out our interest charges, $48.56 and the revenue, $46.00, making a total deficit of $2.56. Under the third plan, simply on the movement cost based on 55 per cent. of the operating expenses, I find the cost to be $26.71, and the
1514 revenue as before, $46.00, making a surplus profit contribution towards our general expense of $19.29 a car.

In the case of packing house product, figured on the same basis, I find under the first method the deficit to be $29.03; by the second method, $12.82, and under the third, a surplus of $16.35.

Mr. COWAN:

Q. Are you through?

A. Yes, sir.

Mr. SEVERANCE: You will have that statement filed?

Mr. COWAN: I will after I get through, yes.

1514*a* Cattle.

Gross weight, 77,000 lbs.; net weight, 22,000 lbs.; miles, 458.

Kansas City Terminals In & Out	$6.80
Mo. Division 214 miles—8239 Gross Ton-Miles at 2.23 mills	18.37
Ill. " 237 " 8824 " " " " 2.00 "	17.65
Chicago Terminals In & Out	5.74
Total Operating Expense	$48.56
Add for Interest & Taxes at 1.77 Cents per Car-Mile	16.21
Total Operating Cost	$64.77

Results.

		Total transportation cost.	Total operating cost.	Movement cost, based upon 55% of operating expenses.
		$64.77	$48.56	$26.71
Revenue freight at 20c...	$44.00			
Terminal charge	2.00			
		46.00	46.00	46.00
Deficit		$18.77	$2.56	
Surplus				$19.29

Ripley Exhibit A (first), vol. 13, p. 1514.

1514*b* Dressed Meats.

Gross weight, 97,000 lbs.; net weight, 21,000 lbs.; miles, 458.

Kansas City Terminals In & Out	$6.80
Mo. Division 214 miles—10379 Gross Ton-Miles at 2.23 mills..	23.15
Ill. " 237 " 11494 " " " " 2.00 " ..	22.99
Chicago Terminals In & Out	5.74
Total Operating Expense	$58.68
Less prop'n for car repairs equals 6.4 Mills per Car-Mile... ..	5.86
	$52.82
Add amount paid for Car-Mileage 1c. per Mile	9.16
Total Net Operating Expense	$61.98
Add Belt Line switching to Packing Houses in Kans. Cy.....	4.00
Add for Interest & Taxes 1.77 Cents per Car-Mile.....	16.21
Total Transportation Cost.....	$82.19

Results.

	Total transportation cost.	Total operating cost.	Movement cost based upon 55% of net operating expense.
	$82.19	$65.98	$39.19
Revenue at 20 cents per 100.....	42.00	42.00	42.00
Deficit.....	$40.19	$23.98	
Surplus.....			$2.81

Ripley Exhibit B, vol. 13, p. 1514.

1514c Packing House Products.

Gross weight, 103,000 lbs.; net weight, 28,000 lbs.; miles, 458.

Kansas City Terminals In & Out	$6.80
Mo. Division 214 miles—11042 Gross Ton-Miles at 2.23 Mills..	24.57
Ill. " 237 " 12229 " " " " 2.00 " ..	24.41
Chicago Terminals In & Out	5.74
Total Operating Expense	$61.52
Less prop'n for car repairs 6.4 Mills per Car-Mile	5.86
	$55.66
Add amount paid for Car-Mileage 1c per Mile	9.16
Total Net Operating Expense	$64.82
Add for Belt switching to Packing Houses in K. C	4.00
Add for Interest and Taxes 1.77 Cents per Car-Mile	16.21
Total Transportation Cost	$85.03

Results.

	Total transportation cost.	Total operating cost.	Movement cost based upon 55% of net operating expense.
	$85.03	$68.82	$39.65
Revenue at 20 cents per 100	56.00	56.00	56.00
Deficit	$29.03	$12.82	
Surplus			$16.35

Ripley Exhibit C, vol. 13, p. 1514.

Q. Are those statements of the estimated figures given, correct as showing all the relative expense of the cost of the service between the packing house products and the dressed meat on the one hand and the live stock on the other?

A. I think so. They represent our best knowledge on the subject.

Q. In your opinion, should the relative rates on live stock and packing house products be such that they are greater on the live stock than on the product, including dressed meat?

A. Not unless conditions force the railroad to take that position.

The COURT:

Q. What is that?

A. Not unless conditions force the railroads to take that position. This is not a question of how much money the railroads shall make; this is a question of how little money the railroads shall lose.

1515 Mr. COWAN:

Q. If the rates were to be made by some authority having power to make the rates between the Missouri river and Chicago on the dressed meat and packing house product, what ought to be the relative relation of those rates?

A. I think in view of all the conditions that the rate on dressed beef should not be less than 150 per cent. of the rate on cattle.

Q. How about it on packing house products?

A. That is a mere matter of judgment, of course. On packing house products loaded in our ordinary cars, the difference, I think, should be very much less, that is, packing house products not going under refrigeration. I don't mean less than cattle, but the difference between the two should be less.

The COURT:

Q. Which should be the most?

A. Packing house products should be the most theoretically, and as a matter of justice to all parties concerned, the rate on the manufactured product should always be more than the rate on the raw material.

Q. Why is that?

A. Because it is worth more, because the freight charges constitute a smaller percentage of its value and on the general theory that the rates should be fixed with reference to the value of the product

1516 or, in other words to what the traffic will justly bear.

Q. It costs you more to carry it, don't it?

A. More to carry it?

Q. A car of dressed meat or finished product?

A. Yes, that is perhaps an additional reason.

Q. No, I mean it costs you less to carry it than the live stock?

A. No, sir, quite the contrary.

Q. You- figures show that, don't they?

A. No, quite the contrary.

Mr. COWAN:

Q. The court perhaps did not understand your conclusion and I will ask you the general question, for the benefit of the court, whether it cost you more to carry the dressed meat and packing house products than it does the live stock?

A. The statements that I have read show that we lose less on the live stock than we do on the packing house product.

Q. If you based it alone on the cost of service, what would be the proper relation of the rates on the two?

A. Well, I have made no calculation as to that. If my figures are correct as to the cost of service, that is a calculation that could be made from those figures.

Roughly speaking, these figures show a cost in this particular case, in the case of the two commodities from Kansas City to

1517 Chicago, they show roughly an operating cost in the case of dressed beef of $82.19 a car; in the case of cattle of $64.77 a car, which is about 40 per cent. or a little less than 40 per cent.

Q. Now will you please explain——

Mr. BAXTER: I would like to have the witness go on and state the cost of the live stock in that same connection?

A. Sir?

Q. I would like to have you state the cost of the live stock car.

A. I did. I said that the total cost of the dressed beef we figured as being $82.19 a car, that is all expenses.

Q. On packing house products, what would it be?

A. On packing house product, $85.03.

Q. On live stock?

A. On live stock, $64.77.

Mr. COWAN:

Q. I would like to have you explain to the court wherein lies the items of difference in the cost relatively of handling the two classes of product, commodities?

A. There are quite a number of items that enter into it. The time in both cases is about the same. Both classes of business demand fast time, and regular time. The dressed beef car is not used for any other purpose. In this computation I have assumed that the other car was not used for any other purpose but as a matter of fact about 20 per cent. of our stock cars are used for return loading.

1518 I have not given the cattle side of the question the benefit of that fact. There is carried all the way from 2,000 to 6,000 pounds of ice in a refrigerator car used for dressed beef. There is paid, between the Missouri River and Chicago one cent a mile for the use of the car and on its arrival at Chicago we are obliged to deliver it at the stock yards without charging for it, while we do charge on the cattle. We are obliged at Kansas City to pay a heavy switching charge on it which we do not pay on the cattle.

Q. Will a train haul a greater gross tonnage of live stock or of packing house products or of dressed meats?

A. A greater gross tonnage?

Q. Yes.

A. Everything being equal a train will haul the same gross tonnage of one as the other.

Q. In your experience on the Milwaukee & St. Paul road, was that the same?

A. Yes. I never made any special investigation of the Milwaukee & St. Paul conditions. It is possible that in some respects they might vary from ours. In fact our conditions as to this business might vary slightly from that of some of the other roads. Some of them may not be subject to quite as much switching charge but in other respects I think the conditions are about the same.

Q. Aside from the respective amount of switching charges,

1519 the condition- are substantially the same over each of the roads?

A. I think so.

Q. How is that with respect generally to the operating cost of

trains on the roads doing business between here and the Missouri river points, like Kansas City and South Omaha?

A. How is that?

Q. I mean the relative cost on the different lines of road. Between your road, for example, and the Milwaukee & St. Paul or the Northwestern?

A. I don't know that I yet understand the question.

Q. The point I seek to draw out is whether the relative cost of the various items of conducting the transportation is greater or less on your road than it is on the other roads, as pertaining to these particular classes of traffic?

A. Well, the classification of expenses is practically the same by all lines. That is, the items that go into the cost of transportation are the same. In fact, the classification is practically prescribed for us by law.

Q. Now, we will take the item of the mere cost of the haul or movement, as you term it, which you estimate to be 55 per cent. of the total operating expenses, as I understand. Would that be substantially the same via both lines aside from the difference in switching charges at the terminal?

A. I think so. It might be slightly greater or less varying with the character of the road. The question of grades, the ques-
1520 tion of the cost of coal and various other items that would enter into that so as to affect it slightly but not greatly.

Q. Would it so affect it as to require any different adjustment of the relative rates on the one and the other or on the one to the other?

A. I should think that the same items of expense could justly be taken in on both sides. I don't see that it would affect the comparison.

Q. Now, if you will let me have those statements, I will ask you some questions that I can only ask intelligently, if at all, by looking at the statements. (Statements handed to counsel.) Aside from the rates between the Missouri river and Chicago, relatively on these two classes of traffic, what is the adjustment of the rates on dressed meat and packing house products on the one side, and live stock on the other, as to whether one is higher or lower than the other?

Mr. SEVERANCE: Where?

Mr. COWAN: In other parts of the country except between Missouri river and Chicago; for example, from here to New York?

A. Well, I do not know that I am a competent witness as to the rates between here and New York. My understanding is that they are between 50 and 60 per cent. higher on dressed beef than they are on cattle between here and New York.

Q. Than it is on cattle?

A. Yes sir.

1521 Q. On other parts of your line except between the Missouri river and Chicago, are the rates on dressed meats and packing house products higher than they are on the live stock or lower?

A. Higher.

Q. Is there any considerable movement of dressed meat and packing house product from Fort Worth to the north-east?
A. Yes, a considerable movement, I cannot tell you how much.
Q. And a considerable movement of live stock?
A. Yes sir.
Q. The rates are higher on the packing house product and dressed meat than on the live stock?
A. Yes sir.
Q. And from St. Louis eastward that same condition prevails, does it not?
A. I don't know.
Q. From the Missouri river to the west?
A. The rates are higher on the manufactured product.
Q. The first item in each of the sheets of computations here under the head in the one case of "Dressed meat" and the other, "Packing house products," and the other, "Cattle" is terminal expense in and out of Kansas City, $6.80. How is that obtained, that item, by what method?
A. Taking our entire terminal expense and dividing it by the number of cars handled.

1522 Q. Is there any better or more accurate method of ascertaining the terminal expense of a commercial point like Kansas City or Chicago, than by dividing the entire cost of terminals by the number of cars?
A. I don't know of any. It strikes me as being the obvious method.
Q. Is that the method that is customarily used by railroads in ascertaining the terminal expense?
A. It is customary with us.
Q. There also appears the item of terminal expenses at Chicago, $5.74 per car, I believe; Chicago terminals in and out. How was that ascertained?
A. The same way.
Q. You consider then, that you have a terminal expense per car on all business handled at Kansas City of $6.80?
A. A terminal expense, average terminal expense.
Q. And the average terminal expense at Chicago is $5.74?
A. Yes sir.
Q. Have you any reason to know whether your terminal expenses at Chicago or Kansas City are greater than the other roads doing business between the two places? Are they greater or less?
A. I have no information on that subject.
Q. These terminal expenses at local stations, when you originate freight at local stations, consist in the maintenance of your

1523 depot and the force you have to work there, do they not?
A. Yes.
Q. So that all freight bears a terminal expense at both ends of the line?
A. Yes.
Q. What is estimated by railroad men of experience as being the

proportional amount of terminal expense in the transportation of freight, to the other expense?

A. I don't know that any such estimate was ever made. I never made any.

Q. Have you an opinion as to the percentage it bears to the total expense?

A. No, I have not, because the terminal expenses at ordinary stations, local stations are not classified. They embrace everything and they would not be divided between the passenger and freight. No estimate of that has ever been made that I know of. I don't know what good it would do to make it.

Q. In the case of the computations made here of terminal expenses at Kansas City and Chicago, was the passenger traffic separated from the freight traffic?

A. Those figures are made up—Yes. Those figures do not include passenger traffic. Passenger traffic is seggregated, kept by itself.

Q. The total expense of the freight traffic, incurred locally at Kansas City and Chicago, is simply divided by the number of carloads handled or the number of loaded cars, which?

A. Locally, at our local stations?

1524 Q. No, no, I mean the terminal expenses at Kansas City, for example?

A. Yes.

Q. Of freight?

A. Yes.

Q. That is divided by the total number of loaded cars?

A. Yes, the total number of all cars, loaded and empty.

Q. Loaded and empty?

A. Yes.

Q. It is $6.80 in the case of Kansas City, representing the expense incurred both on the loaded in and the empty out, or simply one transaction?

A. The loaded in and the empty out or *vice versa,* as the case may be.

Q. And the two together make $6.80?

A. Yes. $6.80 for every car handled, whether empty or loaded.

Q. Now, as a matter of actual expense at Kansas City, you pay a switching charge of $4.00, I believe?

A. I have estimated the charge there at $4.00 although it varies somewhat. It varies between the lines and it varies in the case of our own line. I could not get the exact figures. I took $4.00 there but it is only fair to state that that is the maximum. There is some of that business that we reach with a smaller switching charge but I think none is below $3.00.

Q. And that $4.00 is applied to the dressed meats and packing house products?

A. Yes sir.

Q. Now in the case of live stock, what does that cost at

1525 Kansas City?

A. In the case of live stock,—that is included in our gen-

eral terminal expense. We pay 25 cents a car for loading and I think there is some other expense. The total expense is not over 50 cents but whatever it is, it is included in our general expense.

Q. In other words, you made no separate statement of the item of expense on cattle at Kansas City?

A. No, because in our accounts that is all put together.

Q. Would the $6.80 be sufficient, however, to cover the expense in the case of the packing house products and dressed meats, aside from this $4.00, or do you pay that out extra in addition to your other expense?

A. I am taking every load. I have reason to suppose that one car costs more than another. As a matter of fact, that may be the case.

Q. Whom do you pay the $4.00 to?

A. To the Belt Lines in Kansas City, the suburban Belt and the Kansas City Belt.

Q. Where does it deliver the packing house product to you in Kansas City?

A. At the beginning of our line at Sheffield, at the east end of the city, the east edge.

Q. Is that the same point at which you start to switch live stock down to the yards?

A. No, we haul the live stock about four miles further than we haul the dressed beef.

1526 Q. And you do that with your own service?

A. Yes.

Q. Considering the charges that have to be paid, is it more expensive to receive the packing house product and dressed meats at Kansas City than it is to receive the live stock there?

1527 A. Considering the $4 switching charge naturally.

Q. Now, in delivering at Chicago, is it more expensive or less expensive to deliver packing house products and dressed meat than live stock, considering that you charge $2 terminal charge on cattle?

A. There is practically no difference in the expense we incur in delivering to the Stock Yards, but in one case we charge $2 and in the other case we do not?

Q. Do you deliver both with your own power to the stock yards, or do you pay a switching charge to the Junction Railway in the case of packing house product and dressed meat?

A. We have to pay a trackage charge to the Junction Railway.

Q. The same as you do on live stock?

A. Yes.

Q. You do not know I presume, what the other roads pay on packing house products and dressed meat?

A. I do not.

Q. Is the expense incident to the terminals at Chicago per car greater or less in the business of the Santa Fe than it was with the Milwaukee & St. Paul when you were with it?

A. I cannot definitely answer that question.

Q. Can you approximately do so?

A. My recollection is that it costs the St. Paul a little more to get to the Stock Yards than it does us.

Q. But with respect to the total expenses of the terminals
1528 at Chicago, or terminal expense at Chicago?

A. I never saw those figures for the St. Paul, I do not know that they were ever made.

Q. Does your road, if you know, have a greater expense in its terminal facilities and cost of deliveries at Chicago than the other roads entering here?

A. I do not know.

Q. You do not know whether this estimate of $5.74 per car at Chicago terminals in and out should apply to the other roads in whole or not?

A. I do not.

Q. It would apply to a very large extent, would it not?

Mr. DAWES: He says he does not know.

Mr. SEVERANCE: I think he has been cross-examined sufficiently on that your Honor.

Mr. COWAN:

Q. In the case of the first computation Mr. Ripley, the cost is estimated on the gross ton miles 2.23 mills in the case of dressed meat, that includes, as I understand your answer, all the operating expenses, which includes the cost of maintenance of every character, general expenses and the interest charges upon your funded debt?

A. Yes.

Q. Also taxes?

A. Yes.

Q. The second computation——

Mr. SEVERANCE: You have gone through all of that.

1529 Mr. COWAN:

Q. —includes simply the operating cost leaving out the interest account?

A. And taxes.

Q. And the taxes. The third includes the cost of conducting transportation as that term is generally used in the Interstate Commerce account?

A. No, not altogether. That is simply movement expense. There is some items in the case of conducting transportation which are not included in that computation.

Q. What are those items, or do you know?

A. Well, superintendence—well, if you have a classification there of transportation items, I can tell you practically what is left out.

Q. I will ask you to look at the statement in the annual report of the Santa Fe—I happen to have one for the year 1903 (handing witness a document).

A. This is the cost of conducting transportation. In that is included superintendence of transportation and traffic. That is not, strictly speaking, a movement expense; that is to say, that would remain the same whether we took this particular business or did not.

It includes advertising, outside agencies, commissions, rents of buildings, and a lot of general expenses which are left out of this computation as to absolute movement expenses. I explained when I made that statement that we had assumed, we had taken 55
1530 per cent. of our total expenses as appertaining to the mere movement of the property. Taking out these various things which are not directly affected by the taking of this business, would make the comparison a little more favorable for all those classes of business than it would be if we left them all in. That is, it shows a larger profit than it would if we included all of our conducting transportation expenses in the computation.

The COURT: Do you figure there the cost of keeping up stock yards for the live stock, and that sort of thing?

A. In this particular case there is no cost for maintaining stock yards. We have figured in what we pay the stock yards company for loading a car for the stock.

Q. No; but I mean along your line, the pens and so forth?

A. This computation is made on what it cost to handle live stock between Kansas City and Chicago, as compared with what it costs to handle dressed beef between the same two points, and makes no account of anything local between Chicago and Kansas City.

Q. You did not figure any expense—do you keep pens and yards along the line?

A. Yes sir.

Q. You have not figured that in?

A. No, it does not belong in the computation of these two items.

Q. It belongs in somewhere, don't it, when you compare the two?

A. If the question had been asked me, what was the rela-
1531 tive rates between dressed beef from Carrollton, Missouri, and the rate on cattle from Carrollton, Missouri, it would belong in there.

Q. I see.

A. But this is simply a question as between the Missouri River and Chicago on both classes of goods.

Mr. COWAN:

Q. Well, I have the other question noted to ask you. Now, suppose the live stock originates at some point east of Kansas City, we will say Carrollton, I believe that is on your line?

A. Yes.

Q. You have the same rate from Carrollton on live stock that you have from Kansas City, have you not, to Chicago?

A. Yes.

Q. Now, in that case would the operating cost be greater or less than on the cattle from Kansas City?

A. That is a very hard question to answer, perhaps an impossible question to answer, it is a matter of judgment. I do not think there would be very much difference. It does cost more to pick up this stock at local stations, it costs more per mile than it does where it comes to us in large quantities, as it does at Kansas City, or any other division point where we have facilities *of* taking care of all the business that offers. A car or two of live stock delivered at a local

station means that the car has to be moved there and set out,
1532 and that a train has got to stop and take in, and the expense is indeterminate, almost impossible to tell just what it is, but it is there. There is more or less expense and more or less delay connected with it. On the other hand we haul it a few less miles, which would tend to make the expense somewhat less. On the whole my judgment would be that on the stock picked up within 100 miles of Kansas City, it probably actually costs us more to move it than it would if it was delivered to us at Kansas City.

Q. It would cost more for the item of movement?

A. Yes.

Q. How much more do you think?

A. I am not competent to express an opinion on that. I don't know of any way in which it could be figured out.

Q. It would be a very small amount of difference, would it not?

A. Oh, it is not a large item in any case, either for or against.

Q. Now, the expense of having that car at Carrollton, or three or four cars there, and of having them put into the train, would be an item of expense that would be incurred there, that would not be incurred at Kansas City?

A. There would be more or less of an off-set to it at Kansas City. At Kansas City we have to pay the stock yards for loading the cars, which we do not have to pay at local stations. We have to assist in loading it, but it is generally loaded by the shippers, with the assistance of the trainmen.

1533 Q. But as compared with the dressed meat and packing house product on which you have to pay the Belt Line $4 at Kansas City, and the expense of taking a car at Carrollton would be considerably less than it would if it was a packing house product car at Kansas City?

A. I think so, taking the business as a whole.

Q. In the mere matter of hauling, the expenses per mile estimated upon these papers, would enable one to determine what the difference in the actual haul was, whether it was taken at Kansas City or Carrollton, would it not? The basis of that computation is in these figures?

A. No, I don't think it would. If I understand your question, you apply those figures to the Carrollton car just the same way you would to a Kansas City car.

Q. Yes, apply the cost of haul per mile from Kansas City to Carrollton, you would deduct that in case you were comparing the car load of cattle from Carrollton to Chicago, deduct the cost between Kansas City and Carrollton from the haul?

A. I should say not. I should say it would be off-set by the cost of stopping and picking the car up.

Q. You- judgment is, one would be about equal to the other?

A. Yes sir.

Q. I will ask you whether that is so considered on your road in the making of rates as applied to this traffic?

1534 A. It is a question I have never discussed with anybody else connected with the road. I am not able to say.

Q. Your rates on the product from Kansas City and on the live stock locally from there are the same, are they not, on stock?

A. Yes sir.

Q. And you apply the rate from Kansas City as a maximum for any intermediate haul on the live stock?

A. Yes sir.

Q. Have you any packing house or slaughtering establishments between Kansas City and Chicago, which ship either dressed meat or packing house product?

A. No sir.

Q. Just one question only, and that is if you know what the relative weights are on the live stock and refrigerator cars?

A. I don't know that I can answer that question exactly. Our ordinary live stock car empty weighs about 27,000 to 29,000 pounds. A refrigerator car will weigh I suppose, 37,000 or 38,000 pounds perhaps without any ice.

Q. Your basis of computation is simply to except the relative weights fixed by the Commission in this case?

A. Yes sir.

Q. And your practice would be the same in net results whether the weights should be respectively increased or not, if the relative weights between the two should remain the same as the Commission left them?

A. If the relative weights remained the same, the relative
1535 figures would remain the same.

Examination by Mr. SHAVER:

Q. Mr. Ripley, are not classifications of traffic based largely on values?

A. I said at first that that was theoretically and properly one of the very important considerations to be taken into account in making rates and classifications of freight, but that it was very often necessary to set it aside on account of conditions over which the carrier has no control.

The COURT: That is the value of the commodities, you mean?

A. Yes sir.

Mr. SHAVER:

Q. Where competition does not absolutely dictate the rate should not value be a controlling factor or element in fixing the relative rates on different articles of traffic?

A. Not absolutely controlling. I said before that theoretically and properly, it was a very important item to be considered, but even in cases where competition does not absolutely control, it is necessary sometimes to a certain extent, or desirable sometimes to disregard value, not often but sometimes; because conditions may be such even in the case of valuable commodities that they can only be moved on a rate which, considering the value of the commodity, is small.

1536 Q. Value is an important element in fixing classification of rates?

A. An important element, should always be an important element.

Q. Why are dry goods and boots and shoes classified higher and given higher rates than groceries.

Mr. DAWES: I object as going into a domain which we do not care to investigate.

Mr. SHAVER: It bears on the question of the importance of the element of value.

The COURT: Well, if he knows—if you know, answer.

A. They are given a higher rate primarily because of their value, and because the freight charges in the case of those valuable goods constitute a very much smaller percentage of the value than they do in the case of other commodities. Any rate that is charged in this country on dry goods might be multiplied by 5 and it would not affect the retail price of the goods, the consumer would not pay any more than he does now.

Mr. SHAVER:

Q. Are not dry goods as a rule more easily handled than groceries?

Mr. SEVERANCE: By whom, Mr. Shaver?

Mr. SHAVER: By the carrier.

A. Dry goods as a rule are packed more compactly and perhaps can be handled easier than the average run of groceries. On
1537 the other hand they are more in the line of luxuries and they are more valuable per pound.

Q. Isn't the loading capacity of groceries as a rule greater than that of dry goods?

A. That depends on the character of the groceries and the character of the dry goods.

Q. I said as a rule?

A. You can load a car load of woolens heavier than you can a car load of mixed groceries; you can load a car load of sugar heavier than you can any kind of dry goods. That is a sort of question that it is almost impossible to answer. That would be very much the same kind of question that it would be to ask me which I liked best, billiards or cabbages.

Q. I didn't exactly hear that, which you liked better?

A. It was not pertinent to the question.

Q. Sir?

A. I said, it is very much the same sort of a question as it would be to ask me which I liked best, billiards or cabbages.

Mr. DAWES: And you don't like cabbages?

Mr. SHAVER:

Q. Even where groceries have a greater loading capacity than dry goods, isn't the dry goods rate higher?

A. The dry goods rate is uniformly higher than groceries, yes sir.

Q. Isn't the cost of handling dry goods as a rule less than that of handling groceries?

1538 A. Well, possibly the mere handling at the freight house might be a trifle less per ton in the case of dry goods, but that is so little, that it would not — any appreciable difference. There are certain classes of dry goods that are very light and bulky and which would not be as desirable as groceries. I stated in the first place that the prime reason for making higher rates on dry goods than on groceries is that they are more in the nature of luxuries and they are worth more money. I presume that is what you are trying to get at.

Q. Is not the risk greater in the case of handling goods of a higher value than in the case of handling goods of less value?

A. Undoubtedly the risk of fire and the risk of general damage. But that is so little as to make a very small percentage in a freight rate. Any insurance company would insure us for a mere bagatelle against those things on everything that we carry.

Mr. SEVERANCE: A small part of one per cent., is it not?

A. A small part of one-tenth of one per cent.

Mr. SHAVER:

Q. Is not the value of the service in shipment greater in the case of an article of higher value than it is in one of less value?

A. Certainly.

Q. That is one of the principal reasons why articles of higher value are given a higher rate than those of lower value?

1539 A. Precisely. The price of a keg of nails in Denver is perhaps 40 cents higher than it is in Chicago because the freight is 40 cents—I do not mean that is exact, but whatever it is. The price on a neck-tie for which you pay $1.50 in Denver, the freight on it probably amounts to less than a half a cent.

Mr. SHAVER: No other questions.

The WITNESS: The percentage that the freight cuts to the value of the goods should be largely considered; it is not always, I am sorry to say.

Cross-examination by Mr. BAXTER:

Q. Mr. Ripley, will you kindly look at this diagram that I lay before you. (Showing witness a diagram.)

Mr. COWAN: Before you ask the question, I would like to file these statements as exhibits to Mr. Ripley's testimony, marked "A, B and C."

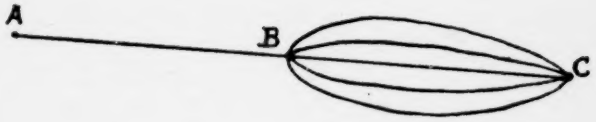
(The documents referred to, were marked "Ripley's Exhibits A, B and C" respectively, and filed as a part of his testimony.)

Mr. BAXTER:

Q. Mr. Ripley, suppose you were the President of a road running from "A" on this diagram, a point which I will suppose to be

1540 450 miles west of the Missouri River, running through a country where live stock is produced, but where there are not packing houses. In fixing your rate for the carriage of the live stock from "A" to "B" supposing your road terminated at "B," would you regulate your rates on live stock from "A" to "B" by the rates that you found these seven lines charging on packing house

1540a



Ripley. Exhibit "A" (recrd)

Vol. 13. p. 1540.

products from the Missouri River, which was represented at "B" to Chicago, which is represented by "C"?

A. Certainly not. The two territories are entirely distinct and separate. Whatever the rate was from "B" to "C" would not have any affect on what we should consider a proper rate from "A" to "B." Conditions might be entirely different, probably would be.

Q. Now if you were to extend your road, build an extension of your road from "B" to "C," would you feel that in regulating your rates for packing house products between "B" and "C," you should reduce your rates back here between "A" and "B" on your live stock because you were forced to accept lower rates on the packing house products beyond?

A. Certainly not.

(The diagram shown to the witness as above was marked "Ripley's Exhibit 'A,' Mr. Baxter's Cross Examination" and filed as a part of said testimony.)

(Here follow facsimile, marked p. 1540*a*.)

1541 Cross-examination by Mr. SEVERANCE:

Q. What is the proportional rate on live stock from Kansas City to Chicago, average proportional rate?

A. I cannot answer that question.

Q. Will you give me the highest and the lowest that you are familiar with?

A. Well, I cannot answer that either.

Q. Isn't it a fact Mr. Ripley, that all or substantially all the live stock that is carried to Chicago from Kansas City, is carried on a proportional?

A. I think most of it is, yes, sir.

Q. And that proportional is considerably less than 20 cents, is it not?

A. I think so.

Q. Consequently a comparison such as you have introduced here as between rates at 20 cents for packing house products and dressed meats on the one hand, and live cattle on the other, would not be a comparison which would be applicable to existing conditions?

A. The rate would have to be—in order to make the comparison authentic or valuable, the actual rate in force would have to be used.

Q. Now, Mr. Ripley, would you have the kindness when you come back after lunch to bring with you a memorandum showing what these average proportionals are, if you can get hold of it during the noon recess?

1542 A. Yes, if I can get hold of it, and I presume I can, I don't know whether we could get the average.

Q. Well, get a range, the figures between which they range.

A. Yes, I can do that.

Q. Do that and I will examine you further with reference to that when you have the figures.

I show you this paper, which I will have marked "Exhibit 1." (The pamphlet was so marked.) This is the annual report of your system, is it not, for 1905?

A. Yes, sir..

Q. And that covers what period of time?

A. July 1, 1904, to June 30, 1905.

Q. And that report is correct is it not, as to its figures and statements, to the best of your belief?

A. Yes, sir.

Q. Now, you said that your rate, your local rate from Kansas City to Chicago on cattle was 20 cents, the same as on packing house products and dressed meats, how far this side of Kansas City does that rate apply?

A. I cannot tell exactly, it runs for something like 100 miles I think.

Q. Would you also ascertain that this noon?

A. Yes, sir.

Q. And let us know. And for all stations within that zone,

1543 and not from Kansas City, on through business, you collect the 20 cent rate?

A. Yes, sir.

Q. Therefore, this comparison of the through rate on live stock, I should say on packing house products and dressed meats from Kansas City, would be a fair comparison in your opinion as against live stock rates in that zone, this side of Kansas City?

A. Yes, sir.

Q. I notice that you charge in each case the same, $6.80 on Kansas City Terminals in and out, that is applicable to meat products and cattle?

A. It is the average of all cars handled.

Q. Kansas City is quite an important terminal point on your line isn't it?

A. Yes, sir.

Q. You make up trains for the West from there, do you not?

A. Yes, sir.

Q. And you run a great many empties in there?

A. Yes, sir.

Q. And these figures are made up by taking the entire expense of maintaining your terminals and dividing it by the number of cars switched in and out?

A. Correct.

Q. And as I understood you to say, applies only to freight business?

A. That is all.

Q. This has no relation to the passenger terminal at Kansas City?

A. No.

1544 Q. Against the dressed meats and packing house products you had a $4 charge, switching charge, to what company do you pay that charge?

A. We pay it in some cases to the Belt Line, Kansas City Belt line, and in some cases to the Suburban Belt Line, so called. I think in some cases to some of the other railroads, I am not sure about that.

Q. And between what figures do the switching charges on these belt lines range?

A. I think the minimum in the case of dressed beef——

Q. I mean in the case of Mr. Ripley's company, as the charges made by these other belt lines?

A. In the case of dressed beef, I think the minimum charge is $3.

Q. And what is it in the case of packing house products?

A. The same.

Q. Are you sure of that Mr. Ripley?

A. As to the minimum charge?

Q. Yes.

A. Well, I am reasonably sure.

Q. Yes.

A. I have assumed there, I stated in my testimony that I had assumed a $4 charge, but that was not the charge in all cases.

Q. Well, I was going to ask you Mr. Ripley, why it was in getting up a statement for comparison like this, you assumed the maximum instead of a fair average charge?

A. Well, the charge in the case of cattle was known and fixed.

In the case of dressed beef I did not give any instructions as
1545 to how that statement should be made up. I saw when I got it that $4 had been added. I therefore, took pains in my testimony to say that was the maximum.

Q. I know you did, and I was trying to find out how it happened to be here. That is the explanation?

A. That is the explanantion.

Q. Some wicked party put it in?

A. No, I think they put it in because it was the impression of the party who made it that that governed on all stock, and I still think that we pay that on most of the dressed beef we get.

Q. And could you have made up a statement showing what those charges actually are?

A. I will find out what they actually are.

Q. Thank you. That will, to that extent modify the burden you place on dressed meat and packing house products in these figures, that is true is it not?

A. Yes, sir, to that extent it would. Will you make a memorandum of these things you want me to get?

Q. Yes. I notice in these statements you charge the packing house products and the dressed meats with their proportion of all of the general operating expenses of your road, with the exception of car repairs, that is true isn't it?

A. Yes.

Q. And you also charge the dressed meats and packing house products with the proportion of interest and taxes?

A. Yes.

1546 Q. Well, those items together make up everything that could be charged against any species of traffic, they are general expenses. You make the same charges against live stock. Now, Mr. Ripley, I see that you also charge against packing house products and dressed meat, car mileage of one cent a mile. Why is that charge made?

A. Because I have previously deducted the cost of repairs in the case of cattle, of repairing our own cars, and I have allowed 6.4 mills for that.

Q. I understand that.

A. In the case of the private car we do not take care of those cars, but we do pay a cent mileage.

Q. Yes, and you also make any repairs that are caused by wrecks?

A. Yes.

Q. But that is a small item?

A. Yes.

Q. You charge this car mileage because you pay it out, as I understand?

A. Certainly. I charge in the other case the 6.4 mills because we pay it out.

Q. Well, we will see about that in a minute. You charge the one cent per mile because all of the packing house products and all of the dressed meats that are moved by you from Kansas City are moved in cars that you rent of the packers?

A. Yes, sir.

Q. Now, I notice by your annual report to which I have
1547 called your attention on page 29, an item of "hire of equipment $11,311"?

A. Yes, sir.

Q. That is the only item, is it not, Mr. Ripley, that would embrace this charge for car rental?

A. No, sir, it has nothing to do with it.

Q. What is the item embraced in car rental?

A. Car mileage.

Q. Car mileage. And what does this "Hire of Equipment" embrace?

A. Well, that embraces occasional borrowing of passenger equipment for large excursions or anything of that kind; occasional borrowing of locomotives or something of that kind; that is equipment borrowed from other roads for special occasions.

Q. Special occasions, and the items of car mileage is the one in which is embraced this expense?

A. Yes, sir.

Q. And that item I see is, $458,989.82?

A. Yes, sir.

Q. Now, you pay car mileage on a good deal of business other than packing house products and dressed meats?

A. Yes, sir.

Q. Necessarily, don't you. As near as I can figure it out from your report, you handle about 7,000 cars of packing house products and dressed meats. Can you tell me whether that is about right?

A. Well, I should think somewhere in that neighborhood. We handle a great deal of it over long distances, we handle a great deal to California.

1548 Q. This shows 36,797 tons of dressed meats and 49,888 tons of other packing house products. Figuring roughly at 10 tons of dressed meat and 15 tons of the other, it would make about 7,000 cars?

A. Yes sir.

Q. Well a good deal of that is handled through to the Pacific coast?

A. Some considerable of it is handled to the Pacific Coast, yes.

Q. Now, Mr. Ripley can you tell us what proportion roughly of that total movement of packing house products and dressed meat is handled between Chicago and Kansas City, or Kansas City and Chicago?

A. I cannot. We have had very little business between Kansas City and Chicago.

Q. You have had very little?

A. Yes.

Q. Well, now, you charge this large sum of nearly half a million dollars for car mileage, which includes these refrigerator cars into your general expense?

A. Yes sir.

Q. So that you put that as a burden upon the live stock business and also upon the packing house products?
A. Why not?
Q. Well, you do, don't you?
A. Yes sir.
Q. And you therefore charge the packing house and dressed meat business, with its proportion of all this money which you pay out including that half million dollars, and then in addition to that you charge the one cent a mile on the particular cars that are used
1549 in this service, making a duplicate charge, do you?
A. No.
Q. Just explain why it is not duplicated.
A. In the case of cattle I have deducted it; in the case of the dressed beef, I have allowed for a cent a mile mileage. Now——
Q. Now, just a moment, let me interrupt. You don't mean to say what you did just now, because you say you have deducted in the case of cattle. You don't mean that.
A. Yes, I have deducted the 6.4 mills.
Q. Well, I don't think you catch the question.
A. I see now what you mean.
Q. Yes.
A. You mean to the extent we paid mileage——
Q. In your general transportation expenses.
A. In our general expenses, that it has been charged twice?
Q. Isn't that so?
The COURT: Charged against both accounts?
A. Charged against both accounts.

Mr. SEVERANCE:

Q. But isn't it used twice as against packing house products and dressed meats?
A. I understand what you mean.

Mr. SEVERANCE: But if your Honor does not catch the point, the general expense is charged against both, and after charging the general expense, which includes the half million dollars
1550 against packing house products and dressed meats, as well as against cattle, he also charges the mileage against packing house products.
The COURT: He has no right to charge it all against the other, so he makes it even by charging one cent against the proper thing.
Mr. SEVERANCE: To make it even if your Honor please, he charges it both times.
The COURT: I understand.
Mr. SEVERANCE: The half million dollars is charged against the packing house products, and against the dressed meat and against the live stock, all three alike, because they are included in this average of 2.23 mills, or 2 mills per mile of expense of operation. Now, having charged it there against the packing house products and the dressed meats, he comes in again and charges it again on the mileage basis, making a duplicate charge.
The COURT: I understand.

Mr. COWAN: Wouldn't that depend if the Court please, on whether the 55 per cent. embraced that particular item?

Mr. SEVERANCE: I am not talking about the 55 per cent.

Q. Now, I will ask you this question: It appears by your annual report of 1905, that you paid out for car mileage $458,989.82, which is embraced in the items on page 29 of your report under the head of "Conducting Transportation." Now, it is a fact,
1551 is it not that in arriving at the cost of transportation over the Missouri Division, and the Illinois Division, as you have given it here respectively, 2.23 mills on one Division and 2 mills on the other, you have taken into account all the items under that head of Conducting Transportation, including this car mileage?

A. I think that is so.

Q. And therefore, when you charge against the movement of packing house products and dressed meat, the 2 mills on the one Division, and the 2.23 mills on the other Division, and in addition to that charge one cent car mileage, you are to a certain extent duplicating the charge, are you not?

A. I should have to go to the Statistical Department to see whether that is true or not, but I think it is. If it is, it would not affect the calculation one per cent.

Q. It would affect the calculation to a certain extent, wouldn't it?

A. Almost an unappreciable extent.

Q. Are you sure of that, sir?

A. Yes sir. The great bulk of the car mileage, the car mileage, the great bulk of it is paid to other railroads for cars which are run through over our line and is off set to a considerable extent by mileage which we collect from other railroads for our cars on their lines. The great bulk of the mileage is paid for that purpose. If we should deduct from that calculation all the mileage we have paid
1552 for use of private refrigerator cars, it would affect the calculation but very little.

Q. But it would however, to a certain extent affect it?

A. If your assumption is correct that it has been charged in both places, as I am inclined to think it may have been. If you will make a memorandum, I will find out whether it was or not.

Q. Now, Mr. Ripley, this charge of Belt Line switching in Kansas City, do you know whether all the roads pay that or pay any charge I mean to the belt lines?

A. Some of them do not?

Q. Some of them do not? Well, now, in arriving then at a figure, a fair average figure as to the burden that should be put upon these different commodities, moving from Kansas City to Chicago in ordinary railroad business, you would have to absorb this charge and govern your rates on the basis of the more fortunate line which reached the industry, wouldn't you?

A. Yes.

Q. And if that switching charge of $4 a car was eliminated, it would of course, still further reduce the operating charge upon those cars?

A. If it were eliminated, yes. I have not attempted to pass any judgment on other people's condition.

Q. I know but you have given some figures here from which an inference is to be drawn, and I want to analyze it.

Now, Mr. Ripley, this matter of interest and taxes—the
1553 interest and taxes are computed upon all of the investment of the company are they not?

A. Yes sir.

Q. You pay taxes upon your whole investment?

A. Yes sir.

Q. And you pay interest upon all of the securities which you have had, the proceeds of which were used to buy these properties?

A. Yes sir.

Q. That includes of course, the stock cars that you own as well as everything else?

A. It includes everything.

Q. Now, I notice in this report, under the head of "Freight Cars in Service, June 30, 1905," 3,803 stock cars. That is correct isn't it?

A. Yes sir.

Q. And you also have 4,516 refrigerator cars, but do not use any of those refrigerator cars in this packing house service, I understand?

A. No.

Q. Total freight cars, 39,172 of which 3803 would be in round numbers, 10 per cent. Now you have charged the packing house products and the dressed meats in making up this computation with the interest and taxes upon these stock cars, the same as you have everything else?

A. Yes sir.

Q. So that you are putting on the packing house product and dressed meat, the burden not only of furnishing refrigerator
1554 cars at one cent a mile, but the additional burden of its proportion of the stock cars that are furnished for the movement of live stock. That is true, is it not?

A. Yes sir, that is true. You might with the same propriety put in all the interest on all of our stock yards, all our local stock yards which are devoted to the live stock business entirely.

Q. I am coming to that, I am going to do that before I get through.

A. All right.

Q. At least, I am going to try to, I don't know whether I will or not. Now, you have also included in your transportation cost, the cost of moving all of these stock cars as well as every other kind of traffic?

A. Certainly.

Q. In making these averages?

A. Certainly.

Q. Now, as I understood you to say a few minutes ago, the only live stock that is actually moved over your lines to any substantial

extent on this 20 cent rate, is the live stock originating this side of Kansas City within that belt?

A. I think so.

Q. Now then don't you think in arriving at a comparison between the profits and losses, there unfortunately seems to be a loss here, in transportation as between the packing house products out of Kansas City, and the live stock that is moved on the same rate you ought to compare the movement of live stock in that zone this side
1555 of Kansas City with the Kansas City packing house products and dressed meat rather than to compare the movement of dressed meats and packing house products with movements from Kansas City, when, as you stated there are no movements on that basis.

A. What I was asked to do was, to endeavor to show the relative cost. I don't know how I could better attempt to demonstrate relative cost than by taking the same rate on each; it would not make any kind of a demonstration if I had a different rate on each.

Q. I am examining now with reference to the movement of stock and packing house products, and the stock moving on the 20 cent rate is this side of Kansas City?

A. Yes sir.

Q. Now, in moving that stock at country points, aren't you subject to certain expenses which are peculiar to the stock itself?

A. Yes.

Q. And to which other branches of the traffic are not subject?

A. Yes.

Q. What are they?

A. You have got to maintain stock yards, which is in effect, our depot for live stock, just as we have to maintain our other depot for other things. We have to bed the cars, which costs something, 10 or 15 cents a car, perhaps. And I have already explained that we have to stop our trains and do more or less switching; we have to switch the empty cars in to begin with, and have to switch
1556 the other cars out, but those are expenses which are incident to almost any kind of business.

Q. Now, let us see if they are. Take the matter of stock yards, they are used for no purpose except loading stock, are they?

A. No purpose whatever.

Q. I beg pardon?

A. No purpose whatever, except that.

Q. Can you tell, Mr. Ripley, the average cost roughly, of country stock yards along your line from Kansas City to Chicago?

A. From eight to twelve hundred dollars.

Q. And does that include the water facilities?

A. Ordinarily yes, except where you have to put down an expensive well.

Q. In some places you have to put down separate wells, apart from your water tank?

A. Yes, in some places. Those are usually surface wells. They are not expensive.

Q. And in some places do you buy water from municipalities?
A. Possibly, I do not recollect any place where we do that this side of Kansas City. Possibly sometimes it may be cheaper to do that than to put down a well.
Q. Could you find out the total, and file as a statement with your testimony, the total cost of the stock yards owned by
1557 your company between here and Kansas City?
A. I suppose I could. That would take sometime, I suppose I could do that.

Whereupon a recess was taken until 2:00 o'clock p. m. of the same day, Friday, September 29, 1905.

1558 SEPTEMBER 29, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon E. P. RIPLEY, resumed the stand for further cross-examination by Mr. Severance, and testified as follows:

Q. Mr. Ripley, you will have those figures here a little later, will you, that we asked for this morning?
A. Yes sir.
Q. Now in getting up tables to show a fair comparison between the net profits in handling live stock and dressed meats on the one hand and cattle and hogs on the other, you have deemed it proper to put in as a special burden on the packing house products and dressed meats products the mileage paid for the refrigerator car. Now, would you not say that, in fairness, there should be put as a burden upon the live stock traffic in fair interest upon the investment in these cattle pens or stock yards that you have described?
A. If the investigation pertained to local cattle business, yes sir.
Q. Well, assume that it does, what rate of interest would be a fair rate to apply to that, 4 or 5 per cent.?
1559 A. No, it should be more than that, just as it should be more than that for any wooden structure that is constantly deteriorating. That would be 7 per cent. or 8 per cent.
Q. And that would include depreciation and interest?
A. Yes sir.
Q. Now, in the shipment of local live stock, Mr. Ripley, you mentioned on your direct examination, if I am not mistaken, the fact that your company had to bed the cars. That is done with what material?
A. Sand, ordinarily.
Q. How much sand per car?
A. Oh, enough to cover the bottom, perhaps from 5 to 7 inches.
Q. The full bottom of the car?
A. Yes.
Q. Have you any idea how much that would weigh?
A. No, it might add possibly a ton to the weight.
Q. These 36-foot cars are 36 feet on the inside or outside?

A. Well, they vary; some are 36 feet inside and some are 36 feet outside. Generally they are 36 feet inside.

Q. And how wide inside?

A. 8 feet.

Q. Can you give an estimate or state in figures in any way, the average or about the average cost to you of this sand laid down at the country stations where it is used?

A. No, I cannot. It varies, of course, with the distance which we have to haul it.

1560 Q. Well, that is a burden that should properly be added to the cost of transporting local live stock, is it not?

A. Yes.

Q. What would you say it would cost, as much as $1.00 a yard, a cubic yard?

A. No.

Q. Would it cost 50 cents a cubic yard?

A. Possibly.

Q. Wouldn't you think that would be a fair estimate of cost taking the whole line together between here and the Missouri river?

A. That would be a mere guess, but I should think it might.

Q. Now, it is your custom, is it not, Mr. Ripley, to give free transportation to drovers who accompany cattle to market and hogs to market?

A. Under certain rules, yes.

Q. What are the rules?

A. We give return transportation with two cars, two cars belonging to one owner, or, I think transportation with five cars, I cannot quite — the rule exactly.

Q. You have the same rule that the other roads have in that regard, don't you?

A. Yes.

Q. That is you carry the drover forward to market in the stock train, do you not, and return him on a first class passenger train?

A. Yes.

Q. What is the passenger fare from here to Kansas City over your road?

A. $12.50, I think.

1561 Q. And is that rate substantially less at these stations within 100 or 150 miles?

A. Yes, it is based on three cents a mile, practically.

Q. $12.50 would not be 3 cents a mile, would it?

A. A little less to Kansas City than 3 cents, but between here and Kansas City, it averages very nearly 3 cents.

Q. It is really 3 cents a mile until you get up to a point where you have to make it a little below the Kansas City rate, isn't it?

A. Substantially that.

Q. It would at least be $10.00 then into this zone that you spoke of?

A. Yes, average that, probably.

Q. Now in bringing the drovers to market they are transported in cabooses, are they not?

A. Yes.

Q. Do you have those cabooses arranged with bunks so those men can sleep?
A. Yes, ordinarily there is a rude bunk for them, not always.
Q. You have specially designed cabooses for drovers?
A. Yes.
Q. Containing about how many bunks?
A. Well, four to six.
Q. Furnished with pillows and blankets?
A. No.
Q. Do you furnish anything except the naked bunks?
A. Nothing but the bunk and ice water.
Q. Bunk and ice water, is that what you said?
1562 A. Yes.
Q. That is a cheerless ride, isn't it? Well, now, you say you furnish this transportation to any man shipping two cars?
A. Yes.
Q. So that in that case a shipper would get a free ride one way and back for each two cars of stock?
A. Yes.
Q. Now that is a burden that is not imposed upon shipments of packing house products, is it, or dressed beef?
A. Yes.
Q. Do you know how many loads, carloads of live stock are picked up and shipped in between Kansas City and Chicago, on your lines?
A. No, I don't.
Q. Well, you would say, wouldn't you, in order to make a fair comparison of the respective burdens on these classes of commodities, that there should be charged against the live stock shipments, the passenger fares that you have mentioned?
A. In so far as they represent people who would otherwise travel and pay fare, yes.
Q. Well, have you any way of knowing whether they would or not?
A. No.
Q. You know that they do pay fares, don't you? Sometimes they come in and get the ride in and in going back, pay their fare?
A. Yes, they do that sometimes. We have no way of tell-
1563 ing how many of these people come because they can ride free and how many come for purposes of their own other than that.
Q. They are treated the same as other passengers on your passenger trains?
A. Yes.
Q. And whether they ought to be with the stock or not, they are treated the same as legitimate drovers on the stock trains?
A. Yes.
Q. And they get transportation?
A. Yes.
Q. And that being the case, don't you think that that is a fair charge to make against the live stock account?
A. I have already stated, to the extent that they represent people

who would otherwise travel and pay fare, it is a fair charge against the live stock.

Q. You cannot know the mental process of every man that boards one of your trains so as to be able to tell whether he would have come under one condition or the other?

A. No, but when a drygoods man comes up here to buy drygoods, it is fair to assume that if it was not for the fact that he could use the stock pass, he would come and pay his fare. The privilege is abused more or less.

Q. A good many country merchants and other people—I *I* think it was testified to here by somebody that even lawyers were known to come in on them.

A. It is not impossible.

Q. Now those people are at times injured, are they not,
1564 while being transported by you, the same as other passengers?

A. Occasionally.

Q. And when they are injured you have to pay for those injuries?

A. Yes.

Q. Are you able to state the amount of money that you have been obliged to pay within the year ending June 30th, 1905, on account of injuries to persons riding in this manner?

A. No, not seggregated from anything else. The amount we have paid for injuries to persons is stated in our report.

Q. Yes, I find about one per cent. of your freight receipts $433,-112.59, is it not, for injuries to persons?

A. That embraces injuries of all kinds and under all conditions. It embraces injuries to employés, injuries to trespassers and people at stations, and people in the shops.

Q. Now, there is more danger of injury to a man riding on these stock trains than on the ordinary passenger train, is there not, more liability to injury?

A. Well, that is questionable, I hardly think so.

Q. Do you think that you handle the cabooses in as gentle a manner and that people are as much protected from injury in them as in the passenger cars?

A. Not exactly that, but the injury to passengers largely are to people traveling in the forward part of the train, that is, ordinarily.

Q. The forward end of the train?

1565 A. Yes. There is a greater number of casualties there than there are on the rear end.

Q. Sometimes there are rear-end collisions?

A. Sometimes there are rear-end collisions, but they are much less frequent than derailments or head-end collisions, in which case, those people in the rear end of the train are in a safer position.

Q. Whatever that does amount to—You say you are unable to state what it is—That is a burden that should, in the making of the comparison, such as you have undertaken to make, be fairly charged upon the live stock traffic, is it not?

A. Yes.

Q. Now, in giving your percentage on the cost and depreciation

of these country stock yards, you did not include in that the cost of the maintenance of those stock yards, did you?

A. Yes.

Q. I mean the cost of keeping them clean, and that sort of thing?

A. Well, that is not appreciable. Practically, no cost.

Q. Who does the work?

A. The section men, what little there is to do. There is very little to do.

Q. What is your expense in cleaning live stock cars?

A. I am unable to say what it is per car. There is a cost for cleaning them, and a cost in some instances for disinfecting them as well but that is all included in our general expense which we have taken into account as to all kinds of business, in that statement.

1566

Q. But that, of course, is an expense that is peculiar to this kind of traffic?

A. Oh, yes, there are expenses that are peculiar to all kinds of traffic.

Q. Name some expense peculiar to box cars that is in any way analogous to the expense of cleaning live stock cars and the trouble of doing it?

A. We have to clean our box cars just as we do our live stock cars. We don't have to take so much out of them, but they have to be swept and provided for.

Q. It costs a good deal less to sweep out a box car than it does to clean out the dirt in a cattle car, doesnt' it?

A. Yes. On the other hand, it costs a good deal to keep a box car tight and you don't have to keep a cattle car tight at all.

Q. Aren't cattle cars more liable to injury in transit by reason of the live animals being in them, than the box cars in ordinary traffic?

A. The average cost of maintaining a cattle car is not greater than that of maintaining a box car.

Q. I mean actually maintaining it, keeping it in repair?

A. I think it is slightly less but that is a mere matter of opinion and a mere matter of judgment. We don't segg*r*egate in our accounts the different kinds of cars.

1567

Q. Whatever this expense is of maintaining country live stock yards and repairing them and the interest on their cost and the water used for those yards, the bedding of stock cars, the cleaning of stock cars, and these other expenses that I have called your attention to, they are all charged in this statement that you have made, charged up equally against the packing house product and dressed meats on the one hand and the live stock on the other?

A. Yes.

Q. Now, don't you have to build at country stations in connection with these stock yards, special side tracks to run on?

A. No, not often. Ordinarily, the stock yard is located on the house track; that is, the track which serves the freight house ordinarily reaches the stock yards as well. Once in a while it is necessary to put a spur to the stock yards, but as a rule, the two are on the one track.

Q. In this statement I notice you figure the gross weight in the case of dressed meats as 97,000 pounds and the weight of the contents of the car 21,000 pounds, leaving a balance of 76,000 pounds. In the case of packing house products you figure the gross weight as 103,000 pounds and the contents 28,000 pounds, leaving 75,000 pounds. Why do you make that difference of 1,000 pounds?

A. A difference of a thousand pounds?

1568 Q. Yes, as between the weight of the car in the case of packing house products and dressed meats?

A. I don't think it was intended to make a difference in the weight of the car, it is a difference in the weight of the contents.

Q. I will give you the figure again. In the case of dressed meats, the gross weight is given as 97,000 pounds and the net weight 21,000 pounds. That would leave a balance of 76,000 pounds for the car.

A. Yes.

Q. In the case of packing house products the gross weight is 103,000 pounds, the net weight 28,000 pounds, leaving a balance of 75,000 pounds for the car, a difference of 1,000 pounds.

A. That is the figure on the weight of the car both ways.

Q. Certainly, I understand that.

A. In one case, the car running empty, and in the other case the car running full.

Q. I understand that. That is so in both cases. In the case of the dressed meat as well as the packing house product, that is so.

A. Well, let us take the case of the dressed beef, just give those figures again.

Q. 97,000 pounds and the contents 21,000 pounds.

A. That leaves 76,000, each way 38,000 pounds. In the case of the packing house product which is given as——

Q. 103,000 pounds, less 28,000 pounds which would be

1569 75,000 pounds or 37,500 pounds each way.

A. Well, I am unable to account for that. There is apparently a mistake of 1,000 pounds there.

Q. I did not know what it was; I thought perhaps you could explain it. That makes a little disproportion as between the contents and the weight of the car. Now, you said this morning, I believe that all packing house products, as well as all dressed meats are shipped in refrigerator cars.

A. I don't think I said that all packing hose products are shipped in refrigerator cars. They are not always so shipped, but they are generally.

Q. Isn't it a fact that a good many car loads of packing house products are shipped in ventilated cars, for instance, or cars that belong to your own road?

A. I don't think we get any of any consequence in our own cars. It is nearly all tendered to us in refrigerator cars or in ventilated cars which carry the same mileage.

Q. Is it not a fact that you ship products in your own cars at times?

A. To some extent, yes.

Q. You have made no allowance for that. You have charged one

cent a mile in each case against the products, the same as against the dressed beef, haven't you?

A. Yes.

Q. In order to get at this in an exact way, there should be an allowance for such of the packing house products as are

1570 shipped in your own cars?

A. If any, yes.

Q. You stated that you thought there were some?

A. I don't think there are, from the Missouri river to Chicago.

Q. You don't think there are any?

A. I do not think there are any.

Q. I suppose you could ascertain that?

A. I think so.

Q. I would be glad if you could ascertain that so that we could find out. Now in figuring the gross ton miles at two and twenty three one hundredths mills, and two mills respectively on those two divisions, that is the cost, I mean, not the gross, you figure on the cost of all locomotive movements, don't you?

A. On that division.

Q. Including a full train or a half train or a locomotive and a caboose or a locomotive without a caboose?

A. Yes. That is in figuring the train miles—Not train miles, they are figured on car miles. The movement of the locomotive, of course for that would not be figured into the divisor.

Q. Those are ton miles?

A. Yes.

Q. Does it make any difference then whether you move a large train or a small train? It is all figured in at the cost of moving that car?

A. Yes.

Q. Well, I was all right in my premises, with the exception of the locomotive?

A. Yes.

1571 Q. It is cheaper to haul in proportion, a heavy train than it is a light train, isn't it?

A. Yes.

Q. Packing house products weigh heavier than live stock?

A. Per car, yes.

Q. Is it not cheaper to haul a train of packing house product then than it is to haul a train of live stock per car?

A. You mean of equal weight?

Q. Yes. No, no, not a train of equal weight, I don't mean that?

A. I don't think it is any cheaper to haul a ton of the one than it is to haul a ton of the other.

Q. Isn't the relation between the dead weight that you haul different in the two cases?

A. Yes. We haul very much less dead weight in the case of a car of live stock than we do in the case of a car of packing house products.

Q. That is you mean, that, in the case of a car of live stock, the

car weighs more in proportion to the load than it does in the case of packing house products?

A. No, I think it weighs less.

Q. Which weighs less?

A. The live stock car weighs less in proportion to the low. I beg your pardon. You asked about packing house products; no. As to dressed beef, yes.

Q. I am talking about packing house products.

A. No, not as to packing house products.

Q. Is it not a fact that in hauling packing house products
1572 you haul more weight for the amount you get paid for than you do in hauling live stock?

A. Yes, I think that is true. That is, there is more dead weight in the case of live stock than there is — the case of packing house products.

Q. My question was turned round, I just got that confused. To put it in a crude way, you haul more car- in proportion to contents when you are hauling live stock than you do in hauling packing house products?

A. Yes.

Q. That makes the transportation of the contents of the packing house car then cheaper to the railroad, does it not, than the transportation of the contents of the live stock car?

A. Everything else being equal, yes.

Q. And in arriving at the general average of the cost per ton, if you had no traffic to handle except live stock on the one hand and packing house products on the other, you would find that the live stock cost more per ton per mile (measured on the basis of your receipts)—that is, your profits are less than they would be in the case of the packing house products?

A. Other things being equal, yes.

Q. You did not take anything of that sort into account in making up this statement?

A. No.

Q. Now, Mr. Ripley, in the case of live stock brought in
1573 from Kansas City, if there should be any shipped from there, either on the proportional rate or on this full rate, you are at the expense of loading it?

A. We pay the stock yards 25 cents a car for loading.

Q. In the case of the packing house products, the packer loads the car and he also does in the case of the dressed beef?

A. Yes.

Q. In getting up this estimate you have not made any charge against live stock of that additional burden of loading, have you?

A. Yes.

Q. Where is it?

A. It is included in our general expense.

Q. Well, now, is it not included against both of them then?

A. No, sir.

Q. Why not? Tell us why? You have charged some the same amount for terminals in each case?

A. We have charged in each case the same amount for terminals but in the one case the switching charges paid to other roads are not included in that terminal expense, whereas the loading charges at the stock yards and the maintenance of the tracks and the switches into the stock yards are all included in our general expense.

Q. Yes, but you have charged this loading charge against the packing house products and against the dressed meats the same as you have against the live stock, in this statement, and that
1574 is included in your general expense, I suppose?

A. Oh, yes, if you mean that expense which we are at in order to get hold of the live stock is included in our general expense, yes.

Q. Well, I mean just what I have said. You have stated that you paid 25 cents a car for loading live stock?

A. Yes.

Q. Now, you have considered that 25 cents in arriving at your terminal expense?

A. Yes.

Q. Now, you have charged exactly the same terminal expense against packing house products and dressed meats that you have against live stock?

A. Yes.

Q. Then I am correct in saying that you have not apportioned that burden of loading to the traffic that it belongs to, but you have spread it over all the traffic?

A. Well, strictly speaking that is correct.

Q. We are speaking strictly here. Isn't that, being a special burden imposed upon the live stock, something that should be taken into account the same as you take into account the one cent per mile mileage in the case of the packing house, for which you have made a specific charge?

A. Well, putting me on the defensive in regard to my statement, I think that the way it is made up is fair. If you would like to have me tell you why, I will tell you.

1575 Q. I am asking you the questions. I suppose Mr. Cowan will ask you why later on.

Mr. COWAN: I think the witness has a right to explain that at this point.

The COURT: Well, the court will ask you why.

A. There are certain expenses that are incident to both kinds of business. It is quite true that we have disregarded those in making up this statement in which we charge all or our general expense,—spread all our general expense over both classes of business. It is true that we do pay on live stock a loading charge that we do not pay on dressed beef. It is also true that there are a good many expenses incidental to the hauling of packing house products and dressed beef which do not apply on the live stock.

Mr. SEVERANCE:

Q. What are they?

A. In the first place, the refrigerator cars are very heavy and they

are much more liable to accident. They cost us a great deal more in wrecks than the live stock cars do. We have had some trouble on account of their construction with broken axles, derailments of the refrigerator cars, more trouble on that account with the refrigerator cars belonging to private parties than we ever had on our own cars on account of their inferior construction, and it costs us a great deal more, a great deal of money outside of the repairs on the car
1576 itself on account of the damage to our own equipment.

Q. Do you claim that under your contract you are liable for broken axles on refrigerator cars? Isn't the cost of that repair borne by the packer?

A. It may be a part of the repairs that the packers have to make, but they do not have to repair the rest of our equipment that is broken or damaged by reason of that broken axle.

Q. You have stated here that you are obliged to pay out money for broken axles on these refrigerator cars, and I am asking you whether or not that is not an expense that you do not pay at all, and that it is paid by the packer?

A. Theoretically, if a broken axle can be proven to be a defect in the car, the packer will have to repair it.

Q. Well, isn't that so practically?

A. Well, it may be that he does practically, but that does not compensate us for the collateral damage that it originates.

Q. You were speaking about repairs to the interior of the car?

A. I did not say anything about the interior.

Q. I understood you to say something about the interior of the car.

A. No, I said nothing about it; I said by reason of the inferior construction.

Q. Well, as a matter of fact, you are not responsible for any damages to these cars that you lease at one cent a mile unless
1577 the injuries are caused by a wreck or by carelessness on the part of your company in its operation, isn't that so?

A. That is the theory.

Q. That is the contract, isn't it?

A. I don't think there is a contract in existence on the subject.

Q. Mr. Dawes suggests that I ask you whether it is not under the Master Car Builders Rules.

A. Under the Master Car Builders rules, the owner of the car is responsible for any defect in the construction of the car and the road that is handling it, or the operating road, is responsible for any accident that occurs through negligence or by reason of inferior track or bad handling or anything of that kind.

Q. Now, have you given the only reason that you are able to give why you have put upon the rest of your traffic, including the packing house products and dressed meats, the burden of loading cattle in cars at Kansas City?

A. Well, I have said that all things considered I think that our average expenses as we have taken them there, constitute a fair criterion by which to judge; notwithstanding that in both cases, both

classes of business there are some expenses that are not incidental to the other.

Q. Can you name any other in connection with refrigerator
1578 cars, than you have stated that are not incidental to the other cars?

A. Well, between here and Kansas City, we are not called upon to provide any special facilities for the packing house business.

Q. Well, it is that country that we are talking about.

A. Between Kansas City and the west, however, we are obliged to have quite considerable investments in icing stations and that sort of thing.

Q. I find on page 29 of this Annual Report that you paid out in the year ending June 30th, 1905, the sum of $107,286.12 for loss and damage to live stock?

A. Yes.

Q. Now there are certain kinds of loss and damage in the transportation of live stock, are there not, which are not incident to the transportation of ordinary dead freight or packing house products or dressed meats, such as damages for delay in failing to reach a market on time.

A. Well, we don't admit much of that unless it is a case of negligence. That damage to live stock includes stock killed on the right of way. It does not represent damages paid on property in transit.

Q. Well, it includes both, does it not?

A. It includes both. It does not represent alone property in transit, exclusively.

Q. Is it not a fact that you do pay to live stock shippers damages for failure to reach the Chicago market on time as per con-
1579 tract?

A. Where it is due to the negligence of our own servants, yes.

Q. Now, is it not a fact that you do not pay on any packing house products or dressed meats, any damages merely on account of delay, where the delay does not cause a spoiling of the product by reason of the lack of ice?

A. So far as I know, we do not. I think there have been cases where it has been paid.

Q. Where it has been merely for delay?

A. Yes.

Q. To whom?

A. I don't know.

Q. When?

A. Do you mean as to dates?

Q. We have a general cut-off in this case so that we do not go back of the time before Judge Grosscup's injunction.

A. I have no knowledge that it has been paid, and I don't think it has been, so far as we are concerned.

Q. Now, does the cost per ton mile increase as you increase the speed of the train?

A. Slightly.

Q. Did I understand you to say in answer to Mr. Cowan, that you

ran your packing house trains as fast as you ran your live stock trains?

A. Substantially on the same time, yes sir.

Q. What time do you load live stock shipments at these points within 100 miles of Kansas City, when it is coming to Chicago?

A. They are loaded in the afte-noon and reach Chicago the
1580 second morning.

Q. Do you stop to feed in transit?

A. No.

Q. How do you get in within the 28 hours then?

A. Our stock trains arrive about 12 o'clock.

Q. About midnight?

A. Yes, from midnight up to 2 or 3 o'clock in the morning. They are on the market the same morning.

Q. How about the packing house products and dressed beef that you transport?

A. They make substantially the same time.

Q. Are they schedule trains?

A. No, our stock trains are *are* not schedule trains; neither of them are scheduled.

Q. What time do they ordinarily leave Kansas City?

A. Kansas City about noon, I think, and arrive here about the same time the stock trains do, along about midnight so as to be delivered the same morning.

Q. You say you load your live stock in the afternoon and get here at midnight and you load your packing house products at noon and get here at midnight.

A. You are asking me about the local live stock which originates all the way from 25 to 150 miles this side of Kansas City; consequently, it has a less distance to travel.

Q. Well, you do ship live stock from Kansas City, of
1581 course?

A. Well, there is some.

Q. How about that?

A. I think that leaves ordinarily at about the same time as the packing house product, possibly a little later.

Q. Can't you find out definitely about that?

A. There is not any definite rule about it. I can find out what happened last week or this week but there is no definite rule about that. Trains are made up out of Kansas City or Chicago or any large center they are made up as we can get them. They are not run on any schedule time. If we can get a train, we run it.

Q. Don't the trains leaving Kansas City, to reach the Monday market (that seems to be the big market) don't they leave there at about the same time every week? If so, what time?

A. Well, I don't think they leave at the same time. Stock is not always ready at the same time, and we are not always ready to send it at the same time. It leaves so as to reach Monday's market but it may be from one to four hours' difference in the time of its leaving Kansas City.

Q. Can you give me an idea of between what hours of the day this one to four hours would be figured?

A. I should say ordinarily, between 2 and 6 in the afternoon.

Q. Leaving Kansas City between 2 and 6 and reaching here about midnight the second night?

A. Yes.

1582 Q. In the case of the packing house trains, you leave at noon at Kansas City——

A. Oh, no, they are taken out of the yards about that time. If we had any packing house product east of Kansas City, which we don't, not very much, we would put that and the stock together.

Q. Then as a matter of fact, you don't handle much packing house product east of Kansas City?

A. Very little.

Q. You do handle packing house products to the Pacific coast?

A. Yes.

Q. From what points?

A. Kansas City, St. Joe and Omaha.

Q. Any from Chicago?

A. No, very little, some.

Q. What is the difference, if anything, in the rate between Chicago and San Francisco, for packing house products, and Kansas City and San Francisco?

A. I think they are the same but I am not certain.

Q. You are pretty sure they are the same, are you not?

A. No, I am not sure.

Q. But it is your opinion they are the same?

A. That is my opinion.

Q. Do you regard that as a discrimination against Kansas City that you ship 400 miles further practically at the same price?

A. I don't think so.

Q. You would not discriminate if you knew it?

A. No.

1583 Q. Now, with reference to these intermediate rates—— It is suggested that I ask you also the rate from Omaha, if you know, to San Francisco.

A. I think that is the same as Kansas City.

Q. The fact is that the rates to San Francisco, and possibly also to Los Angeles——

A. Yes.

Q. —on packing house products is the same from Chicago and east of the Missouri river packing centers?

A. Yes, I think it would be the same to New York if we were running there.

Q. Now, with reference to charges on the basing rate from the Missouri river, this side of there, you think it is quite proper and justifiable, do you not, to charge the same rate, to charge this 20 cent rate from these country stations this side of Kansas City, while you move the live stock that comes through from the west, from Kansas City to Chicago, on a proportional rate, which is considerably less?

A. I think so.

Q. Kindly state the reasons why?

A. Well, I think the rate of 20 cents from intermediate stations, is more than reasonable to the shipper. It is less than reasonable to the carrier. It is out of line with other rates in the same territory and I think that it discriminates in favor of live stock as against everything else. The fact that the packing house product is

1584 carried from further west——

Q. I am not asking about the packing house product.

A. The fact that live stock is carried from further west and pays a less rate, proportional rate from Kansas City to Chicago, has nothing to do with the case; it has no bearing on the question of what the rates should be from these stations in Missouri. The question between these people and the railroad is whether the rate is in itself reasonable.

The COURT:

Q. Is what?

A. Whether the rate is in itself reasonable. It is not their affair what other people pay.

Mr. SEVERANCE:

Q. And that is so as to all commodities?

A. That is so as to all commodities.

Q. And all places?

A. Yes, except so far as the rates on one article may be injurious to the man that is shipping another. In this instance, that is not the case. There is no injury inflicted here on anybody east of Kansas City, because of the 20 cent rate, notwithstanding that the cattle originate west of Kansas City and are carried through for less.

Q. You do not think there is any injury being inflicted to any person by reason of those rates?

A. I do not, except the railroad.

1585 The COURT: I would like to hear that answer.

(The two preceding answers were then read.)

The WITNESS: Excuse me, that is somewhat misleading. Change that to read, "Notwithstanding the fact that cattle originating west of Kansas City are transported from Kansas City to Chicago for less than 20 cents." As I gave the original answer it would appear that cattle originating west of Kansas City are taken through for less than 20 cents, which is not the case in any instance. They simply pay the railroads east of Kansas City less than 20 cents.

Mr. SEVERANCE:

Q. That is you mean that the proportional from Kansas City on to Chicago is less than 20 cents?

A. Yes.

Q. But if the cattle originate at points west of Kansas City it is more than 20 cents?

A. Yes.

Q. And none of those rates that we are discusing here, and I am

examining you about in your opinion, discriminate against anybody, except as you say, against the railroads?

A. That is right.

Q. You stated this morning in explanation of the fact that you had made these statements up on the basis of the 20 cent rate on each class of commodity (instead of making them up on the pro-
1586 portional rate so far as live stock was concerned) that you did it upon request, upon a request to make them up on the 20 cent basis.

A. Excuse me, I did not say that.

Q. What did you say in that connection?

A. I don't recall what I said, but I certainly did not say that because I had no such request. I said that it seemed to me that, if you are going to make a comparison, that you should take the same rate on both commodities.

Q. Then you made it up without any request?

A. I made it entirely of my own motion. It is perfectly easy to change that statement by using other figures, but in making a comparison, I took, of course, the same rate.

Q. You took the same rate but you eliminated what you pleased in one case and left it in in the other?

A. I endeavored to make it fair in both cases. I had no object in doing otherwise.

Q. Now you say that this 20 cent rate that you have in force on live stock is altogether too low.

A. Yes.

Q. Then do you regard the 23½ cent rate that the other roads have in, as too low?

A. I do.

Q. Then why was it that you put a 12 cent rate in force at the time these packing house rates went in? You put in a 12
1587 cent rate, did you not, on live stock from Kansas City and intermediate points to Chicago?

A. We did for a while. Well, without going into it at any very great length, it occurred to us, when this reduction was made in the packing house product and dressed beef, that it was so outrageous that it ought to be fought out. Our first disposition was to fight it out.

We put in a rate of 12 cents, thinking possibly it would bring about a reform, and without having made very many figures on it, simply guessing at it, it was our opinion that the 12 cent rate on cattle was about as good as the 20 cent rate on packing house product; but we modified our position in that regard, after a little while, and advanced our rate.

Q. As a matter of fact, when you put that 12 cent rate in, you put in a rate that was not very far from the proportional rate anyway, the proportional rate on which cattle were moved from Kansas City, not much lower?

A. Why, yes.

Q. Well, anyway, you will have the figures on that later?

A. Yes, I will have the figures later.

Q. Is it not a fact that in the summer time the railroads go to the expense of spraying the hogs and possibly the cattle also, with water, along the line?

A. In very extreme weather that is done. There is very
1588 little expense to the railroad there except in the water. It is generally done by the men in charge and sometimes by the train men.

Q. Well, it takes water to do it?

A. Yes.

Q. And you have to delay the train while that is being done?

A. It is generally done at division points where there is more or less delay in any case.

Q. Are you sure of that?

A. Well, I know we don't do it anywhere else.

Q. You would not do it anywhere else?

A. We don't do it anywhere else.

Q. Does it not add to the delay at the division point?

A. Possibly a little; it might or it might not. That depends on how much there is of it to do, and how much the train would ordinarily be delayed.

Q. Suppose the hogs are getting heated and are liable to be damaged between division points; would you not stop the train and spray those hogs?

A. Well, it would have to be a very extreme case. I don't think we ever do it.

Q. Packing house products are hauled out of Kansas City, are they not, by the other roads in solid trains?

A. I think so.

Q. But not by your road, because you have not enough of
1589 the traffic to make it pay to do it.

A. That is right.

Q. Now, while you state that the rate on packing house products ought to be a great deal higher, and that the business is transacted at a loss, is it not a fact that you have soliciting agents who almost daily visit the packers and solicit shipments?

A. Very likely.

Q. Now, you say that you were formerly engaged with the Burlington system and the Milwaukee & St. Paul system?

A. Yes.

Q. Now it is a fact, isn't it, that, on those two systems the railroads lose the use of their live stock equipment to a very considerable extent by reason of the fact that cars are set in at country stations to be loaded, and that they lie there for considerable periods of time before they are loaded out?

A. That is more or less true.

Q. That is more or less true of all roads, isn't it?

A. Yes.

Q. Have you any special place where your stock cars are cleaned?

A. Yes, I know where they are cleaned at Kansas City. They are cleaned out west of Kansas City. Here in Chicago, they are cleaned up at Corwith where our yards are.

Q. Cleaned by men in your own employ?
1590 A. Yes.
Q. Do you keep regularly a force of men for that purpose?
A. Not for that purpose.
Q. And in winter time, that is rather expensive, the cleaning of stock cars, isn't it?
A. Sometimes, when it is frozen, it is a rather troublesome thing to do.
Q. Do you use a locomotive and steam?
A. No.
Q. Never?
A. I don't think so.
Q. You have to take them how far in order to get them to this cleaning place?
A. From the stock yards a couple of miles.
Q. And then they are brought back over the same track?
A. If they are going to the stock yards, yes. If they are loaded out, no; or if they are sent west empty, no. As a rule they are taken out to the stock yards and not brought back, because there is nothing in the stock yards to load them with.
Q. Is that portion of the yard where you clean your cars built on purpose for that work?
A. No.
Q. What other work is done there?
A. All of our yard work, all of our making up of trains.
Q. That is one of the items of work that is carried on there?
A. Yes.
Q. Do you have a special part of the yard where that is
1591 done?
A. Yes, because we are using it for filling.
Q. Now, you stated that it was the universal rule that the manufactured product should take a higher rate than the raw material?
A. I said it ought to be.
Q. I understood you to say it was.
A. I said it was the general rule and it ought to be universal but it could not be.
Q. I did not so understand you. Then this is not the only instance where the raw material takes a higher rate than the manufactured product?
A. No.
Q. The question of bulk has something to do with fixing the rates, does it not?
A. Yes, bulk as compared to weight has a great deal to do with it.
Q. So that if the raw material is more bulky than the manufactured product (unless there is a very great disproportion between them as to values) the raw material would naturally take the higher rate?
A. Yes, it might take a higher rate, it might be justified.

Examination by Mr. LYNDE:

Q. Mr. Ripley, can you tell us what the proportion is of live stock traffic on your road as compared to your total tonnage?

A. If you will pass me the annual report, I can tell you very nearly. The tonnage of live animals was 872,509 tons out of
1592 1,289,400. Roughly speaking, I should say about 7 per cent.

The COURT:

Q. What per cent.?

A. About 7 per cent.

Mr. LYNDE:

Q. Now of that tonnage of live stock, about how much of that would you say is handled by your road coming from intermediate points between Kansas City and Chicago?

A. A very small proportion.

Q. Almost the whole of that is live stock that you receive west of Kansas City?

A. Yes.

Q. And made up in through trains at Kansas City and brought through?

A. No sir, not coming east of Kansas City at all.

Q. Then I want to ask you what is the number of cars than your road brings into Chicago or did, during the last year?

A. I cannot answer that question.

Q. Can you tell us about how many men are brought into Chicago by your road, on these trains, to whom return transportation is furnished?

A. That would depend on the number of cars, and, in as much as I cannot give the number of cars, I cannot estimate the number of men.

Mr. COWAN: If you will pardon me, Mr. Lynde, the stock yards report for the year 1904 shows the total number of cars de-
1593 livered to the Santa Fe at Chicago to have been 8,651, in 1903, 12,783.

Mr. LYNDE: How about 1905?

The WITNESS: Those reports are made for the calendar year, while this (referring to annual report of A. T. & S. F. Company) is for the fiscal year.

Q. That is the total number dilivered here at Chicago?

A. Yes.

Q. Can you give us an estimate based on that number, as to the amount of transportation your company issued?

A. No, I cannot. If there were 8,000 cars—it is a mere guess, but I would say perhaps we brought in 2,500 people.

Mr. SEVERANCE:

Q. And took them back?

A. And took them back.

Mr. LYNDE:

Q. Can you state anything as to the proportion of these 8,000 cars that came from this intermediate territory?

A. No, I cannot.

Q. Your experience, prior to becoming president of the Santa Fe Company was mainly in the traffic departments, was it not?

A. Mainly, yes.

Q. Have you had occasion at any time recently to give your personal attention to the details of handling the live stock traffic and the peculiar incidental expenses which there are attached to it, I mean the local traffic?

1594 A. I have not given very close attention to traffic matters for the last ten years.

Q. Well, have you any knowledge or do you profess to have any knowledge with respect to the special services that are rendered on the Northwestern Company's lines in its live stock traffic from local points to Chicago?

A. What company?

Q. Chicago & Northwestern Railway Company.

A. I have no knowledge whatever of it.

Q. Have you any knowledge as to the cost of the special services that are rendered by that company in handling that traffic?

A. None whatever.

Q. Or as to what amount of that traffic is received by it on its branch lines and local pick-up trains?

A. Not at all.

Q. In coming into Chicago and bringing in the product from Kansas City, to what extent, how many cars of that do you bring in in the course of a year?

A. I cannot answer that.

Q. Do you run special provision or meat trains out of Kansas City?

A. I have already stated that we had, I think, practically no regular trains carrying it. We run trains as the business appears for it.

Q. What do you make up that train with after you get such a number of cars of packing house product or dressed meats,

1595 or do you know?

A. Whatever there is there.

Q. You fill up the train as far as you can and you pick up live stock with that train at intermediate points?

A. Not at intermediate points between Kansas City and the Missouri river. That is usually picked up by way-freight and hauled as far as the Mississippi river and then put into through trains.

Q. What are the principal points between Kansas City and the Mississippi river, where you receive live stock?

A. Oh, we take it at all those local stations in there. They are all small towns and they all ship but very little out, very little in the aggregate, taking it in comparison with the business west of Kansas City.

Q. Now your computation which you have submitted in those

three statements is based upon the same tonnage in each train of each commodity?

A. It is based upon all tonnage handled.

Q. You take each train and assume it to have the same tonnage, do you not?

A. Why, there is no assumption there whatever as to what any train has. It is the total cost per ton taking all trains loaded heavy and those loaded light.

Q. It is not then a train computation?

A. No, no, it is a tonnage computation.

1596 Q. Now if it should be a fact that the greater number of tons of revenue paying freight is handled in the dressed meat or packing house product train than in the live stock train, that would affect the result of your computation, would it not, as between the train tonnage of those two trains?

A. As between the train tonnage or to given trains, one loaded with packing house product and the other loaded with live stock, yes.

Q. The one that handles the greatest number of tons will produce the greatest amount of revenue?

A. The one that handles the largest number of net tons.

Q. Do you know as to whether it is a fact that, on the Northwestern lines, the number of cars of packing house product and dressed beef will exceed the number of cars of live stock?

A. I have no knowledge of that subject.

Q. Now in your computation you have taken—in arriving at your terminal expense and at your operating expenses,—you have arrived at them by taking your gross operating expenses and the gross terminal expenses and dividing them by the total amount of tonnage over your road.

A. Yes.

Q. And in the terminals, by the number of cars. Now, if you were trying to make a comparison between two different commodities, as you are here, and it should appear that there were incidental

1597 expenses attached to the handling of one commodity which are not attached to the handling of the other, the effect of that would be, would it not, that you are taking a gross average as between the two, which does not represent the relation between the two?

A. I still think that the comparison is substantially fair, because we have taken in our expenses, into consideration, a great deal of business which costs us very much less to move than either one of those two commodities.

Included in this statement of tonnage on which we have based this cost, is everything; coal, brick, sand, lime, cement, and stuff that is loaded in far greater proportion of paying load to dead weight and that is moved as slowly as we want to move it and moved at our own convenience. It is all put in there and all charged with an equal share of the burden; so that in my judgment the statement I have made is quite fair as to the two items I have discussed.

Q. Undoubtedly it is fair so far as a statement of general average

is concerned; but, as a comparison between two particular commodities, you are including in your computation a great many things that do not properly enter into the computation; is that not true?

A. I don't think so.

Q. You include all the peculiar expenses attached to the handling of other products than packing house products and live stock?

A. No, I have not included them at all.

1598 Q. What you do is to lump everything, taking the general average?

A. That is what I did. I think it is more than fair to both the items that I have discussed.

Q. More than fair to what?

A. To both the items

Mr. SEVERANCE:

Q. That is, as between those items and the rest of the freight?

A. Between those items and the rest of the tonnage.

Mr. LYNDE:

Q. Your road then, does not suffer from any special congestion of the live stock traffic on particular days of the week or particular months of the year, between Chicago and Kansas City?

A. Not between Chicago and Kansas City.

Q. You don't know then as to what peculiar expenses, if any, is attached to the handling of that live stock traffic under those conditions?

A. I do not.

Q. I think you have already stated that it costs more money to pick up live stock at way stations than it does to handle a through train, have you not?

A. I think it does probably.

Q. Is it not a fact that during the last 20 years there has been a general decline in all freight rates throughout this country?

A. Yes.

1599 Q. Is it not a fact that that decline has reached such a point that freight rates are markedly lower in this country than they are anywhere else in this world?

A. That is true.

Q. Now what is that due to?

A. It is due to a variety of causes.

Q. Chiefly competition, is it not?

A. Yes, chiefly competition.

Q. When the Great Western put this contract in force by which the reduction was made in the packing house product and dressed beef rate, is it not true, Mr. Ripley, that, if the Northwestern Company wanted to participate in this traffic it had to meet that rate?

A. It is true.

Mr. SEVERANCE: May I just make one request now? That you will have made up a statement, and hand it in, showing the damages paid for delays on live stock between the Missouri river and Chicago?

A. For what time?

Q. For the years covered by your report; the last four years we will say, if it is convenient for you to do it.

A. Why, it certainly is not convenient and I don't know whether we can get at the figures, but we could easily do it for the year past.

Q. Well, for the year then.

Mr. LYNDE:

1600 Q. Now, it has been testified to here by the general manager of the Chicago & Northwestern Railway Company that the empty mileage on stock cars amounts to 99 per cent., that is to say that not more than one per cent., indeed less than one per cent. goes back loaded. Do you know anything about that on the Northwestern line?

A. I have no knowledge as to the conditions on the Northwestern line as I told you before.

Mr. DAWES:

Q. I want to ask the same question. Have you any special knowledge about the conditions under which stock and dressed beef product are moved on the Burlington road, or the peculiar expenses which may be incidental to both those commodities on that road?

A. Having been absent from the Burlington for fifteen years, I have no knowledge of it.

Q. Since that time, you have not given any special attention to this?

A. No.

Q. I notice one item in your annual report for 1905 which I would like to call your attention to. On page 29, gross earnings and operating expenses, the net earnings for the year ending June 30th, an item of stock yards labor for the year 1905, $58,678.00, 1904, $66,287?

A. Yes.

1601 Q. Should not those items be charged to the cost of handling live stock?

A. No.

Q. Why?

A. Because they are paid for in other ways. Those expenses represent expenses which were incurred at our large yards where we transact a general stock yards business and receive an income for it. Those services are paid for.

Q. Labor as well as supplies?

A. Yes.

Q. So the one hand washes the other?

A. Yes., we hope so. Those are feeding yards where we make a charge for bedding the cars and for supplies furnished and all that sort of thing and where our intention is to get even.

Examination by Mr. BAXTER:

Q. I understood you to say that the classification which you have introduced here was made up in your statistical department?

A. Yes.

Q. Is that presided over by Mr. Peabody?

A. Yes.

Q. How long has that department been in existence on your road?

A. About a year and a half.

Q. Are you aware of the fact that in the case of the Cattle Raisers Association of Texas against the Fort Worth, Denver & Sioux City Road and in the case of the Cattle Raisers Association of
1602 Texas against the Missouri Kansas & Texas Railroad Company, in which your company was a party, Mr. Peabody made up these two exhibits (handing exhibits to witness). Have you ever seen them before?

A. I cannot say as to that, I think so. I think I have seen them. Oh, yes, I have seen those.

Q. Have you confidence in their accuracy and reliability and in the accuracy and reliability of Mr. Peabody?

A. I have no reason to doubt it.

Q. You have no reason then to doubt that those exhibits are correct?

A. I have no reason, whatever, to doubt it.

Q. Now, Mr. Ripley, doesn't your road pay more attention and are you not spending more money in endeavoring to ascertain the cost of hauling your freight, than any other road that you know?

A. I have no knowledge on that subject.

Q. Do you object to telling what you are spending on your statistical department?

A. Well, if it is information that is germane to this inquiry, which is desirable that the public should know, I have no objection, but it does not strike me that I ought to be obliged to state that, or that it bears in any way on this question.

Q. I want to show this: That heretofore the railroad companies of the United States have not paid the attention to trying to
1603 ascertain the cost of the transportation of freight that they are now paying to that feature of their business and that that is the case with your road particularly; that you are using extra efforts, beyond all the other roads, what they have heretofore used, to solve that problem, if you can; is that true?

A. That is possibly true. We made up our minds some time ago that we wanted to know more than we did know about what our business was costing us and what it was costing to operate our various divisions, and what the relative cost of the various classes of business was.

Q. Now before your statistical department took up the inquiry, as I understand it, railroad companies generally could tell you the average cost of hauling a ton of all freight over all portions of their road?

A. Oh, yes.

Q. But they could not tell you the average cost per ton of hauling it over particular divisions of that road.

A. That is right.

Q. Now, your road has ascertained that, by Mr. Peabody's mode of calculation, have they not?

A. We have tried to.

Q. So that you can take a car of freight originating at any point on your road and trace it from that point to Chicago?

A. No, we cannot take an individual car. We can tell
1604 after the event. That is all any of us can do is to tell after the event, after the accounts are made up what it has cost us to move the entire tonnage.

Q. You can tell more than what the other roads can tell. They can only give you the average cost per ton per mile over the whole system.

A. Yes.

Q. And you can give the average cost per ton per mile of hauling a car over any division on your road?

A. We will be able to do that but not on any one car, no.

Q. Not any one car but the average of all cars over all divisions?

A. We expect to be able to tell the average of all cars over each division, and, further, we hope some day to be able to subdivide that so we can tell what those expenses were, what class of expenses.

Q. That is a very material advance, isn't it, in railroad accounting?

A. Well, that is a question that remains to be seen as yet, whether the game is worth the candle.

Q. At all events you are trying to do it?

A. So far as our investigations have gone up to this date, it has occurred to me sometimes that we would be happier if we did not know so much.

Q. How is that?

A. It has occurred to me sometimes that we would be happier if we did not know so much.

Q. But you are trying to ascertain that, in good faith?

A. Yes, we are trying to find out.

1605 Redirect examination by Mr. COWAN:

Q. What does it cost you to clean your cars, if you know, your stock cars?

A. I cannot give you the exact figures.

Q. Is there any appreciable difference in the price per car of cleaning stock cars and the cost of cleaning box cars on the average?

A. Well, it costs a little more to clean stock cars. You don't clean them as often, but it costs more when you do clean them. Every box car, unless it has had something deleterious in it, it is simply a question of sweeping it out, and with the other, it is a question of shoveling it out.

Q. Are not the cars sent out for grain and other traffic left at side tracks to be loaded, the same as stock cars are?

A. No. Oh, excuse me?

Q. Is it not a fact that cars which go out for grain from some local station are set in there and left there to be loaded like stock cars?

A. Oh, yes.

Q. You seem to have something that you want to read so I will wait till you get through.

A. It is a statement as to the extent of the local territory east of Kansas City which is covered by the 20 cent rate; also a statement of switching charges paid in Kansas City.

Q. Just read it then.

1606 A. Well, it varies, it is quite a long statement.

Mr. SEVERANCE: Read the whole statement so we can get it in the record.

A. Well, the business of Armour & Company, on that we pay $4.06; the business of Swift & Company, we pay $4.06, except in cases where it comes out over the Union Pacific and then we pay $5.03. In the case of the Cudahy Packing Company we pay $4.06; in the case of Nelson Morris we pay $5.06; in the case of The Morris Packing Company, $4.06; Swarzschild & Sulzberger, $4.06 when it comes out over the Kansas City Belt and $6.06 when it comes out over the Kansas City Southern; Fowler Packing Company, $4.06; Jacob Dold Packing Company, $4.06.

The 20 cent rate east of Kansas City on cattle applies as far east as Cama, which is 185 miles east from Kansas City and on hogs it applies for 141 miles east of Kansas City and on sheep for 201 miles.

The proportional rate on cattle which you asked about, from Kansas City to Chicago ranges from 15¼ to 20 cents.

Mr. SEVERANCE: That is a statement here of switching charges that you just read and the switching charges are in most cases $3.00 and range from that up to $5.00.

A. $3.00 to $5.00.

Q. And the other is called "Belt Trackage, about" some

1607 estimate?

A. It is based on the Belt line earnings. It really does not belong in there. The switching paid to the various companies outside of the Belt is all I had in mind when I made the original statement. I called it $4.00 and you will see that it is from $3.00 to $5.00.

Q. It is $3.00 in the case of the Armour Packing Company and The Missouri Pacific——

A. No, no, those are the parties who do the switching.

Q. Well, then it is $3.00 for Armour & Company, $3.00 for Swift & Company except Union Pacific which is $4.00, Cudahy is $3.00, Nelson Morris, $4.00, Swarzschild & Sulzberger, $3.00 and when switched to the Kansas City Southern, $5.00; Fowler Packing Company, $3.00 and Jacob Dold Packing Company, $3.00; that is correct, is it?

A. Yes.

Mr. COWAN:

Q. Now will you please be kind enough to make a statement to be filed hereafter showing the comparative cost to your company of live stock shipped from Carrolton,—I assume that as an average—as against packing house products and dressed meats shipped from Kansas City? I will give you a memorandum of that if you will have it made up to be filed.

A. Well, we will hunt that up, that will be the best we can do.

Q. How much additional cost is it in your opinion to
1608 handle a train from Kansas City to Chicago when one of the same tonnage comes at 18 miles an hour and one at 20 miles an hour; is there any material difference in those two as to the cost, with the same tonnage?

A. There is a difference, but nothing that is ascertainable, that can be found out. There is a theoretical difference and, in all probability there is a practical difference, a little difference as between the 18 and 20 miles an hour but it would be impossible to arrive at anything definite.

Q. It would be so small as not to be of much importance?

A. Yes.

Q. Will you please also make up a statement to be filed, showing the items, but not in dollars and cents unless it is convenient, of expenses which are incident to the handling of packing house product and dressed meat, which are not incident to the handling of live stock? Also items which are incident to live stock which are not incident to packing house product and dressed meat?

Mr. SEVERANCE: I don't want that statement filed, I want Mr. Ripley to bring it back here so we can examine him about it.

Mr. COWAN: I said I wanted it filed.

Mr. SEVERANCE: I object to it then, unless we have an opportunity to cross examine and I now notify counsel of that fact.

1609 Mr. COWAN: I notice that you have been interrogated with respect to several points concerning the difference in the cost, and you have named several items and I make this request in order that you may have an opportunity to name all the items, as nearly as they occur to you so that they can be hereafter filed, without attempting to do it this afternoon.

Mr. SEVERANCE: I did not mean this afternoon, but if the statement is prepared by Mr. Ripley we want him to come here with it.

Mr. COWAN: In your statement there appears a difference of one ton in the weight of the packing house product and the dressed meat car. May that not be due to the fact that there is more ice carried in the one than in the other?

A. That may be.

Q. With respect to the relative cost of maintaining the cars, is it your opinion that it costs more for the matter of maintaining the packing house product and dressed meat cars than the live stock?

A. Yes, I think it costs more to maintain a refrigerator car than a live stock car.

Q. When you estimate six and four tenths mills as the cost of maintaining a stock car, I believe you said that it was an abnormal expense for that particular year.

A. Yes.

1610 Q. The six mills which is paid to private stock car companies is supposed to be sufficient to pay for maintenance, and some profit for the ownership of the car?

A. It is supposed to be.

Q. Do you think it serves the purpose of doing that on the average?

A. I have no knowledge on that subject. The stock car companies are furnishing the cars to the railroads for that sum and they are living and maintaining the cars.

Q. Does it cost your company any more to maintain the stock cars than the average cost of the maintenance of the box cars?

A. No, I think it is somewhat less.

Q. Why is that?

A. They have not got to be kept in quite as good condi-
1611 tion. There is less work on a stock car than there is on a box car anyway. You haven't got to keep the roof so tight.

Q. Is the return transportation for the man in charge of live stock considered by you except the item of expense charged to that business?

Mr. SEVERANCE: I object to that as immaterial.

Mr. COWAN:

Q. Except such of it as reduces your passenger earnings by reason of men going free who should pay passenger fare.

Mr. SEVERANCE: That is objected to as immaterial.

The COURT: The objection is overruled.

A. I can hardly say that it enters into our calculations as an item of expense, because the theory is that those people would not travel, or would not travel to any extent; a small percentage of them would travel, if they were not given transportation. On the other hand, we are restive under it because we know that it is abused a great deal and we would like to get away from it if we knew how.

Mr. COWAN:

Q. Mr. Ripley, the printed annual report which I exhibited to you this morning of 1903 of your Company, represents correct statistics as to the financial statement of the operation and the traffic?

A. I think so.

1612 Mr. COWAN: I desire to offer as part of his evidence the annual report of 1903; I happen to have it here, and will offer the one you have if you desire (addressing Mr. Severance).

Mr. SEVERANCE: I have offered the one of 1905.

Mr. COWAN: I happen to have this here (referring to the report of 1903), and thought I would offer it as part of Mr. Ripley's evidence. If you would kindly furnish us one for 1904 and 1905, I should be very glad to have it.

The WITNESS: There is one copy here, there are plenty of others.

Mr. SEVERANCE: I put in the one.

Mr. COWAN: You did not offer it. You may offer it now if you like, or I will offer for you in this connection.

Mr. SEVERANCE: I intended to have it identified so I could ask him about particular items, that was all. I did not intend to offer the whole report.

Mr. BAXTER: I again note the objection I made yesterday to the introduction of these entire reports except for the purposes of getting abstracts from them. I do not want them to go into the transcript.

Mr. COWAN: It will not be contended by me that they shall all go in.

The COURT: You need not incorporate anything except the portions you desire.

1613 (The annual report of the Atchison, Topeka & Santa Fe Railway Company for the year 1903, above referred to, was marked "Ripley, Exhibit "D," and the report of the same company for 1905, was marked "Ripley, Exhibit 1.")

Mr. COWAN:

Q. There was one thing you said in your testimony, that cars were bedded five or six inches deep with sand. I wanted to inquire if you claim to know the depth to which they are bedded for shipment?

Mr. DAWES: I object your Honor, it is his witness, and he is cross examining him.

Mr. COWAN: If I see a man has made a mistake, it is not improper to call his attention to it.

The COURT: Well, you can call his attention to it again.

Mr. COWAN:

Q. You spoke about the weight of the sand as probably about a ton, while five or six inches would probably make four or five tons.

Mr. DAWES: Well, now, wait a minute.

Mr. SEVERANCE: I object to the testimony on the part of the counsel, and move that it be stricken out.

The COURT: The motion to strike out is sustained.

Mr. COWAN:

Q. Well, what do you say about whether your

1613a RIPLEY EX. No. 1.

1905.

Tenth Annual Report of the Atchison, Topeka & Santa Fe Railway Company for the Fiscal Year Ending June 30, 1905.

* * * * * * *

1613b Office of the Atchison, Topeka & Santa Fe Railway System, No. 5 Nassau Street, New York City.

SEPTEMBER 6, 1905.

To the Stockholders:

Your Directors submit the following report for the fiscal year July 1, 1904, to June 30, 1905, inclusive.

The Lines composing the Atchison System, the operations of which are embraced in the following statements, are as follows:

	June 30, 1905.	June 30, 1904.
Atchison, Topeka & Santa Fe Railway	6,839.98 miles.	6,822.53 miles.
Rio Grande & El Paso Railroad	20.17 "	20.17 "
Gulf, Colorado & Santa Fe Railway	1,328.74 "	1,329.05 "
Southern Kansas Railway of Texas	129.17 "	129.17 "
Total	8,318.06 "	8,300.92 "

The average mileage operated during the fiscal year ending June 30, 1905, was 8,305.40 miles. The total increase of mileage was 17.14 miles. The increase in the average number of miles operated compared with the preceding fiscal year was 125.81 miles.

* * * * * * *

1613c *Comparison of Operating Results.*

The following is a statement of the earnings and expenses of the System for the fiscal year ending June 30, 1905, in comparison with the previous year:

	Year Ending June 30, 1905.	Year Ending June 30, 1904.	Increase.	Decrease.
Earnings:				
Passenger	$16,045,380 27	$15,433,773 63	$611,606 64	
Freight	47,404,982 36	47,782,653 23		$353,670 87
Mail and Express	3,804,528 54	3,835,662 08		31,133 54
Miscellaneous	1,116,946 08	1,139,111 26		22,165 18
Total Earnings	$68,375,837 25	$68,171,200 18	$204,637 07	
Operating Expenses:				
Maintenance of Way and Structures	$11,385,418 33	$9,170,234 07	$2,215,184 26	
Maintenance of Equipment	10,914,864 47	10,006,135 41	908,729 06	
Conducting Transportation	21,362,859 64	21,295,960 11	66,899 53	
General Expenses	1,854,241 87	1,749,702 98	104,538 89	
Total Operating Expenses	$45,517,384 31	$42,222,032 57	$3,295,351 74	
Net Earnings from Operation	$22,858,452 94	$25,949,167 61		$3,090,714 67
Percentage of Operating Expenses to Earnings	66.57	61.94	4.63	

No portion of the earnings was derived from the transportation of Company material.

1613d The average tons of revenue freight per loaded-car mile increased from 13.87 to 14.05, or 1.30 per cent.

The average tons of revenue freight carried per freight-train mile increased from 269.81 to 281.85, or 4.46 per cent.

The average freight revenue per freight-train mile increased from $2.75 to $2.82, or 2.55 per cent.

The average passenger revenue per passenger-train mile decreased from $1.15 to $1.12, or 2.61 per cent.

The average total revenue per passenger-train mile decreased from $1.44 to $1.38, or 4.17 per cent.

Tons of revenue freight carried one mile increased 47,820,436 or 1.02 per cent., while freight-car mileage decreased 9,656,080 miles

or 2.01 per cent., and freight-train mileage decreased 571,710 miles or 3.29 per cent.

The number of passengers carried one mile increased 35,380,008 or 5.00 per cent. The passenger-car mileage increased 7,336,313 miles or 8.91 per cent., and the passenger-train mileage increased 1,018,696 miles or 7.62 per cent.

The following is a consolidated statement of the business of the System for each fiscal year during the period since January 1, 1896:

Fiscal year ending June 30.	Average miles operated.	Earnings, including income from other sources.	Expenses, including taxes, rentals, and other charges.	Fixed interest charges.	Adjustment bond interest.	Surplus.
1897 18 mos.	6,443.81	$14,541,649 81	$10,038,455 30	$6,900,007 91	$1,540,380 00	$62,846 60
1898	6,936.02	39,396,126 41	30,524,179 15	4,892,148 30	2,053,840 00	1,825,958 96
1899	7,032.62	40,782,833 47	29,353,818 11	5,188,132 40	2,053,840 00	4,167,343 36
1900	7,341.34	46,438,899 04	29,434,048 13	5,291,326 50	2,053,840 00	9,719,684 41
1901	7,807.31	54,807,479 78	31,510,665 40	5,776,970 83	2,053,840 00	12,465,903 55
1902	7,855.38	60,277,944 33	36,272,402 45	6,385,145 00	2,053,840 00	15,564,526 88
1903	7,965.13	63,668,390 99	40,635,576 48	7,080,645 24	2,053,840 00	13,898,329 27
1904	8,179.59	69,419,975 41	44,641,434 10	7,364,930 00	2,053,840 00	15,359,771 31
1905	8,306.40	69,189,739 65	47,835,883 50	7,557,670 09	2,053,840 00	11,742,346 06

1613*e* The following statement shows the gross earnings of the System lines (exclusive of income from other sources) per mile of road operated for each fiscal year since July 1, 1896:

Year ending June 30.	Gross earnings from operations.	Average per mile of road.
1897	$30,621,230 10	$4,752 04
1898	39,214,099 24	5,653 69
1899	40,513,498 63	5,760 80
1900	46,232,078 23	6,297 49
1901	54,474,822 61	6,977 41
1902	59,135,085 53	7,527 97
1903	62,350,397 28	7,827 92
1904	68,171,200 18	8,334 31
1905	68,375,837 25	8,232 70

The following statement shows the development of the freight and passenger earnings of the System since July 1, 1896:

Year ending June 30.	Freight earnings.	Passenger earnings.
1897	$22,067,686 77	$5,574,288 31
1898	28,588,716 76	7,347,361 59
1899	29,492,585 65	8,126,141 85
1900	33,729,332 83	9,334,661 57
1901	39,052,557 43	11,678,017 25
1902	41,815,607 05	13,439,384 57
1903	44,622,438 71	13,469,985 78
1904	47,762,653 23	15,433,773 63
1905	47,408,982 36	16,045,380 27

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1613*f* RIPLEY EX. "D."

1903.

Eighth Annual Report of The Atchison, Topeka & Santa Fe Railway Company for the Fiscal Year Ending June 30, 1903.

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1613*g* Office of The Atchison, Topeka & Santa Fe Railway System, No. 5 Nassau Street, New York City.

SEPTEMBER 2, 1903.

To the stockholders of The Atchison, Topeka and Santa Fe Railway Company:

Your Directors submit the following report for the fiscal year July 1, 1902, to June 30, 1903, inclusive:

The Lines composing the Atchison System, the operations of which are embraced in the following statements, are as follows:

	June 30, 1903.	June 30, 1902.
Atchison, Topeka & Santa Fe Railway	6,173.61 miles.	6,071.22 miles.*
Rio Grande & El Paso Railroad	20.17 "	20.17 "
Gulf, Colorado & Santa Fe Railway	1,202.89 "	1,177.81 "
Southern California Railway	478.07 "	478.33 "
Southern Kansas Railway of Texas	129.17 "	129.17 "
Total	8,003.91 "	7,876.70 "
Increase	127.21 "	

* NOTE.—This includes the Santa Fe Pacific Railroad and the San Francisco and San Joaquin Valley Railway, which in the last annual report were stated separately.

The average mileage operated during the fiscal year ending June 30, 1903, was 7,965.13 miles. In the above statement 90.94 constructed miles of the Eastern Oklahoma Railway are not included as they had not been turned over to the operating department.

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1613*h* *Comparison of Operating Results.*

The following is a statement of the earnings and expenses of the System for the fiscal year ending June 30, 1903, in comparison with the previous year:

	Year ending June 30, 1903.	Year ending June 30, 1902.	Increase.	Decrease.
Earnings:				
Passenger	$13,469,985 78	$13,439,384 57	$30,601 21	
Freight	44,622,438 71	41,81[illegible],607 05	2,806,831 66	
Mail and Express	3,411,697 68	3,089,122 85	322,574 83	
Miscellaneous	846,275 11	790,971 06	55,304 05	
Total Earnings	$62,350,397 28	$59,135,085 53	$3,215,311 75	
Operating Expenses:				
Maintenance of Way and Structures	$5,304,892 04	$6,141,466 39	$3,163,425 65	
Maintenance of Equipment	8,510,543 09	7,864,951 25	645,591 84	
Conducting Transportation	19,023,145 35	18,442,437 66	580,707 69	
General Expenses	1,598,536 06	1,460,413 33	138,116 73	
Total operating Expenses	$33,437,110 54	$33,909,268 63	$4,527,841 91	
Net Earnings from Operation	$23,913,286 74	$25,225,816 90		$1,312,530 16
Percentage of Operating Expenses to Earnings	61 65	57.34	4.31	

1613*i* No portion of the earnings was derived from the transportation of Company material.

The average tons of revenue freight per loaded car mile increased from 13.68 to 14.15, or 3.44 per cent.

The average tons of revenue freight carried per freight-train mile increased from 247.51 to 279.67, or 12.99 per cent.

The average freight revenue per freight-train mile increased from $2.53 to $2.65, or 4 74 per cent.

The average passenger revenue per passenger-train mile decreased from $1.04 to $1.03, or 0.96 per cent.

The average total revenue per passenger-train mile increased from $1.28 to $1.29, or to 0.78 per cent.

Tons of revenue freight carried one mile increased 473,792,445, or 11.20 per cent., while freight-car mileage increased 23,525,926 miles, or 5.30 per cent., and freight-train mileage increased 290,421 miles, or 1.76 per cent.

The number of passengers carried one mile increased 5,495,773, or 0.90 per cent. The passenger-car mileage increased 2,081,582 miles, or 2.77 per cent., and the passenger-train mileage increased 174,320 miles, or 1.35 per cent.

The following is a consolidated statement of the business of the System for each fiscal year during the period since July 1, 1896:

Fiscal year ending June 30.	Average miles operated.	Earnings, including income from other sources.	Expenses, including taxes, rentals and other charges.	Fixed interest charges.	Adjustment bond interest.	Surplus.
1897	6,443.81	$30,875,729 19	$24,814,425 56	$4,608,858 03	$1,540,380 00	*$87,934 40
1898	6,936.02	39,396,126 41	30,513,553 17	4,992,148 30	2,053,840 00	1,836,584 94
1899	7,032.62	40,762,933 47	29,332,964 11	5,188,132 00	2,053,840 00	4,187,997 36
1900	7,341.34	46,498,889 04	29,414,427 56	5,291,326 50	2,054,840 00	9,739,304 98
1901	7,807.31	54,807,379 78	34,502,039 87	5,776,970 33	2,053,840 00	12,474,529 08
1902	7,855.38	60,275,944 33	36,272,432 45	6,385,145 00	2,053,840 00	15,564,526 88
1903	7,965.13	63,668,390 99	40,635,576 48	7,089,645 24	2,053,840 00	13,898,329 27

*Deficit.

1613*j* The following statement shows the gross earnings of the System lines (exclusive of income from other sources) per mile of road operated for each fiscal year since July 1, 1896:

Year ending June 30.	Gross earnings from operations.	Average per mile of road.
1897	$30,621,230 10	$4,752 04
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1900	33,729,332 83	9,334,661 57
1901	39,052,557 43	11,678,017 25
1902	41,815,607 05	13,439,384 57
1903	44,622,438 71	13,469,985 78

* * * * * * *

1614 evidence is more certain as to the depth or are you more certain as to the weight?

Mr. DAWES: I object to that.

The COURT: Let him answer that.

A. I undoubtedly overstated the depth.

Mr. COWAN:

Q. Have you any particular personal knowledge about either the weight or the depth the sand is put in?

A. Well, I have not had any practice in putting it in, no.

Q. What was it you stated that the weight was?

A. I said I thought about a ton, but of course that is absurd in connection with the other, and upon reflection, the other is absurd too, the depth, there is no necessity for any such depth, and there is no such depth.

Q. Do you charge for the bedding, Mr. Ripley,

A. No, we do not charge.

Q. Mr. Ripley, independent of the figures which you have made in regard to the cost of transportation here, and the method you have used, independent of that fact, from your experience as a man, operating a system of railroad, does it cost more to handle the live stock, or handle the refrigerator cars loaded with dressed meat and packing house product than it does the live stock cars over the same division for equal distances?

1615 Mr. SEVERANCE: I object to that your Honor, as not redirect examination.

The COURT: I will let him answer.

The WITNESS: May I answer that?

The COURT: Yes.

Mr. COWAN: I am asking now, independent of the calculation, as a matter of judgment?

A. I think that, ton for ton, it would cost less to haul live stock, and car for car costs less.

The COURT: Isn't that a fair basis on which to determine your rate, that is the amount of the cost to you of the service?

A. That would be a very disasterous basis for the counrty. It does not cost appreciably less to haul coal than it does pianos. If we should charge the coal rate on the piano, it would be a ridiculous percentage on the value of the article. If we should charge the piano rate on the coal, it would be so prohibitory that everybody would burn wood, or wrap themselves in comfortables.

The COURT: Take what it costs you with a fair profit on everything, why should not that fix the rate, have you answered that?

A. If we did that, we would make the same rate on everything. Practically the movement of each ton of freight would cost within a very narrow range, the movement of each ton of freight costs us the same. Now, if we had no classification, if we based every-

1616 thing on what it cost us with a fair profit, even supposing it were possible to determine what a fair profit would be, if we were to do that, we would prohibit the movement of a very large

number of commodities which now move in a very large volume, and we would be rendering a service in the case of other commodities, which would be ridiculously small as compared with the value of that service to the people who own the property.

Mr. COWAN:

Q. There is one other question, Mr. Ripley, I want to ask you and then I am through.

Independent of the cost of service as a single item, independent of the value of the service as a single item, but considering all of the conditions and circumstances surrounding the traffic and live stock and packing house products, and dressed meats, is it your opinion that the rates on the packing house products and dressed meats ought to be higher than on the live stock?

Mr. SEVERANCE: That is not redirect your Honor, he went into the whole thing.

The COURT: He has answered that before.

Mr. COWAN: The question is put in a very different form from what it was before.

Mr. SEVERANCE: That does not signify.

The COURT: He answered it, I think. You may answer
1617 again.

A. Yes sir, it is.

Recross-examination by Mr. SEVERANCE:

Q. But you said you would make a difference Mr. Ripley, between dressed meats on the one hand and packing house products on the other?

A. I would.

Q. Packing house products ought to be moved the cheaper of the two?

A. Yes sir.

The COURT: I was going to ask him to state his reasons for his answer to Mr. Cowan.

A. Because of the fact that packing house products need not of necessity be moved in a special class of car, and may be moved in a car of cheaper construction and with less dead weight in proportion to the paying load and because they can be loaded per car a great deal heavier.

Q. Why should they both be higher than the live stock?

A. For the reasons which I have tried to explain: Primarily because one car load of packing house products means a condensation of about three car loads of hogs and is worth in dollars and cents nearly as much, if not quite as much as three carloads of hogs; and because a car load of dressed meats means a condensation of about two to three car loads of cattle, and is worth about two or three times as much.

1618 Mr. SEVERANCE:

Q. Now, let me ask you a few questions about that Mr. Ripley.

As I understand you to say, the car load of dressed beef is the condensation of three car loads of cattle?

A. From two to three I said.

Q. Two to three. Now, what per cent. will cattle dress of dressed beef?

A. Well, I would rather you would get some expert on that.

Q. What do you make the statement if you don't know?

A. Why, I know in a general way.

Q. Well, in a general way, how much will they dress then?

A. Do you mean in pounds?

Q. Yes, sir.

A. I can't tell you.

Q. Well, in percentages?

A. I don't know about what they dress in percentages.

Q. Well, now, you say that packing house products represent the condensation of three times, or three car loads of hogs, we will say, is that what I understood you to say, to one car load?

A. Yes sir.

Q. Now what percentage of the full weight of the hog will it dress?

A. I don't profess to have any expert information on the subject.

Q. Would the fact, Mr. Ripley, that it has been testified here by a number of witnesses that a hog would dress 80 to 82 per cent. of its weight have any effect on your judgment that it takes
1619 three car loads of hogs to make a car load of packing house products?

A. Well, I should have great respect for anybody who testified to that effect, or who had any knowledge on the subject; I would subordinate my opinion to his knowledge.

Q. Yes.

A. I do know that ordinarily in our packing house centers that there is about one-third as much dressed beef comes out as—that is about one-third the number of cars of dressed beef goes out as there are of cattle coming in.

Q. What about the products?

A. In the case of products, I think it is about the same.

Q. That is, you mean, there are two cars of dressed beef and product for every three cars that come in?

A. No, I do not, I mean one to three.

Q. Now, isn't it a fact Mr. Ripley, that the tonnage of the cattle or the hogs, either one, going in, together with the tonnage of the ice, and the tonnage of packages, that these products are about—exceeds by at least 20 per cent., or just about 20 per cent., the tonnage of the product?

A. In the case of packing house products?

Q. Yes.

A. In the case of the hogs, I think that may be so, taking the cooperage in, taking everything that goes into the product, but that has not any bearing, in my judgment, on this question.

1620 Q. But you don't know what percentage of that 20 per cent. is hog, and what percentage of it is cooperage?

A. No.

Q. The cooperage pays the same rate when it comes out?
A. I think so.
Q. And the ice pays the same rate when it comes out?
A. No, it don't pay anything, it don't pay a cent.
Q. Don't you pay by weight on the contents?
A. No sir.
Q. How is that?
A. No sir, the ice is free.
Q. The ice goes free?
A. Yes sir.

The WITNESS: Will you excuse me, I have made, without any idea that this would keep me so long, a very important engagement with a man out of town, at four o'clock. I would like to be excused.

The COURT: You would better go and we can ask you any further questions when you come back with your figures.

Mr. SEVERANCE: Yes, we can finish it up when you bring in these figures Monday morning.

The COURT: Whenever it is convenient for him.

The WITNESS: Monday morning would be quite satisfactory to me, any time.

The COURT: Can you get all these figures asked for by Monday?

The WITNESS: I think so.

The COURT: All right, return Monday morning.

1621 Mr. BAXTER: I would like if your honor please, to have these two compilations, made by Mr. Peabody, to appear as exhibits to Mr. Ripley's testimony.

The COURT: Very well.

(The statements here referred to, were marked "Ripley Exhibit D, Mr. Baxter's Cross Examination, and Ripley Exhibit E, Mr. Baxter's Cross Examination" respectively.)

EXHIBITS

NOT

SUITABLE

FOR

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FILMING

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Vol. II.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 852: 73

THE INTERSTATE COMMERCE COMMISSION,
APPELLANT,

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY
ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 28, 1906.

(20,317.)

A. SYKES, called as a witness in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. What is your name?
A. A. Sykes.
Q. Where do you live?
A. Ida Grove, Iowa.
Q. On what railroad?
A. C. & N. W.
Q. What is your business?
A. Farmer and feeder and shipper.
Q. Of what?
A. Live stock.
Q. Hogs and cattle?
A. Yes sir.
Q. To where do you ship?
A. To Chicago.
Q. How often?

A. I just feed what I ship, that is, I ship what I feed
1622 myself, my own feeding, perhaps four to six times a year I ship into Chicago.

Q. How long have you been in the business?
A. I have been shipping from Ida Grove for twelve years.
Q. Is that a large shipping station?
A. Yes sir.
Q. Are there any larger shipping stations than that on the Northwestern?
A. I think not.
Q. Are you well acquainted with the situation, size and conditions of the stock yards at that place?
A. Yes sir.
Q. Do you know the cost and expense of construction of structures similar to the stock yards?
A. Yes sir, buildings, and the price of labor and material.
Q. Do you know definitely or approximately the value of the stock yards there, and the cost of construction?
A. I believe I do, yes sir.
Q. State the size of the stock yards and their value?
A. The stock yards at Ida Grove consists of nine pens, or eight pens, and a receiving pen. Those pens, to the best of my knowledge are 48 foot square, the receiving pen is a little smaller; and a scale and watering troughs in some of the pens, some of — have watering troughs, and some haven't.
Q. What is the character of construction?
A. The yards are built of boards solid from the bottom up, five foot high, with a post every eight foot.
Q. With scantling between to nail the boards to?

A. No sir, the boards are nailed right on to the posts, the
1623 posts are set in the ground, and the boards are nailed lengthwise on the posts the same as you make a board fence, but nailed

solid, instead of leaving spaces between the boards, it is a solid fence from the ground up. And then the chutes are built of about inch stuff, the loading chutes.

Q. How many chutes?

A. Two loading chutes.

Q. What sort of stuff are these boards?

A. At the loading chutes?

Q. No, the boards?

A. The boards are what we call sheathing, ordinary sheat-ing, inch boards.

Q. One by twelve or one by six?

A. Any width, there is no regular width in them.

Q. How long have these stock yards been built?

A. Well, to the best of my knowldege, it is twelve years since they were built.

Q. What condition are they in?

A. I wish to explain there, the stock yards were on the other side of the track, on the south side of the track, and to the best of my knowledge twelve years ago they were moved across on to the north of the track, and rebuilt out of new material.

Q. Out of the old material?

Mr. SEVERANCE: All new, he said.

The WITNESS: All new material to the best of my knowl-
1624 edge, yes sir. Unless it was for kind of patching up or something, I don't think there was anything of the old yards used to any extent.

Mr. COWAN:

Q. What is their condition now?

A. The condition, I would say that they are in fair repair.

Q. What would it cost to keep those stock yards in repair of the character of repairs that have been made on them for the last twelve years?

Mr. LYNDE: Your Honor, I object to that question. There is no foundation laid for that. We don't know what the character of the repairs is that was made on them, or what this witness knows as to that, or the cost.

The COURT: What do you know about that? Do you know about the repairs made on them by the company?

A. I think I know of most of the repairs that have been made there. I live right there in Ida Grove, and visit the yards frequently.

The COURT: Answer the question.

A. To the best of my knowledge there has been——

Mr. LYNDE: I still make my objection.

The COURT: The objection is overruled.

A. There has been three watering troughs replaced in the twelve years, at a cost, I would say, of $3 apiece. It takes a hundred
1625 foot of lumber to construct each one of those watering troughs, which is worth on the market there, $20 a thousand, that class

of material. And as to the other repairs, I should make an estimate of $100 including the watering troughs.

The COURT: One hundred dollars for the whole period?

A. Yes sir, $100 for the whole time including the watering troughs and all. That has been in repairing gates and such as that. There has been no material repairs in other respects, except in the gates and something of that kind, on account of the substantial condition of the yards, being built in the first place the way they were, substantially built, why the yards have been kept in good repair with very little expense.

Mr. COWAN:

Q. Now, what is the cost of those stock yards, what is the value of the stock yards, or the cost of building?

Mr. LYNDE: I object to that on the same ground, there is no foundation laid to show the competency of the witness.

The COURT: The objection is overruled.

A. I would say, in making a fair estimate, and I have endeavored to be fair in this matter and figure out, as I am well posted on the price of materials and labor there, that those yards would cost at Ida Grove, right around $1,000, $800 to $1,000 complete as they stand, when they were constructed.

1626 Mr. COWAN:

Q. $800 to $1,000 when they were constructed?

A. Yes sir. That includes the land and the scale and all that pertains to the yard, except the trackage, the switch.

Q. Is that switch used for other purposes besides stock yards business?

A. Well, not to any great extent.

Q. Who loads the cars, in loading, the shipper or the railroad?

A. The shipper.

Q. Who sets the cars to the chutes, the shipper or the railroad?

A. Well, now, if we are only shipping a few loads, the shipper sets them. If we have a train load, we have to wait for an engine, that is the condition there.

Q. Do the cars always come to you clean?

A. No sir.

Q. What percentage of cars come to you cleaned?

A. Well, now that would be a difficult question to answer correctly. I would say this: In the summer a much larger per cent. of cars come to us clean than in the winter-time. In the winter-time a small per cent. of the cars come to our station cleaned, in the summer-time a large per cent. come cleaned.

Q. What sort of bedding do you use in the shipment of cattle and hogs?

A. We use straw altogether for cattle in our territory, and for hogs in cold weather, during the warmer monts*h*, we use sand or gravel, sometimes cinders.

Q. Who furnishes the sand and gravel?

1627 A. The Northwestern railroad company.

Q. How much do you put in a car?

A. I estimate it at a yard of sand to bed a car.

Q. How do you come to estimate it at a yard?

A. Well, sir, when I used to bed my hog cars with cinders, we put in a yard of cinders, and so when we come to bed our cars for hogs with sand, we shoveled until we thought we had in about that amount.

Q. How do you know you put in a yard of cinders?

A. How do I know?

Q. Yes, sir, did you haul it?

A. Yes sir, hauled it on a wagon. We have a grist mill in Ida Grove and they gave us the cinders for hauling them away, and we bedded with those cinders.

Q. Are the sizes of the stock trains in which stock are carried now, greater or less than they were ten years ago?

A. Greater.

Q. What was the relative sizes of the trains ten years ago and now, in which live stock is carried?

A. I should say from a third to a half greater now than they were ten or twelve years ago, that is in numbers, number of cars.

Q. What was the size of trains ten years ago, how did they range?

A. Oh, from about 15 to 22 or 23 cars possibly, to the best of my knowledge, my recollection.

1628 Q. How is it now?

A. 30 to 42 and 43 and sometimes 45 cars they run on their stock trains.

Q. What time do you load in order to reach Chicago for example, on Monday morning's market?

A. Under present conditions at our station, we are compelled to load there, unless we have a special train, for what is called No. 34, that is due in Ida Grove at 7:00 o'clock, and it is liable to arrive anytime between that and daylight. It is a local train and sometimes we load at ten o'clock in the night, and sometimes at two in the morning, just as the train arrives, of course, we load. That is the conditions. If we have a special train, why, of course, there is an engine sent up there, and we load when they arrive, usually about seven o'clock in the evening.

Q. To reach Chicago for Monday morning?

A. Yes sir.

Q. What station do you go to, to get on the regular main line train?

A. Carroll, Iowa; the division point is Carroll, Iowa now.

Q. Are you on the main line, or a branch line?

A. No sir, I am on the branch between Carroll and Sioux City, what is called the Des Moines Branch.

Q. How far from Chicago?

A. 438 miles.

Q. How many hours does it generally take you from your place to Chicago?

A. 28 to 36 hours, depending on the conditions, weather conditions and so forth and so on.

1629 Q. How long does it generally take from your place to Carroll and from Carroll to Chicago?

A. Well, now, that local train runs very slow down there. We usually spend five or six hours running down there to Carroll.

Q. So you deduct that from the other figures you gave. I say if you deducted that from the other figures, that would give the length of time to come to Chicago?

A. Yes sir.

Q. Twenty-three to 28 or 29 hours?

A. From Carroll, yes sir, that is it.

Q. Now, do you know anything about meat trains, and whether they run faster or slower than live stock trains?

A. Yes sir.

Q. What do you know about that?

A. I happened to have the good fortune to get on a meat train once, when I was shipping some stock out of Sioux City.

Mr. LYNDE: That I move to have stricken out.

The COURT: The motion is overruled.

Mr. COWAN:

Q. Go ahead.

A. I was in Sioux City buying some feeder, and at that time the Northwestern run their meat train from Sioux City to Carroll, and connected with the main line train there from Omaha, which they are not doing at the present time, and this train left Sioux

1630 City at a time when I could get home along about five o'clock in the afternoon, and if I waited for the local No. 34, I would not get in there perhaps until ten o'clock, or midnight, and I made a fight to get on that meat train, and I finally succeeded through the assistance of some of my friends there, and I got on to the meat train and my stock was shipped on and sent down to Ida Grove on this refrigerator train. I say, it was a meat train—it was a refrigerator train, and the trainmen said it was dressed meat, that is all I know about it I did not see inside of the cars.

Q. And what speed did you make?

A. We run at the rate of 25 miles an hour on that trip.

Q. Now, in your observation, from your shipping experience, do the live stock trains run any faster than the meat trains?

A. Well, taking this one case for example, I should say—please state that question again.

Q. From your experience and observation, do the live stock trains run faster than the meat trains?

Mr. DAWES: I object, your Honor. He has not shown the slightest experience or observation, except this last incident.

The COURT: He may answer what rate of speed the stock trains run.

Mr. DAWES: He told that the only beef train he ever saw, he rode on practically.

1631 The COURT: I know what he said about that. Now, what rate do the stock trains run?

A. Well, now, figuring at the rate that it takes us to run from Ida Grove to Chicago, it would figure 16 or 17 miles an hour, I guess, in the neighborhood of that.

Q. Did you ever have any other experience or observation of dressed meat trains?

A. I never rode on any other dressed meat train, no sir.

The COURT: That is all.

The WITNESS: And I say, that is the only way I can determine is to ride on the trains, then I know how fast they run.

Mr. COWAN:

Q. Do you come with your live stock yourself?

A. Nearly always, yes sir, I nearly always accompany the stock.

Q. Did you ever observe any side tracking of live stock trains to let meat trains pass, or side tracking of meat trains to let live stock trains pass?

A. I have at division points, where we have been lying there. Of course, they said we were waiting to get out. Now, of course, it is pretty hard for stockmen to tell what they are waiting for. They will tell you they are waiting to get out.

Mr. LYNDE: I object to that.

The COURT: Yes, just answer the question.

Mr. COWAN:

Q. Do you know of dressed meat trains coming in and
1632 going out ahead of you?

A. Yes sir, I have observed dressed meat trains pass at these division points where we were waiting to get out, as they called it.

Q. Going in the same direction you were?

A. Going in the same direction we were, yes sir.

Q. Pass you and go on ahead of you?

A. Yes sir. They would go on and we would lie there.

Q. Did you catch up with them then when you went on?

A. No sir, not to the best of my knowledge.

Q. What is the weight of your cattle that you shipped?

A. I usually pay freight on 22,000 to 24,000 pounds.

Mr. DAWES: I suggest that the witness answer the questions, your Honor.

The COURT: Yes, answer the question. The question is: What is the weight. Repeat the question.

Mr. COWAN:

Q. What do the cattle weigh that you ship per car, a 36 foot car?

A. What do they weigh?

Q. Yes sir.

A. Now, do you mean, what do I pay freight on, or what do I actually load.

Q. You answered my question, now they want you to answer a question. What do they weigh?

Mr. DAWES: He may not pay on all he ought to.
Mr. COWAN: That is true.
A. The load of cattle, do you mean?
1633 Q. Yes.
A. We usually load about 26,000, 24,000 to 26,000.
Mr. LYNDE: And pay on 22,000 pounds.

Mr. COWAN:

Q. Now, taking the stock yards, other than Ida Grove, what ones do you know about?
A. Why, I never shipped from any station only Ida Grove.
Q. I didn't ask you about that, I asked you the others that you knew about.
The COURT: Do you know of any others?
A. Yes sir.

Mr. COWAN:

Q. What stock yards?
A. Battle Creek, Arthur, Danbury.
Q. Are these stock yards at Ida Grove larger or smaller than the other stock yards along the line?
A. They are larger.
Q. What are the sizes of the other stock yards?
A. They usually contain six pens.

Mr. DAWES: If your Honor please, I don't know whether you have passed on this particular question or not, but it seems to me so obvious that we ought not to be compelled to go into this, that I venture again to object. The only testimony which this
1634 can possibly rebut, is testimony, if this is the Northwestern road to which he is referring, the testimony of Mr. Gardner, who testified to the general cost of the stock yards on his line. Now, if he should prove ten, twenty or thirty out of six hundred yards, it would not tend in any way to rebut the testimony of Mr. Gardner that the average cost was $1200, or whatever it was he testified. He may pick out fifty, and these may be the fifty that he is now testifying about that cost less than the average; but it has no tendency whatever to rebut the testimony of Mr. Gardner on that subject unless my Brother says that he is going far enough into this question, going to examine enough of these men on particular stock yards to refute the conclusion Mr. Gardner drew. In such a case as that, I acknowledge the testimony would be competent, but no isolated case under any rule of evidence is admissible in any court.

The COURT: I think that is true. I am letting it go in on the theory it is the shortest way around it, unless you are going to introduce a whole lot of it, in which case, I would shut it all out.

Mr. COWAN: If the Court please, I am going to ask the witness another question in regard to that. These stock pens as shown are of substantially the same character, some larger and some smaller. Dependent on the number of pens, they are all built substantially alike. Certainly it would not be necessary to go into the construc-

tion of all of these pens to inform the Court as to the prob-
1635 able cost of repairs and the like, and if Mr. Gardner has mistakenly stated the cost of the pens, or mistakenly stated the cost of the repairs, certainly if I have taken Ida Grove, which is the largest stock yards in that part of the country, and stated what that originally cost, and what the repairs cost, then it seems to me a fair inference that other stock yards of that size and character did not cost more, and the repairs did not cost more.

The COURT: I do not think it is worth while to take time on that. The best way to get at it is to go through them and measure them, and examine the prices, and prove it. That would be the best evidence. The other side has given evidence of what their records show they cost. I don't think it is worth while to go into that to any great extent.

Mr. COWAN:

Q. What is the weight of the bedding in your car?

A. We bed with straw there, and we figure to bed three cars with a good load of straw; that would perhaps be about 500 pounds to the car.

Q. Does the shipper furnish it?

A. Yes sir.

Q. What is the weight of the bedding and the contents of the car after your live stock are unloaded from the car?

A. I have no way of knowing that only to estimate it.

Q. Well, according to your judgment, you see it?

1636 Mr. LYNDE: I object to that.

The COURT: He can give his judgment, the objection is overruled.

A. My judgment would be that in dry weather, it would vary from 600 to 800 pounds, and during a trip of rainy, wet weather, when it absorbed the moisture, and it remained, the refuse, perhaps 800 to 1000 pounds.

Mr. COWAN:

Q. How much sand do you put in your bedding per car for hogs?

A. This refers to cars bedded with straw, this estimate. How much sand?

Q. How much sand is put in for bedding hogs?

A. I answered that question once.

The COURT: He said a yard.

Mr. COWAN:

Q. What proportion of the cars are bedded with straw and what proportion with sand?

A. That is a difficult question for me to answer.

Q. Well, it would save a great deal of time if you would say, you estimate it instead of saying you can't answer.

A. I should say a third.

Q. A third what?

A. A third of the cars are bedded with sand.
Q. Are the cars cleaned in winter?
A. Very few of them.

Mr. LYNDE: He has gone all over that your Honor.

1637 Cross-examination by Mr. LYNDE:

Q. How long have you lived there in Ida Grove?
A. Fifteen years.
Q. How did you happen to come here Mr. Sykes, to-day?
A. I had a subpœnae from the United States Court.
Q. Did you talk with these gentlemen before you came here?
A. No sir, I never saw them.
Q. Did you have any communication from Mr. Cowan as to this?
A. No sir, I never saw any of them.
Q. You don't know how they got your name do you?
A. No sir.
Q. You never met the gentlemen before, did you?
A. No sir. Yes sir, I have met Mr. Cowan before, I met him here at the Convention in August.
Q. Have you talked with him about what you were going to testify to here?
A. At that time?
Q. Here, yes, to-day, before you went on the witness stand, have you?
A. Yes sir.
Q. Now, you ship from Ida Grove four or six times a year?
A. Yes sir.
Q. How many years have you done that?
A. Well, I would say ten years, since I have been in the regular business. Before that I did not ship so heavy, did not feed
1638 so heavy.
Q. Do you live in Ida Grove yourself?
A. Yes sir.
Q. And your business, you say is farming?
A. Yes sir, I run a ranch outside of Ida Grove about three miles.
Q. How much of your time do you give to the farm.
A. I give it all only when I am called away on some other business.
Q. That is where you spend your time practically, is on your farm?
A. Yes sir.
Q. What do you know about other stations besides Ida Grove on the Northwestern, you know two or three?
A. Yes sir.
Q. Do you know of any others?
A. I know of them, yes sir.
Q. Of your own personal knowledge is what I want to know, what do you know as to them?
A. Nothing only in a general way, just stopping off as the trains went through, that is all.

Q. You have stated here that you know that the Ida Grove stock yards is the largest, as I have it here, largest stock yard on the Northwestern road in Iowa?

A. No sir, I didn't, I don't think I made that statement.

Q. Well, I understood you to say that?

A. No sir, I didn't, I said in our territory.

Q. In your territory?

A. Yes sir.

1639 Q. What do you mean by your territory?

A. Ida County.

Q. The largest in your county?

A. Yes sir.

Q. What others are there there, besides Ida Grove, what other stock yards?

A. Battle Creek, Arthur, Holstein, Galva, Schaller.

Q. All in this same county?

A. Yes sir, but on a different branch.

Q. Do you ship over that branch?

A. No sir.

Q. Do you have anything to do with the stock yards at those different points that you have named?

A. No sir.

Q. But that is what you mean when you speak of Ida Grove Station, or stock yards as being the larger, is it?

A. Yes sir.

Q. Now, they put up pretty good stock yards there twelve years ago?

A. Yes sir, they did, I give them credit for that, the Northwestern people.

Q. Well, I am much obliged to you. They have kept it in pretty good condition up to this time, haven't they?

A. Yes sir.

Q. How much of your time, by the way, do you spend out on that farm, do you say?

A. Oh, I should say that on an average——

Q. Every week?

A. Sir?

Q. Every week, how much of your time are you out there?

1640 A. I should say on an average, four days out of the week.

Q. Have you got a house there?

A. I think so, I have a family living there, a hired man.

Q. Do you stay out there when you go?

A. I stay out there for my dinner and come home in the evening.

Q. Your daytimes you spend out there at least four days a week?

A. Yes, sir, I should think in the neighborhood of that.

Q. And yet you state here that you are able to state what repairs have been made on this stock yard at Ida Grove during the last twelve years?

A. Yes, sir, I think any man in the stock business could see for himself.

Q. You saw what was done?

A. Yes, sir.

Q. How about cleaning?
A. That didn't include the cleaning, no, sir. We were not talking about the cleaning at all, it was repairs on stock yards.
Q. Well, we are at present. How about cleaning, who does it?
A. The railroad company, I presume.
Q. You don't?
A. No, sir.
Q. Now, do you think you are better qualified to state as to the amount of repairs that are done to that stock yards than the man who is in charge of that work?
A. Perhaps as well.
Q. And as to the cost?
A. Yes, sir.

Q. You estimated the whole thing, did you, at the time it
1641 was built?

A. In a general way, yes, sir.
Q. How about the value of the land there, do you know anything about that?
A. Yes, sir, I am pretty well posted on the value of the land.
Q. Well, just tell how many feet of lumber went into the stock yards when it was built?
A. No, sir, I couldn't do that.
Q. How about the prices of lumber at the time the stock yards were built?
A. My recollection was, I figured the lumber at $20 a thousand.
Q. I know, but what was the price at the time the stock yards were built?
A. Perhaps it wasn't that much, it was quite cheap at that time, I should say about $15.00 a thousand.
Q. Are you able to state that of your own knowledge, that that was true?
A. Yes, sir, I should say so.
Q. What is it worth now at your place?
A. That class of lumber is worth $18 to $20 a thousand.
Q. Worth less than your estimate, you think it was worth more, that is you have given a higher estimate?
A. I wanted to give the railroad people the benefit of the doubt in this case.
Q. How many feet did you figure on?
A. I figured on 250 feet to each side of the pen.

Q. Well, you load your cattle 26,000 pounds to the car,
1642 do you?

A. That depends on how many, just how large my loads are, what they weigh, and how large the cattle are.
Q. You said that was your average load?
A. I said, 24,000 to 26,000 pounds if you please.
Q. And you paid on 21,000 to 22,000 I think you said?
A. No, sir, I said 22,000 to 24,000 pounds.
Q. How much over weight do you get there per car, on the average, 2,000 pounds?
A. Perhaps, yes, sir.

Q. That would certainly balance your account, won't it. Now, how about the scales, what do you know about the cost of scales when they were put in there?

A. Why, I know what scales cost, I don't know what that one cost, but I know what I can buy them for.

Q. Now or then?

A. Yes, then or now either. They are cheaper now than they were then.

Q. Did you ever buy one?

A. I never bought one of that particular make, I have a scale on my farm.

Q. Is there a switch into that yard?

A. Yes, sir.

Q. Used for that purpose alone, for the stock purposes of that yard?

A. Not entirely, no.

Q. To what extent?

A. Largely, I would say.

Q. What purposes otherwise, is it used for?

A. For switching in dead freight, coal cars and box cars and such like that comes into the general traffic.

Q. Now, when you put in the bedding in a car, using sand,
1643 how deep do you spread it?

A. I should estimate about an inch, possibly not that much, but not to exceed that.

Q. Now, these cars that you have, that you load in, what are the measurements?

A. Usually we use the 6 foot.

Q. 36 foot you mean?

A. 36, yes sir.

Q. Is that inside measurement?

A. I could not say as to that.

Q. How wide?

A. They call them 8 foot, I think. I never measured the cars.

Q. 8 feet 6 isn't it. Did you ever measure these pens?

A. No, sir.

Q. Give us an estimate, you have been doing so as to the pens, what do you say to the cars?

A. I told you in my direct testimony the pens were 48 foot square.

Q. I am not talking about pens, but as to the cars, how wide are they?

A. I didn't get that question.

Q. As to the width of the car?

A. I say, I never measured the cars.

Q. I know it, but I want you to give an estimate, you have given us one on other things that you have not measured?

A. I should say they were 8 foot.

Q. Very well. Now, that is 288 square feet inside of the car.

A. I didn't figure it out at all.

Q. Well, that is what it is, 36 by 8 feet.

1644 A. All right, I will take your word for it.
Q. That you covered to the depth of about an inch you think?
A. I should say not to exceed that.
Q. Now, Mr. Sykes, you are on the branch line?
A. Yes, sir.
Q. Carroll is the division point, you say?
A. Yes, sir.
Q. When you have loaded cars there, how many cars would you load?
A. At Ida Grove?
Q. Yes.
A. When I loaded?
Q. Yes.
A. I scarcely ever ship more than three cars, sometimes four, but usually two to three cars at a time.
Q. Well, how would those be handled for the railway company, would they pick them up on their way train?
A. Yes, sir, on train No. 34; that is unless, as I stated on my direct testimony, that we had a special train.
Q. Well, you do have special trains up there?
A. Yes, sir you bet we do.
Q. You mean by that, a train that has been sent up for the purpose of picking up live stock, do you?
A. Yes, sir, that is what I mean.
Q. And that is a pretty common occurrence, isn't it?
A. In the winter-time it is I will say, yes.
Q. Well, you said you were prepared to wager, I think that
1645 was the expression, that you did? And you mean by that, you had a good many of them in the course of the year?
A. I say, in the winter-time those trains are frequent. In the summer time they are very infrequent.
Q. When do you ship most of your cattle?
A. In the winter, during the spring, during the early spring season.
Q. Don't you ship most of them, a large portion of them during the fall and winter there?
A. No, sir.
Q. What?
A. Our heavy feeding is done in the winter time in that territory.
Q. They still have this way train in the winter time, don't they?
A. Yes, sir, that is a regular train, and runs the year around.
Q. That is a train sufficient to accommodate the stock that is handled at that station in the heavy shipping time, is it?
A. Why, they make it so.
Q. But in the winter time when they don't ship much, you can have all the special trains you want, is that it?
A. No, sir, I didn't say that.
Q. Well, you have them, that is when they are a frequent occurrence?
A. I said in the winter time, we had special trains frequently.

Q. But that is the time you say you are not doing any shipping, didn't you so state?

A. What I mean by that is, the latter part of the winter and early spring. We call it winter. We commence our shipping there
1646 in the latter part of February, and it continues up until May.

Q. Well, that is the time that you get the special trains?

A. Yes sir.

Q. That is what I wanted to know. Now, those special trains, are they sent solely to Ida Grove, or do they go to other points along there beyond?

A. That depends on what there is West. If there is traffic West, they go on as far as there is anything to load, and get it and come back.

Q. They pick up whatever may be at other points?

A. Yes sir.

Q. And then come back to Ida Grove?

A. Yes sir, and take our stuff.

Q. Take your stuff and go on?

A. Yes sir.

Q. They don't take anything else do they, those special trains.

A. No sir.

Q. How frequent an occurrence would it be to have a special train sent up there at that time, in the heavy shipping season.

A. Why usually on Saturday, we have special trains.

Q. That is so as to get the stock in to the Monday market, isn't it?

A. Yes sir.

Q. And you load your cars in order to reach that market about when the special train comes, you would load of course, so as to reach that train?

A. Yes sir, we aimed it to load so as to leave Ida Grove about eight o'clock.

1647 Q. I understood you to say you had a load at ten in the evening, sometimes two in the morning?

A. That is on the regular train, on No. 34, we load whenever she comes.

Q. You would load also as to the special whenever that came, wouldn't you?

A. Well, the agent usually asked us when we wanted to load, when we had a train of that kind, and he wires the Superintendent and the engine is sent there.

Q. They try to fix it for you, so that you can load?

A. Why, as a rule, yes. Sometimes we have to wait.

Q. Now, those cars are taken down to Carroll and there consolidated into a regular through stock train, isn't that so?

A. Usually so.

Q. How far is the run down to Carroll?

A. Forty miles, I think, 40 or 42.

Q. Are there other points between Ida Grove and Carroll, other stations where stock is shipped?

A. A number of them, yes sir.

Q. This train, whatever train it is, way train or special train, will have stock to pick up at those stations, will it not?
A. Yes sir.
Q. It lays up at those stations while the stock is being loaded and put in to the train, doesn't it?
A. If the stock isn't already loaded, yes sir.
Q. That takes some time, doesn't it?
A. Yes sir. If there is only a load or two going from those
1648 stations, they are usually loaded and ready on the side track.
Q. Suppose there are a number of loads going?
A. Then they have to use the engine as I said, to set the cars.
Q. In that case, they have got to set the cars in and load the stock in each car?
A. Yes sir.
Q. And that takes some time, makes the time between Ida Grove and Carroll, take some time, doesn't it?
A. Yes sir.
Q. Now, at Carroll do you have to lie up there?
A. Yes sir, quite frequently.
Q. They have to make up a train there, don't they?
A. Yes sir.
Q. That takes some time too?
A. Yes sir.
Q. Then from Carroll on after that train is made up it comes through to Chicago without many stops, doesn't it?
A. If you have a special stock train from Carroll, it does, if not, it doesn't.
Q. What do you mean by a special stock train from Carroll?
A. That is a train that carries nothing but stock.
Q. Well, don't they consolidate the stock that they receive over your branch into special stock trains at Carroll?
A. Not always.
Q. Don't they generally do so?
A. They do if they have stock enough to make the train.
1649 Q. When they do, they bring that train through without many stops between there and Chicago, when they get once started, don't they?
A. Well, as a rule, I would say yes.
Q. Do you feed on the way coming in?
A. Sometimes I feed at Clinton.
Q. How much time does that take?
A. Well, we usually aim to lie there four to six hours.
Q. So that is part of the time that is taken between Carroll and Chicago on your run, isn't it?
A. If we feed, yes sir.
Q. You say you usually do feed at Clinton?
A. Occasionally, I said.
Q. I understood you to say you usually do. Other stock men feed there?
A. I didn't intend to say so, if I did, I should have said occasionally.

Q. But other men may have stock in the same trains that they want to feed at Clinton?

A. Yes sir, and if they do, we go on.

Q. In that case, what do they do with the train, hold it there?

A. They switch out the stock for the men that want to feed there, and run the rest of them down to the yards, and there they are put into another train.

Q. They make up a train and carry it on?

A. Yes sir.

Q. If you want to go through, and if there are other men that want to feed, they are left there and you go right through?

A. Yes sir, that is the way it is done.

1650 Q. They don't delay you then on account of the feeding of the other fellow?

A. No sir.

Q. Now, you come through, as I understand you, with your stock generally?

A. Usually, yes sir, I nearly always do, that is with cattle.

Q. Where do they land you here at Chicago?

A. At the chutes at the stock yards.

Q. You go down with the train to the stock yards?

A. Yes sir.

Q. Do they take the caboose down there?

A. Yes sir.

Q. And all the stock men in the caboose, they give them that transportation too?

A. Yes sir, if you see fit to stay in you can ride right to the chutes.

Q. Most of them go, don't they?

A. Yes sir. Some of them get out and take what is called the Elevated and go down town.

Q. You get return transportation on your stock shipments as a rule, don't you?

A. If I have two loads, yes sir.

Q. How many loads do you generally have?

A. I generally aim to ship two loads or more.

Q. Two or more?

A. Yes sir.

Q. Now, what time does this train usually leave Carroll, your stock train?

A. Well, of course, the time varies in that respect.

Q. If you have a special train, there isn't any fixed time,

1651 is there?

A. If we go on what is called No. 62, that is the train out of Omaha, why, I think that is about 2:30, along there, possibly, that is if they are on time, I think they are due at Carroll about 2:30 in the morning.

Q. Well, that would be 2:30 then, Sunday morning, is that your idea?

A. Yes sir, if we go on No. 62.

Q. Yes, but suppose you take a special, you make up a special train there?

A. If you make a special, that all depends on how long it takes to make up the train and how soon you get out. The time will vary from two to five in the morning. I have left there as late as five in the morning.

Q. Well, when do you get to Clinton then?

A. We get to Clinton, well, usually about seven in the evening, six or seven in the evening.

Q. How long do you lay there usually?

A. Just long enough to go over the train and give it the necessary looking after, that is necessary at this point, say half an hour.

Q. Well, suppose you want to feed, you lay there four to six hours?

A. If I get in Clinton that late, I wouldn't feed at all.

Q. Now, would you do that if you were violating the law to go on to Chicago without feeding?

A. I would have to stop to feed.

1652 Q. Well, if you did——

A. That is, if the railroad people said so.

Q. Do they determine whether you feed or not?

A. Yes sir, that is, they do in the case of the law.

Q. They do tell you to get out and feed?

A. Yes sir, you bet they do. They will tell you you have to stop here, they can't run you on to Chicago because it will violate the law, and they will set you out here whether you want to be set there or not.

Q. I see. And when you are set out, that takes four to six hours.

A. Not necessarily so.

Q. How long?

A. You can unload and water your stock and reload and go right on the next train, if you see fit.

Q. You don't give them any chance to rest then. The law requires that as well as feeding and water.

A. Well, I could not say in relation to that because I never got in one of those conditions. When I stop to feed, I stopped of my own accord, so I don't know.

Q. Then you would stay four to six hours, as you said?

A. Yes sir. If I couldn't stay that long, I wouldn't stop to feed at all.

Q. When you get the cattle fed and watered and staid that length of time, then what do they do with them?

A. We load them up and they made them up into a train and sent them out, if they had a train there at the stock yards,

1653 they made up the train right there, and if not, they sent them down to the yards down town where they did make up trains.

Q. They made up a train just as quick as they could and got them out on the road, did they?

A. Apparently so, yes sir.

Q. Now, you would arrive at Chicago at all kinds of hours, wouldn't you?

A. Yes sir.

Q. No regular time?
A. No sir.
Q. Anywhere between midnight and five o'clock in the morning?
A. Yes, and nine o'clock in the forenoon, sometimes later.
Q. Then you wouldn't get the market?
A. Sometimes.
Q. That does happen occasionally, does it?
A. I have been here when I thought I didn't get the market.
Mr. DAWES: You waited until the next day before you determined, didn't you?
A. Occasionally, yes sir.
Q. And you found the market the next day——
A. (No answer.)

Mr. LYNDE:

Q. Well, after you left Clinton, for instance, in the evening, coming on to Chicago, you would take the caboose, wouldn't you?
A. Take a sleeper, what they call a stockmen's sleeper.
1654 Q. Well, you would go to sleep in it, wouldn't you?
A. Yes sir, usually.
Q. What did they give you, blankets, and bedding and that sort of thing?
A. Such as they have, yes sir.
Q. What did you do, get out and look after the stock at different points between Clinton and Chicago?
A. No sir.
Q. Did you watch the running of the train between that time—you would go to sleep, wouldn't you, turn in?
A. Certainly I did. I would be very foolish if I didn't after being up one night on the road.
Q. I think so myself; but you don't know of your own knowledge and never have known as to what occurred in the running of that train between Chicago and Clinton except that you got here at some hour in the morning?
A. No sir.
Q. That's all.
A. I know one thing, if I woke up in the morning and found I was late, I asked the conductor and he usually had an excuse.

Mr. DAWES:

Q. You don't look after the stock at all?
A. No sir, not between Clinton and Chicago.
Q. Does any stock man in your experience look after the stock when they are on the road?
A. Not between Clinton and Chicago.
Q. Or any place where he is out over night?
1655 A. Yes sir, I will say when we don't have the sleepers, we do.
Q. Yes, but where you have the sleepers, you go to sleep and let the stock shift for itself, or let the trainmen look after it?
A. We do that ourselves.

Q. What do you come in for?
A. We never have our sleepers out there.
Q. One minute, what do you come in for?
A. To see the stock sold.
Q. I understood you got off on the elevated and went down town?
A. No sir.
Q. Well, many of the stock men do?
A. No sir.
Q. Didn't you testify some of them went in on the elevated? And some went down on the caboose to the stock yards?
A. I have known some cases.
Q. Didn't you say that was customary?
A. No sir, I said some of them did.
Q. Some of them did?
A. Yes sir.
Q. Did such men as that have an opportunity to look after the cattle?
A. Yes sir, they would go down the next morning, to the yards.
Q. After they are sold?
A. No sir.
Mr. LYNDE: Just one more question as to the speed at which your train ran between Clinton and Chicago, as to what trains
1656 passed it, or what trains it passes, you don't know anything about that at all?
A. No sir.
Q. That is all.
A. The only way I have of figuring the speed, is the time it takes to run from Clinton to Chicago.
Q. You don't know what stops are made in that run?
A. No sir.
Q. Or where?
A. No sir.

Examination by Mr. SEVERANCE:

Q. What is your rate to Chicago?
A. 23½ cents.
Q. What is the actual rate you pay, you say you underbill your stock, what is the actual amount you pay?
A. We pay on just what we have.
Q. You say you pay on 22,000 to 24,000 pounds when you ship 24,000 to 26,000 pounds?
A. Yes sir.
Q. Now, what is the actual amount you pay then, per hundred weight?
A. That stock is weighed at the Northwestern weighing station.
Q. That is not my question, I am not asking where they are weighed or who weighed them. You said you underbill your weights some way, or under pay.

Mr. COWAN: I object.
The COURT: You ask your question and then give him a chance to answer it. Repeat your question.

1657 Mr. SEVERANCE: It is my intention to do that. I want to put a question he will understand.

The COURT: Yes, you put the question and then let him answer.

Mr. SEVERANCE:

Q. Now, as my question is, if you have stock that weighs 26,000 and pay on 24,000 pounds——

Mr. COWAN: He still doesn't give an opportunity to answer.

The COURT: Repeat your question.

Mr. COWAN: He didn't say he underbilled.

The COURT: He is endeavoring to repeat the question. Now, repeat your question, complete your question.

Mr. SEVERANCE:

Q. If your stock weigh 24,000 to 26,000 pounds, and you pay on 22,000 to 24,000 pounds——

A. Yes sir.

Q. I say, what is the actual rate then to Chicago on the stock that you ship, what do you actually pay per hundred weight?

A. 23½ cents per hundred.

Q. Will you explain how you do that, sir?

A. Yes sir, in shipping that stock from Ida Grove to Chicago, it shrinks the difference between the weight at Ida Grove and the weight at the time it is weighed here over the Northwestern scales.

Q. It shrinks 2,000 pounds?

A. Yes sir, whatever the shrinkage is, I wouldn't say it shrinks 2,000 pounds.

1658 Q. And they charge you on the weight at the terminus?

A. They charge me on the weight—where the car is weighed, the loaded stock is weighed here on their weighing scales in Chicago.

Mr. LYNDE:

Q. At the Chicago end instead of the other end?

A. Yes sir.

Q. So you get the benefit so far as the decrease in weight is concerned, in the amount you pay?

A. Yes sir, I don't pay on what the stock is weighed in at.

Mr. SEVERANCE:

Q. You pay on what it weighs after it shrinks 2,000 pounds coming to Chicago?

A. On whatever the shrinkage is.

Q. Didn't you say it shrunk from 26,000 to 24,000 pounds?

A. I should say 1500 to 2,000 pounds on a car would be a reasonable estimate.

Q. Do you ever ship to Sioux City or Omaha?

A. No sir, I have shipped from there, but never to there.

Mr. LYNDE:

Q. How are shipments generally at Ida Grove, towards Chicago?
A. Mostly all to Chicago, practically.
Q. How far is Ida Grove from Omaha?
A. One hundred miles, and 80 miles from Sioux City.

An adjournment was here taken until Monday, October 2, 1905, at 10 o'clock a. m.

1659 MONDAY, *October* 2, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Mr. BAXTER: In addition to the extracts heretofore introduced from Appendix G-16, the Annual Report of the Interstate Commerce Commission entitled "Forty Years' Review of Changes in Freight tariffs," I desire on behalf of the defendants to offer the following extracts from the same publication which I overlooked at the time. Page 20, Table, IX, "Changes in the Minimum Carload rates on the articles shown in carloads from April 1st, 1887 to April 1st, 1902."

Page 20, Table X, "Changes in Minimum carload weights on the articles shown in carloads from April 1st, 1887 to April 1st, 1902." That is from the same publication.

Mr. COWAN: Mr. Ripley was coming back this morning but he does not seem to be here.

1659a TABLE IX.—*Changes in the Minimum Carload Weights on the Articles Shown, in Carloads, from April 1, 1887, to April 1, 1902.*

[Applies to Tables 67 and 69.]

Western Classification.

Date of changes.	Wheat.	Rye.	Barley.	Corn and oats.	Flour.	Cattle.	Hogs.		Sheep.	
							Single deck.	Double deck.	Single deck.	Double deck.
1887—Apr. 1	20,000	20,000	20,000	20,000	20,000	(*)	(*)	(*)	(*)	(*)
1888—Oct. 1	20,000	20,000	20,000	20,000	20,000	(†)	(†)	(†)	(†)	(†)
Oct. 25	20,000	20,000	20,000	20,000	20,000	20,000	‡15,000	‡22,000	‡12,000	‡22,000
1889—Aug. 1	20,000	20,000	20,000	20,000	20,000	19,000	‡15,000	‡19,000	‡10,000	‡19,000
1895—Jan. 1	24,000	24,000	24,000	24,000	24,000	19,000	‡15,000	‡19,000	‡10,000	‡19,000
1899—July 1	30,000	30,000	30,000	30,000	30,000	19,000	‡15,000	‡19,000	‡10,000	‡19,000
1901—Apr. 6	30,000	30,000	30,000	30,000	24,000	19,000	‡15,000	‡19,000	‡10,000	‡19,000
1902—Mar. 1	30,000	30,000	30,000	30,000	30,000	19,000	‡15,000	‡19,000	‡10,000	‡19,000
Apr. 1	30,000	30,000	30,000	30,000	30,000	19,000	‡15,000	‡19,000	‡10,000	‡19,000

* Rates apply to cars not less than 29 feet but not to exceed 30 feet 6 inches in length, inside measurement, the minimum weights in larger cars being proportionately greater.

† Rates apply to cars 34 feet in length, inside measurement, the minimum weight in larger cars being proportionately greater.

‡ Minimum weights apply to cars 31 feet and under in length, inside measurement, the minimum weight in larger cars being proportionately greater.

Classes.

1887—Apr. 1. All classes, 20,000 pounds.
1895—Jan. 1. Third class and higher, 20,000 pounds; lower than third class, 24,000 pounds.
1899—July 1. Third class and higher, 20,000 pounds; lower than third class, 30,000 pounds.
1902—Apr. 1. Third class and higher, 20,000 pounds; lower than third class, 30,000 pounds.

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TABLE X.—*Changes in the Minimum Carload Weights on the Articles Shown, in Carloads, from April 1, 1887, to April 1, 1902.*

[Applies to Table 68.]

Western Classification.

Date of changes.	Hogs.		Packing-house products.	Wheat.	Other grain.
	Single deck.	Double deck.			
1887—Apr. 1	(*)	(*)	20,000	20,000	20,000
1888—Oct. 1	(†)	(†)	20,000	20,000	20,000
Oct. 25	15,000	22,000	(‡)	20,000	20,000
1889—Aug. 1	15,000	19,000	20,000	20,000	20,000
1895—Jan. 1	15,000	19,000	20,000	24,000	24,000
1899—July 1	15,000	19,000	20,000	30,000	30,000
1900—Aug. 1	15,000	19,000	26,000	30,000	30,000
1902—Apr. 1	15,000	19,000	26,000	30,000	30,000

* Rates apply to cars not less than 29 feet but not to exceed 30 feet 6 inches in length, inside measurement.

† Rates apply to cars 34 feet in length, inside measurement.

‡ Minimum weights apply to cars 31 feet and under in length, inside measurement, the minimum weights in larger cars being proportionately greater.

B. S. CUSEY, called as a witness on behalf of the complainant in rebuttal, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. Where do you reside?
A. Chicago.
1660 Q. What is your business?
A. Traffic Manager for Swarzschild & Sulzberger.
(The witness was at this time properly sworn.)
Q. The questions you have answered are correct, are they?
A. They are.
Q. Or rather the answers are correct?
A. Yes sir.
Q. As such Traffic Manager, what are your duties, and what business services do you render?
A. My duties are to look after the movement of our traffic in general, that is the movement of live stock and dressed beef and provisions, the movement of the cars both loaded and empty. I have charge of the checking up of rates to see that they are correct, and also the question of checking icing charges and other matters in general pertaining to the business.
Q. From your position, do you learn the movement of traffic and its direction and volume of it?
A. Yes sir.
Q. Where has your firm packing establishments?
A. Kansas City, Chicago and New York City.
Q. What is the extent of the business in point of its volume?
A. From Kansas City our business in dressed beef amounts to approximately 450 cars per month destined east of the Mississippi river. From Chicago about the same number destined to
1661 points east of Buffalo and as to New York, I could not state.
Q. I believe I did not understand the number of cars from your Chicago place destined east?
A. About 450 cars per month of dressed meats each.
Q. That is from each place?
A. Yes sir.
Q. A total of about 900 cars per month?
A. Yes, as to dressed meats. Then as to provisions about 250 cars per month from Kansas City and possibly 300 from Chicago.

Mr. DAWES:

Q. What do you mean, packing-house products?
A. Packing-house products, yes sir.

Mr. COWAN:

Q. How many are there from Chicago?
A. I should say 300 cars.
Q. Take a trainload of cattle of the average sort in weight, what is the relative proportion of dressed meat to the provisions produced?
Mr. DAWES: Dressed meat?

Mr. SEVERANCE: I object to that on the ground that it is not rebuttal.

The COURT: I don't understand the question.

(Question read.)

Mr. DAWES: Neither do I.

1662 The COURT: What do you mean, do you understand the question?

A. I think I do.

Mr. SEVERANCE: Let the rest of us understand it.

Mr. COWAN: A trainload of cattle will produce so much meat and so much provisions and I want to know the relative amount.

Mr. SEVERANCE: The objection is overruled, your Honor?

The COURT: Yes.

A. It will be approximately 55 per cent. of fresh meat. That is 55 per cent., the live stock will dress out—it will produce about 55 per cent. in dressed beef and provisions approximately 20 per cent. I am not posted thoroughly on those statements, it is merely an estimate.

Q. By provisions you mean the other products than dressed meat?

A. Yes sir.

The COURT:

Q. You mean in a certain amount of cattle, that 55 per cent. becomes dressed meat and 20 per cent. will be products?

A. Yes, such as oils and fats.

Q. Making 75 per cent.?

A. Yes sir.

Mr. DAWES: I object to the witness further testifying on this subject. He has now disqualified himself by saying that he cannot give any accurate estimate. This is of no value unless it is accurate.

The COURT: He may be more modest than some of the
1663 other witnesses. I will risk it. I think he knows a good deal about his business.

A. In addition to those there are also the weight of the hide which is about 60 pounds to the animal and also the weight of the bones, the hoofs and horns and fertilizer, making out the balance of the 100 per cent.

Mr. COWAN:

Q. Well, do you mean that a trainload of cattle will furnish in products and meats, the weight of the cattle?

A. Not entirely; there is a very slight loss, though.

Q. In what proportion of the product, both meat and the product, what proportion will be meat and what proportion other product in pounds or weight? What I mean by that, what per cent. does the dressed meat bear to the other products?

A. I testified about 55 per cent.

Q. That is 55 per cent to the weight of the animal?

A. Yes sir.

Q. What per cent does the dressed meat bear to the product?

Mr. DAWES: He says 55 per cent. and 20 per cent.

Mr. COWAN: He did not answer that way. He answered 55 per cent. to the gross weight. That is, a steer will dress out 55 per cent. of meat.

A. Yes sir.

1664 Q. Now you get certain freight out of a trainload of cattle that you ship?

A. Yes sir.

Q. Do you know how much of that animal, if it is a thousand pound steer for the sake of even figures,—there would be 550 pounds of dressed meat?

A. Yes sir.

Q. How much other weight will there be in products the hides, you say, will weigh 60 pounds?

A. 60 pounds.

Q. Does the hide weigh that when it is dry?

A. That is the green hide.

Q. Do you ship the green hide?

A. The green hide salted down.

Q. The hide weighs 60 pounds?

A. That is so, yes sir.

Q. What are the other items?

A. The item called packing-house product consists of tallow and oil.

Q. Mr. Cusey, can you make up a statement showing the detail of those items?

A. Yes, I can.

Q. All right, prepare such a statement. Did you prepare such a statement for the Garfield Report?

A. I did not.

Q. Was ever such a statement prepared?

A. Not that I am aware of.

1665 Q. I will ask you to make up a statement, a correct statement in detail showing what the various items are and the proportionate weight of a thousand pound steer, we will take one on the basis of a thousand pound steer for convenience,—you can get that definitely and correctly, can't you.

A. Yes sir.

Q. I will ask you to do and file it and get the same information as to the average hog?

A. Yes sir.

Q. We, will say a thousand pounds of hogs and the average steer, a thousand pounds, and then we will have it per thousand pounds. You look after the shipment of all of this product that is shipped out from Kansas City?

A. Indirectly, through my office.

Q. Through your office?

A. Yes sir.

Q. You have general charge of it?

A. Yes sir.

Q. And you likewise do on the Chicago shipments?

A. Yes sir.

Q. To what points of consumption are the products, including the meat, shipped from Kansas City,—First, I will ask in what direction does the dressed meat move?

A. Principally to points east of the Mississippi river and north of the Ohio river. New England territory and the Middle States.

Q. Do you come in competition with the other packers in
1666 the sale of dressed meats at various points throughout the country, commercial centers?

A. We do.

Q. Has your company established houses at those places?

A. They have.

Q. Does your company own its cars in which the product is shipped?

A. Not all, we own about one thousand cars.

Q. What proportion of the dressed meat put up at Kansas City, moves to Chicago locally at the 20 cent rate and what proporti-n moves as destined east of the Illinois and Indiana state line, on the 18½ cent rate?

Mr. SEVERANCE: Is this something that the witness knows or is he going to guess about it?

The COURT: You had better find that out first.

Mr. COWAN: He has general charge of the traffic and I am assuming that he does know. If he don't know, I don't suppose he will answer, but I will ask him the question anyway.

Mr. SEVERANCE: He was stopping to think like a man who was making up his mind.

Mr. COWAN: That has not been an infrequent occurrence in the trial.

Q. Do you know what proportion or approximately what proportion?

A. Approximately, yes sir.

Q. State it?

A. About four or five per cent. to Chicago proper and the balance east of Chicago.

Q. Four or five per cent?

A. Yes sir.

1667 Q. Is there any reason in the commercial situation of the market for dressed meat at Chicago that would cause the movement of any considerable amount of dressed meats from Missouri river points to Chicago for sale, locally, that would move on the 20 cent rate?

A. That depends upon the price of cattle at Chicago and also at Kansas City. When they can be purchased at Kansas City to advantage, we buy and ship from there. Otherwise we supply our Chicago demand from here.

Q. Then that part of the dressed meat which moves from Kansas City locally on the 20 cent rate for sale at Chicago, is that which is bought to an advantage over the Chicago market, there?

A. As a rule, yes sir.

Q. The Chicago kills are very much more than the local supply here, are they not?

A. Yes sir.

Q. Now, of the packing-house products under the head of "provisions," what proportion of it moves to Chicago on the 20 cent rate for local consumption, sale and distribution at Chicago and what proportion east of the Indiana and Illinois state line on the 18½ cent rate.

A. The percentage is still less. Probably not more than 2 per cent. to Chicago proper.

Mr. DAWES:

Q. Does this include the hog products as well as the beef?

1668 Mr. COWAN: I understand it to do so. I am speaking of the hog as well as the beef supply.

A. Yes sir.

Q. And your answer applied to that?

A. Yes sir, the products as a whole.

Q. What is the total number of cattle which you kill where you have it in your mind now, either per day or per week or per month at Kansas City and the number of hogs that you kill at Kansas City per day or per week or per month as you may have it in mind, or per annum? if you please?

A. At Kansas City in cattle about 4,000 or 4,500 per week.

Q. Per week?

A. Per week.

Q. And of hogs?

A. Hogs, it will average from 7,000 to 10,000 per week.

Q. From 7,000 to 10,000 per week?

A. Yes sir.

Q. Proportionately, do you kill more hogs than the other packers there, that is, in proportion to the number of cattle killed, do you kill more hogs than other packers at Kansas City?

A. I am not in a position to say.

Q. Have you access to information which will enable you to show the total killing at Kansas City of the different packers there in both the cases of hogs and cattle?

A. No sir.

Q. You could only make that statement with respect to

1669 your own?

A. Yes sir.

Q. I wish you would file, prepare and file a correct and definite statement showing the amount of the killings and the amount of your shipments so we will have it exact.

Mr. SEVERANCE: I don't want to fight it now, but he must come back with it so that we can examine him about it. Otherwise, we object to its being filed.

Mr. DAWES: Will you be kind enough to indicate the period?

Mr. COWAN: Why, you can bring it to-morrow.

Mr. DAWES: No, no, the period for which this statement will run.

Mr. COWAN: Any year you please, the year 1904, for example.

Q. What is the amount of the average load, if you know or if you know approximately, of dressed meat per car shipped from Kansas City by your concern?

A. About 21,500 pounds.

Q. How is that dressed meat put in the car?

A. It is hung on hooks from rails at the top of the car.

Q. The cars are provided with rails and hooks to hang it on?

A. Yes sir.

Q. Is any of it hung from the roof?

A. Well, these rails are all just below the roof of the car, not on the sides.

1670 Q. They are swung across then?

A. Yes sir, lengthwise.

Q. Do you fill the car that is supplied with hooks with all the car will hold?

A. Generally to the full capacity.

Q. Is it possible to load those fresh meat cars much in excess of 21,500 pounds considering the manner in which they are loaded, unless you fill it up with packing-house products on the bottom of the car?

A. That depends, of course, on the size of the car. We have some equipments 34 feet long and some 38 feet long. The 38 feet cars will hold as much as 24,000 pounds of straight dressed beef alone.

Q. Straight dressed beef?

A. Yes sir.

Q. How much will the 34 foot cars hold of straight dressed beef?

A. Pretty close to the minimum, 20,000 pounds.

Q. What is the minimum carload weight if you know of the 34 foot car and the 38 foot car as shown by the tariffs?

A. There is no difference in dressed beef, the minimum is 20,000 pounds on all.

Q. In other words, you can ship 20,000 pounds and you pay for 20,000?

A. Yes, sir.

Q. If you ship less, you pay on 20,000?

A. Yes sir.

Q. If you ship more, you pay in proportion to the excess?

1671 A. For the actual weight.

Q. Now how is the weight arrived at in practical operation?

A. The weight of the beef?

Q. Yes, on which you pay the freight. You go to the railroad and pay your freight bill? By what method do you arrive at the weight that you have shipped in the cars that you pay the freight on?

A. The beef is hung on rails, and they run across a scale where each carcass is weighed. In that way, it is taken down on a tally-sheet. That rate is subject to inspection by the Western Railway Weighting Association. That weight is taken from the tally-sheet for the bill of lading. Those records are all checked by the repre-

A. About twice as much beef as provisions.
Mr. DAWES: Beef, you mean?
Mr. COWAN: About twice as much fresh meat as products.
A. Yes, fresh meats.
Q. Now of the hogs that you kill, what proportion is shipped as fresh meat and what proportion is bacon and hams and in that form.
A. Probably not more than 10 per cent. of fresh products.
Q. In the hog?
A. In the hog.
Q. The balance is shipped as product?
A. Cured products, yes.
Q. Do you ship the products of the hogs aside from fresh meat, in the refrigerator cars?
A. Not at all times.
Q. Generally, how is it?
A. When we have enough equipment, we, of course, use
1676 our own cars. Otherwise, it is in foreign equipment. As a rule it is shipped in foreign cars.
Q. Do you have any contract agreement or arrangement with the railroads whereby you have a right to load your own equipment wherefor you can get it with the bacon and hams?
A. No sir, there is no such contract.
Q. Is there such a custom?
A. A custom, yes sir.
Q. Wherever you have the equipment you load it?
A. Yes sir.
Q. Why do you do that?
A. Because, as a rule our cars are better than the cars of foreign lines. They are kept in better shape.
Q. What do you receive as compensation for the use of your cars?
A. In Western territory we receive one cent per mile, mileage.
Q. What do you mean by "western territory".
A. The territory between Kansas City and Chicago.
Q. That is one cent per mile each way?
A. Yes sir.
Q. Do you have any rule or custom with respect to the speed and time of returning the live stock—or the refrigerator cars?
A. No sir.
Q. In actual practice how long does it require to get the cars returned in a shipment say, of 10 or 15 cars, which make to Chicago if they were unloaded at Chicago?
1677 A. It will average about four days returning by the direct lines and by the differential lines five and six days and sometimes seven.
Q. Do you distribute your shipments over the various lines of railroad out of Kansas City?
A. As a rule, we confine them to one line as largely as possible.
Q. What lines do you mostly patronize?
A. At the present time we are patronizing the Alton.

Q. Are you acquainted with the refrigerating equipment of other packing concerns besides yours?
A. No sir.
Q. Do you know anything about it?
A. Somewhat, but nothing special about the different features of their cars.
Q. Do you know whether they are built on substantially the same lines?
A. Practically they are.
Q. Where do you have them built?
A. We build some ourselves and other times we have them built by the Car Building Companies.
Q. The St. Louis Car & Foundry Company?
A. The American Car & Foundry Company.
Q. The American Car & Foundry Company?
A. Yes sir.
Q. Do you know whether other lines have cars built there,
1678 to-.

Mr. DAWES: I don't know why we should go into the question of where those cars are made, your Honor.

Mr. COWAN:

Q. In actual practice, in shipping dressed meat and packing-house product, you do load both in the same car?
A. Do we?
Q. Yes.
A. Often times.
Q. Now how is the car designated then? when you have in it fresh meat, when you have any fresh meat in the car, does that mean a fresh meat car?
A. It is a mixed car of fresh meat and provisions.
Q. You have to ice that the same as a fresh meat car?
A. Yes sir.
Q. What will the packing-house products when they are shipped alone amount to in actual weight per car?
A. They will average 30,000 pounds per car.
Q. That is, when there is no fresh meat, when it is a packing-house product car?
A. When it is a packing-house product car.
Q. What is the minimum carload?
A. In Western territory it is 26,000 pounds.
Q. You can ship 26,000 pounds, if you please?
A. Yes sir.
Q. If you ship less you pay for 26,000?
A. Yes sir.
1679 Q. And if you ship more you pay on the excess?
A. Yes sir.
Q. Are those refrigerator cars loaded on their return movement?
A. Sometimes, but as a rule they are not, for the reason that there is a load awaiting their return at all times.

Q. Of your refrigerator cars which are returned to you at Kansas City, what per cent. of the total are returned loaded?

A. Not more than four or five per cent.

Q. Now is your concern engaged also in the shipping of live stock?

A. To a certain extent, they are.

Q. Do you have your own cars for that?

A. We have some equipment but not enough to handle all of our business.

Q. How much equipment have you?

A. 400 cars.

Q. How many?

A. 400.

Q. What are the size, capacity and weights of those cars?

A. They are 36 feet long, and the weight is about 28,000 or 29,000 pounds.

Q. What is the capacity, do you recollect?

A. The capacity is, they have a marked capacity of 40,000 pounds but, of course, not more than 22,000 or 23,000 at the outside can be loaded in them.

Q. On what arrangement do you ship your live stock in the live stock cars which your company owns, do you get mileage?

1680 A. Yes sir.

Q. How much?

A. Six tenths of a cent per mile.

Q. Do you have charge of the matter of the collection of claims for damage for injury to the freight by various methods in which it might be injured in transit?

A. Yes sir.

Q. Are you able to state the amount of loss and damage collected, averaged per car on dressed meats and packing-house products, the total out-put of your business, say, from Kansas City?

Mr. DAWES: I object to that. There has been no evidence here showing that they shipped over any other line than the Alton road, that is, in any quantity, and whatever his testimony might be in this regard could not tend in any way to rebut or refute any evidence as to the amount of damage presented, claimed and paid on the part of the other railroads. Suppose it should appear that Swarzschild & Sulzberger had a very high claim average or a very low one, it would seem to me that it would have no bearing in enabling your Honor to determine the general amount of claims which the railroads pay on this business.

The COURT: Is the Alton Road a defendant here?

Mr. COWAN: Yes sir.

Mr. DAWES: But there has been no testimony on their part.

Mr. COWAN: The question is, what is the risk incident to the business. This is evidence that tends to show that. Whatever

1681 the comparative risk is incident to the business can only be proved by testimony showing what it covers for a period of a year or two years, in the actual amounts paid. The risk of the trans-

portation always is reflected or ought to be reflected in the claims that are actually paid. What they don't have to pay is not a matter of risk incurred. What they do have to pay is a matter of risk incurred. The conditions of the traffic between the Missouri river and Chicago must be substantially the same on those different lines. That has been practically shown here. It is a matter of such general knowledge that the Court will take judicial notice that the conditions of traffic must be in a general way substantially the same.

The COURT: Not necessarily. Certain railroads introduce proof here and it is contradicted as to other railroads. It seems to me it is competent for one railroad.

Mr. COWAN: I desire to ask the witness one other question before Mr. Dawes's objection is passed upon.

The COURT: Mr. Dawes objection is so far as his road is concerned.

1682 Mr. COWAN:

Q. What other roads do you ship over besides the Alton?

A. Practically all, but at the present time the greater part of our traffic is confined to the C. & A. road.

Q. How has it been hertofore?

A. It varies. At one time we will be using one line and at another time another.

Q. What different lines have you used?

A. Used the Wabash, the Rock Island, the Great Western, the Santa Fe, the Burlington, and in fact all of them.

Mr. LYNDE: Name them, please, don't say "all of them".

Mr. COWAN:

Q. The Milwaukee & St. Paul?

A. Yes, sir.

Mr. SEVERANCE: May I make a suggestion? It is this: The only testimony that has been introduced by the defendants with reference to damages is along this line; every witness who has been questioned has said that he would be unable to state whether, by reason of accidents and wrecks, there would be any more damage to one class of products than another. Every one who has been examined on that question has said that. There has been no claim asserted by the defendants that live stock is more liable to be damaged, but there is evidence offered on behalf of, I think, all of the defendant roads whose officials have testified, that claims have been paid on account of delays in the arrival of live stock at destination, and that no such claims have been paid in the case of dressed meats. Now, I

1683 submit, your Honor, that we are trying a question of comparisons here. There is one feature in which the defendant roads have asserted there is a difference. Now, if this gentleman can testify that any of the roads whose officials have testified on this very question, have paid such claims it is competent, because—damages because of the delay in the arriving of packing house products, that is competent as contradicting that other testimony, but as to whether they have paid damages because of wrecks, or anything

of that kind, that is certainly incompetent, because a wreck is an accident, and it might happen to one class or the other class of products. If a train goes into the ditch it might destroy product or live animals. The testimony should be confined to contradicting that which is asserted here by the defendants, but this question is not limited, I object to it as immaterial and incompetent.

Mr. COWAN: This is the first time, I believe, that I have ever heard that because the witnesses of one side testify to a particular state of facts, that therefore, the other is excluded from proving the contrary of those facts.

Mr. SEVERANCE: But you are on rebuttal now.

Mr. COWAN: Just a moment, I am addressing the Court. They claim that the liability to wrecks is the same in each case. The proposition urged by counsel would be that that would ex-
1684 clude our proving that that was not the fact. The point at issue is, what is the risk incident to the business, both classes of business are risky. Both classes of business involve an expenditure because of the fact that that is perishable freight. That is reflected in what is paid for it. Nobody has testified as to the relative amount of damage produced by wrecks. They have said that in case of wrecks the damage is about as much to the one as to the other. At least, they have assumed that it was so. Each of them say that they have not estimated what it is, and don't know what it is, and they do not. A wreck might produce a very fatal result in the case of cattle, or not any, and so, if it was a wreck of dressed meat, it might be very injurious, and might not be, depending upon the character of the wreck, but I say that the risk is reflected in what is paid for the damages, what the average of that is per car, ought to be reflected in the rate of freight on each. Nothing else ought to be reflected. It does not matter what the character of the claim for damages is, whether it is for missing the market or whether it is for wrecks, whether by delay or otherwise.

The COURT: His point is that this is rebuttal testimony, and should be limited by the ordinary rules applicable to rebuttal testimony.

1685 Mr. COWAN: There have been a great many objections here, on the ground that it was not proper rebuttal. I undertake to say that the Supreme Court of the United States has laid down the rule, and I undertake to say that it is the rule in every work on evidence now extant and in use in this country where there are courts of liberal procedure, that you make your *prima facie* case. You can support it by any testimony in rebuttal that will support your *prima facie* case, and I can produce decision after decision on that subject. The idea of its not being proper rebuttal. Any testimony that supports your case is admissible in rebuttal, and that is within the discretion of the Court. The courts are becoming more liberal on that question every day. I can produce decision after decision on the subject. All we have to do is to make a *prima facie* case. They start in then and rebut that case. Any testimony that will suppose our original case is proper on rebuttal and always admissible at the discretion of the Court, and ought

to be. Now, then, I propose to show by this witness that he has had experience, not merely with the Alton but with the other roads, and prove by him what is the normal risk as shown by the claims that they actually pay per car load on the shipments of this freight.

Not a gentleman has produced his actual statistics on the
1686 stand here as to how much was paid on dressed meat and packing house products. Nobody has produced that; I don't recall a single witness that has produced the actual amount. Some have said it was $5,000. Mr. Gardner said it was about 85 cents per car, but here is a witness who is handling the whole output of one concern, and it seems to me that if the Court desires the information as to what is the normal risk, here is a witness who can give it, with respect to each one of the roads covering a period of years.

The COURT: Well, now, what is the question, let us hear that.

(The pending question was then read.)

The COURT: For what period?

Mr. COWAN:

Q. In answering that question, state your experience going back for a period of four or five years, so as to fairly represent what the risk is as reflected in the payments made over the various lines of road over which you have shipped?

Mr. LYNDE: I object to that question in that form, anyway.

Mr. COWAN: Whether for delay or for risks.

Mr. DAWES: I do not wish to take up any more of your Honor's time, if your Honor is with me, but there are certain suggestion that occur to me, which ought to have force and potency
1687 with reference to this particular inquiry. Without stating against what I believe to be the rule of evidence, that rebuttal testimony is rebuttal testimony, and that, having made a *prima facie* case, if my friend chooses to omit certain testimony which should have gone in then, he is only in the sound and legal discretion of the Court, permitted to show it afterwards.

Our great difficulty in the trial of these causes has been that in hearings before the Interstate Commerce Commission we have been compelled to meet testimony of all kinds and character, hearsay testimony, and testimony not admissible under any rules of evidence, and oftentimes the predeliction or predisposition of the Court itself which we were not able to meet, and we have come in here for our day in court, and we rely upon your Honor with confidence, that the orginary rules of procedure, sanctioned by ages, shall be applied to us here in this court, and that we shall not ramble all over the country in the discussion of this question. We should not be forced to try our case for the benefit of the government nor for the benefit of the counsel who represents the Interstate Commerce Commission. If he stands here and puts in his case, let him put it in as he would have to do in every court, whether in Texas or here. If we come in and meet his case and make
1688 our defense, and if in that defense we introduce evidence competent at the time, but which was not in the original case,

that alone must he meet. Now, there has been testimony here in reference to claims in figures, which says that the damage per car, stock car and dressed meat car, is so and so, but the Chicago & Alton road was not mentioned. Is he going to undertake to meet that or disprove those claims, will he call these gentlemen, every man who has done a considerable amount of the business on these roads to refute that and rebut that evidence by such testimony? If so, I admit its competency. That is, if he will go over the whole subject, and if he will disprove our statement in any way known to the rules of evidence. But how does it meet the testimony of Mr. Gardner in any way when this witness is ask-, How much have you paid on an average per car for dressed beef and live stock? Does it in any way rebut the testimony that Mr. Gardner's road has actually paid 80 cents or thereabouts per car? It seems to me that it in no respect is rebuttal.

The COURT: The trouble about your question is that it is rather indefinite. You could not tell what railroad the answer would apply to.

Mr. COWAN: I asked him the railroads he shipped over, and he has already named the railroads.

The COURT: You did not say that.

1689 Mr. COWAN: He has named the C. B. & Q., he named the Chicago Great Western, he named the Atchison, Topeka & Santa Fe, he named the Milwaukee & St. Paul. The Northwestern does not go to Kansas City and of course it does not apply to that.

The COURT: What is this, sort of a lump sum that you are asking for? Is it over the different roads that you are asking? You are asking for a lump sum?

Mr. COWAN: Yes, sir.

Mr. SEVERANCE: He is asking for an average.

The COURT: I will sustain the objection.

Mr. COWAN: Then I will ask you to answer the question with respect to each of the roads.

The COURT: Ask one question at a time. You started out with the Alton road.

The WITNESS: I will have to be given further time for each road.

Mr. COWAN:

Q. How is that?

A. I will have to be given further time to answer for each road.

Mr. DAWES: We desire to make the same objection as to each road, and as to the Alton particularly.

The COURT: Have you data from which you can answer that question?

1690 The WITNESS: I have for the last three years over all lines.

The COURT: Then answer; give your best answer.

A. That average is about $2.50 per car via all lines.

Mr. COWAN:

Q. How much live stock shipments have you made?
A. That is, in western territory?
Q. Yes, from Kansas City to Chicago, and from Omaha to Chicago?
A. An average of 1,000 cars a year from Missouri river territory, that is, Kansas City, Omaha and Sioux City.
Q. How is that?
A. Sioux City.
Q. About how many?
A. About 1,000 cars per year.
Q. What have been the claims for damages collected on the live stock shipments to Chicago during that time over the lines reaching from this point to Kansas City?

Mr. SEVERANCE: I desire to reserve an objection to that, unless it is limited to claims for delays.
The COURT: Objection overruled.

Mr. LYNDE: I would like to have that question read.
The COURT: It does not apply to your road, anyway.
Mr. LYNDE: It seems to apply to the whole country.

(The question was then read.)

The COURT: Answer the question.
A. I have prepared no statement covering such loss.
1691 Mr. COWAN: Do you know what it amounts to?
A. I should judge it would amount to——

Mr. SEVERANCE: I object to any guessing. This is or should be a matter of definite figures.
The COURT: Let him guess the same as the others, and then prepare your figures afterwards.

A. Probably $1.00 per car.

Mr. SEVERANCE: What is the ruling?
The COURT: The objection is overruled and he is instructed to prepare his statement afterwards.

Mr. COWAN:

Q. Have you the means of furnishing a definite and correct statement with respect to the amount of loss and damage per car, with respect to each one of the railroads on shipments of meat over it, with respect to packing house products and dressed meat, on the one hand, and live stock on the other hand?
A. Yes, sir.
Q. Will you prepare and produce such a statement tomorrow?
A. Yes, sir.

The COURT: Now, you had better make that apply to the different railroads.
Mr. COWAN: All right, I said every road.
Mr. SEVERANCE: I ask that the witness be instructed to note upon

the statement the number of cars of each class of commodity
1692 shipped. He has testified offhand here to a dollar or car, or something like that, and no number of cars is given which that is to cover, or as to which class of product, or as to whether it is the live stock, so we can see how it checks up with the railroads. I would like to have those things noted. Perhaps we can find out where this settlement was made.

Mr. COWAN: I also request that the statement show what it was for.

Mr. SEVERANCE: Yes, we would like that.

Mr. DAWES: Yes, whether it is legitimate, or otherwise.

Mr. SEVERANCE: Yes, whether it is a legitimate claim or a bogus claim.

Mr. COWAN: You had better be mighty cautious about that, you gentlemen on the other side of that rail.

The COURT: You don't want him to put that down on paper, do you? Wouldn't you rather cross-examine him on that subject?

Mr. SEVERANCE: We want him to have the data with him so that he can give answers that are not guesses.

The COURT: Any more questions, Mr. Cowan?

Mr. COWAN: You have heard the statement with respect to the other matters we asked you to make up.

A. I don't recollect them just now.

Q. Well, statements concerning how much dressed beef and
1693 how much product they actually dressed out in the case of cattle and in the case of hogs.

A. Yes, sir.

Mr. BAXTER:

Q. In making up your statements of the kind called for, with reference to damage to live stock and damages to dressed meat and packing house product, I wish, in addition to your specifying the road against whom you made the claim, that you would state the date and the number of the car, so that we can trace it.

Mr. SEVERANCE: The day the claim was put in.

Mr. BAXTER: Yes; and I want the number of the car, so that we can trace it.

Mr. DAWES: If you will be good enough, state whether it is a claim for delay or a claim for physical injury.

Mr. SEVERANCE: In each case, as to the live stock and the packing house product and dressed meats.

Mr. BAXTER: You were asked in regard to the number of cattle, and so forth, received by your house. I wish you would file a statement showing the total number of cattle, calves and hogs received by your company at each of your packing houses in the years 1901, 1902, 1903 and 1904, and also a statement showing the total number of cattle, calves and hogs slaughtered by your company at each of your packing houses in each of those years.

1694 The WITNESS: That will take some little time,—two or three days,—I will have to hear from Kansas City and New York.

Q. Well, you can bring it in as soon as you get it done?
A. Yes, sir.

Mr. DAWES: I think, your Honor, that if we may be permitted, we will postpone the cross-examination until these statements are in.
The COURT: I think that is better.

E. P. RIPLEY, having been duly sworn, resumed the stand for further Direct Examination by Mr. Cowan, and testified further in rebuttal, as follows:

Q. I forgot whether I had any additional questions to ask of Mr. Ripley or not. He was requested by counsel for defendant to bring with him some statements?
Mr. SEVERANCE: Well, you asked him to bring a statement—I can tell you what you asked for. It is on page 1608 of the record. You asked him to bring a statement to be filed showing the items, not in dollars and cents, unless it is convenient, of expenses that are incident to the handling of packing house products and dressed beef, which are not incident to the handling of live stock, and
1695 also the items of expense incident to the transportation of live stock which are not incident to the packing house product and dressed beef.
Mr. COWAN: Yes; and a comparative statement of the expenses, the cost of the service on shipments received, say, at Carrollton, of live stock and packing house products and dressed meat, and at Missouri River.

Q. Any such explanations as you desire to make to any of the statements made when you were on the stand before, you are at liberty to proceed with, as well as in answer to the requests that have been made.
A. The two questions which have just been read, I either did not understand, or else they did not lodge in my memory, and certainly no memorandum was given me in regard to them. The questions that were asked, which I remembered, and on which I have prepared a statement, was, first, the number of stock yards on our line between here and Kansas City. I have that statement.
Mr. SEVERANCE: Kindly read that into the record, I asked for that.
A. Well, it is a pretty long statement.
Mr. SEVERANCE: Well, give the number and the total value, then, if you have it.
A. On the Illinois Division between here and Fort Madison,
1696 the total value is, $24,300. That is merely for the yards, but adding the tracks and stock scales and everything pertaining to the yards, the total is, $40,560. The number of yards is 55 in Illinois, and 48 in Missouri; the valuation in Missouri is, $59,500. That includes the yards, scales, tracks and everything else.

The COURT:

Q. Do you remember the average?

A. The average is very easily ascertained by those figures, it is a total of about 100 yards and about $100,000, about $1,000 apiece, that is a rough estimate.

Mr. SEVERANCE:

Q. Does that include the cost of the land on which the yards are located?

A. Yes, that includes the entire value. There is no segregation of the value of the land, because it is generally on the right of way.

Q. Are those figures made up from the cost of the yards, or is it an estimate of their present value?

A. The cost of the yards as they stand on our books.

Q. Do they stand on your books with a certain depreciation charged off against them?

A. No, sir.

Q. Just the original cost?

A. Just the original cost. Theoretically they are kept in such repair as to eliminate the idea of depreciation. We have
1697 rebuilt some of them. Some of these have been built for many years, and probably in that time they have been entirely rebuilt.

I was also asked for the amount paid during the fiscal year ending June 30, 1905, in settlement of claims for loss and damage on account of delay to live stock arriving in Chicago. The total of that is, $5,130.97. That, however, embraces more or less delay which took place west of Kansas City. That is the amount paid for delays on cattle arriving in Chicago, but it is not—the most of it applied on the business this side of Kansas City, but some of it did not.

The COURT:

Q. Is that for one month, you say?

A. For one year.

Q. $5,000, that is for a year's delay to live stock?

A. Yes. The number of cars received I think is shown in the stock yards' books, and that was 8,000. That was in the evidence the other day.

The COURT: You gentlemen had better write out the questions you want him to answer.

Mr. SEVERANCE: Those are the only ones I wanted.

The WITNESS: If you will write out the other question, I will see if I can get it.

Mr. COWAN: Yes, I will. Perhaps I can get it in another way.

1698 Mr. SEVERANCE: When we adjourned last night I was asking Mr. Ripley some questions. Could I complete those questions now?

Mr. COWAN: Oh, yes. For the purposes of the record, at present, the exact amount or number of cars was 8,651 cars for the year 1904.

The WITNESS: No, that is the calendar year, while this statement here covers the fiscal year from June 30th to June 30th.

Mr. COWAN: Well, it would be something around that.

Mr. DAWES: Say 80 cents a car would be it, figured roughly.

The WITNESS: Something like that, it is about five-eighths.

Mr. COWAN: It amounts to just about 60 cents.

Mr. DAWES: Well, if you divide that, but Mr. Ripley is not accurate as to the number of cars, because they cover a different period, but estimating it upon the amount paid, and the estimated amount of cars, something about 80 cents a car, is that right?

A. Well, as I recollect it it is $5,130.

Mr. DAWES: And there are about 8,000 cars.

A. About 8,000 cars; about five-eighths—about five-eighths of a dollar per car.

Mr. SEVERANCE: You were asked by Mr. Cowan on re-
1699 direct examination, if you could tell the difference in cost between hauling the same train 18 miles an hour and 20 miles an hour? You said there would be a difference, but it would be impossible for you to state what the difference would be.

A. Yes, sir.

Q. It is a fact, however, is it not, that you cannot haul as great a tonnage 20 miles an hour as you can 18?

A. Not quite. If all of our trains were full, if every locomotive was taxed to its utmost capacity, the difference would be more accentuated between 18 miles an hour and 20 miles an hour than it is under other conditions.

Q. Can you tell, in percentages, the difference in amount of tonnage the same locomotive will haul at 18 miles an hour and 20 miles an hour?

A. I don't think that question could be answered unless you assume similar conditions.

Q. I am assuming that it is hauled over the same line of road at the same speed—I don't mean at the same rate of speed, but I mean over the same line of road.

A. I think a theoretical answer could be given to that question, that is, an answer that would be theoretically correct, but I cannot give it at the moment, but I think it could be done.

Q. Wouldn't it be safe to say that it would be 40 per cent.
1700 difference?

A. No, sir, between 18 and 20 miles?

Q. Between 12 miles and 20?

A. No, I think not.

Q. You testified the other day, Mr. Ripley, that a car of packing house product represented a condensation of three cars of live stock. On reflection, don't you think you want to modify that statement?

A. Possibly I should modify that statement somewhat. I have no expert knowledge on the subject. My judgment as to that was, that, as a rule, at the various packing centers there is about—there is received, from two to three carloads of live stock for every car load of product that is shipped out. Of course, in a center like Kansas City, there is more or less local consumption which takes

care of part of that. Then, there is also more or less live stock shipped out and there is also more or less product shipped west, so that, from that information, it would be hard to judge. I prefer to take expert testimony of people who do packing.

Q. For the purpose of your testimony, do you regard that suggestion as withdrawn?

A. I did not intend in my testimony to be exact about that. I said, somewhere in the neighborhood of from 2 to 2½ cars of live stock were condensed into one carload of manufactured product.

Q. As at present advised, you don't care to give any opin-
1701 ion on that?

A. No, I think I was wrong on that.

Mr. COWAN:

Q. Mr. Ripley, you said that theoretically, to run a train at 20 miles an hour, or 18 miles an hour, there would be a difference. That is, as I understand, on the theoretical full loading of each train?

A. Yes, sir.

Q. But under actual railroad conditions, in this western country, is that theoretical tonnage loading of engines practical or does it happen?

A. It happens as often as we can make it happen. That is something that we are always striving for, and which we attain as nearly as we can. It very often happens that we cannot. That is especially true in the case of both packing house products and live stock, which has to be moved regardless of whether there is anything to go with it or not, and regardless of whether the train is light or heavy.

Q. Isn't it true that if you take the train consists out of any division point, that you will find that in 90 per cent. of the cases your engines are not loaded to their theoretical capacity? Have you examined to see?

A. I know, in a general way. In practice it is impossible to load an engine to its theoretical capacity. There are a great many things
that prevent that. The condition of the engine, the condi-
1702 tion of the atmosphere, the condition of the track and the question of wind pressure, so that we simply aim to load the engine with all that it can practically haul, which is generally somewhat less than it can theoretically haul.

Q. Isn't it a fact that when you are making up your trains from various division points, that you have got certain schedule trains, fast freight trains that run every day, maybe one or two trains a day each way, and you have got to run those trains whether you have got the theoretical loading or not?

A. Always.

Q. Then you have a great deal of fast freight that is not hauled on regular trains, like California fruits and vegetables?

A. Yes.

Q. And perishable items?

A. Yes.

Q. And trains have to be made up and run, whether you have got the train load or not?

A. Yes, sir.

Q. And that applies to traffic in both directions?

A. Yes, sir.

Q. Now, isn't it a fact that when your engine and crew get to one division, that they have got to be gotten back on their return trip so as to bring other freight that will be accumulated, and you might not have a full load going back for them, but they have got to go back anyway?

1703 A. Yes, sir.

Q. And isn't the result of it that it is practically impossible to adjust a freight business down to the theoretical loading of engines?

A. It is impossible to attain full loading of our engines, of course. Our through train loading last year was 289 tons. Probably the average capacity was three times that.

Q. Now, in the examination of the annual reports of other railroads, do you not find that that same condition prevails pretty well throughout the district where you operate?

A. Well, I have not given any special attention to the reports of other roads. I look at their average train loading and compared it with ours. What their theoretical train loading is I don't know. I don't know the class of engines they have.

Q. You stated in your original testimony the other day the basis on which, in your opinion, the relative rates between these commodities should be. Now, I desire to ask you what is the general basis of rates, whether it is made upon guess work or whether it is made upon some conditions other than guess work?

Mr. SEVERANCE: I think, your Honor, that that was gone into on the direct examination.

The COURT: I think so. What is the use of going over that again?

Mr. COWAN: If there is any further explanation you desire

1704 to make in regard to it, you are at liberty to do so.

Mr. SEVERANCE: I don't think he is at liberty to do so, in view of the present attitude of the Court.

The COURT: The objection to the question is sustained.

Mr. COWAN: I was going to add, he was at liberty to do so so far as the complainant's counsel was concerned.

The COURT: He went over that fully last time. It is not necessary to spend any more time on it now.

Mr. COWAN:

Q. The figures which you have stated in the original statements filed, were made up by your statistical department?

A. Yes.

Q. Mr. Peabody is the man who made up those statements?

A. Yes.

Q. Does he understand the detail of the points on which the inquiries were made of you on Friday?

Mr. DAWES: I object to that.

The COURT: The objection is sustained.

Mr. COWAN: I will prepare a statement and hand it to you before you leave, requesting that you make a comparative statement of the cost of receiving at Carrollton, or such a place as Carrollton, where you receive live stock this side of Kansas City.

1705 The COURT: You had better put that in writing and submit it to the other side.

Mr. DAWES: How is that, your Honor?

The COURT: I stated that he had better put those statements in writing, showing what he wants, and hand them to the witness out of court and then the witness will bring it. It will save a great deal of time in court.

Mr. SEVERANCE: Of course the witness will bring the statement back.

Mr COWAN: It is extremely difficult to cross-examine one witness and then turn right around and cross-examine another and attend to these statements also.

Mr. SEVERANCE: You ought to have thought of it in the first place.

1705*a* *Amounts Paid During Fiscal Year Ending June* 30, 1905, *in Settlement of Claims for Loss and Damage — Account — Delay to Livestock.*

Shipments.

Claim No.	Amount paid.	Division.
2848	$325.00	M. E. Mo. Ill.
2937	163.57	Mo. Ill.
2944	72.50	Mo. Ill.
2837	115.52	M. E. Mo. Ill.
2422	450.00	Mo. Ill.
2552	175.00	W. E. Mo.
3064	134.37	Mo. Ill.
2256	80.00	S. K. K. K. E. Mo. Ill.
2076	198.67	S. K. Ill.
2028	144.74	S. K. Ill.
2075	57.82	S. K. Ill.
2919	200.00	E. Mo. Ill.
3216	91.97	M. E. Mo. Ill.
2383	86.27	Mo. Ill. M. K.
2712	82.33	K. C. M. E.
2967	77.47	Mo. Ill.
2166	9.00	Ill.
2461	69.00	Mo. Ill.
2868	72.81	M. E. Mo. Ill.
1746	100.00	W. M. Mo.
2813	78.16	M. E. Mo. Ill.

Exhibit—Ripley, trans. p. 1705.

	Claim No.	Amount paid.	Division.
1705*b*	2872.....	$67.56.....	M. E. Mo. Ill.
	2850.....	88.74.....	Mo. Ill.
4071.....		120.00.....	Mo.
2903.....		119.37.....	M. E. Mo. Ill.
4505.....		6.00.....	Ill.
2053.....		335 59.....	S. K. E. Mo. Ill.
2080.....		494.00.....	S. K. E. Mo. Ill.
3073.....		32.30.....	Ill.
2866.....		14.92.....	Ill.
2981.....		22.15.....	Mo. Ill.
2972.....		29.88.....	Mo. Ill.
2982.....		25.36.....	Mo. Ill.
3007.....		32.00.....	Mo. Ill.
2273.....		10.00.....	Mo.
2360.....		25.00.....	Mo. Ill.
2976.....		50.00.....	Mo. Ill.
2293.....		15.00.....	Mo.
3105.....		50.00.....	Mo. Ill.
2938.....		22.16.....	Ill.
2759.....		44.19.....	Mo. Ill.
2805.....		50.00.....	M. E. Mo. Ill.
2804.....		48.29.....	N. E. Mo. Ill.
2895.....		27.20.....	Ill.
2614.....		15.00.....	Ill.
2298.....		50.00.....	Mo. Ill.
2453.....		6.00.....	Ill.
	3319....	26.60.....	Mo. Ill.
1705*c*	2825.....	13.33.....	Ill.
	2791.....	49.60.....	Mo. Ill.
2356.....		25.50.....	M. E. Mo. Ill.
2244.....		15.00.....	S. K. E. Mo. Ill.
2443.....		30.00.....	W. M. E. Mo. Ill.
2803.....		20.00.....	Ill.
2506.....		20.00.....	Ill.
2617.....		28.91.....	Mo. Ill.
4134.....		25.00.....	Mo. Ill.
1286.....		50.00.....	Mo. Ill.
2725.....		35.90.....	Mo. Ill.
2815.....		22.14.....	Me. Mo. Ill.
3149.....		50.00.....	E. Mo. Ill.
2927.....		42.80.....	M. E. Mo. Ill.
2929.....		40.95.....	Ill.
2814.....		50.63.....	M. E. Mo. Ill.

1705*d*	Statement	One	$2,706.04
	"	Two	1,682.38
	"	Three	742.55
			5,130.97

Exhibit—Ripley, trans. p. 1705.

1705*e* *Telegram.*

Number	Rec'd from	Sender	Receiver	Time Rec'd
4	P. M.	O.	Se	2:30 P

KAN. CITY, 9/30, 1905.

To Jas. Peabody:

J. D. X. 6-176 Amount paid during fiscal year ending June 30" 1905, acct. delay to shipment of stock which moved between K. City & Chicago is five thousand one hundred and thirty dollars and ninety seven cents other divisions are involved in some of the shipments see statement to you by mail today.

H. 3 W. A. COMBS.

Ex.—Ripley, trans. p. 1705.

1705*f* SEPTEMBER 29, 1905.

W. A. Combs, Kansas City:

Please wire me figures of the amount of damages paid for delays on live stock for year ending June 30, 1905, on movement between Kansas City and Chicago. Must have these figures by early Monday morning.

JP-176 JAS. PEABODY.

Exhibit—Ripley, trans. p. 1705.

1705*g* Ex.—RIPLEY, p. 1705.

The Atchison, Topeka & Santa Fe Ry. Co.

Statement Showing Investment in Stock Yard Facilities, December 31, 1903.

Illinois Division.

Location.	Yards. Cap. cars	Yards. Value.	Stock tracks. Length.	Stock tracks. Value.	Stock scales. Value.	Total.
Ancona	8	400 00	....	.....	.....	400 00
Appleton	15	1 100 00	....	.....	160 00	1 260 00
Benson	6	200 00	351′	300 00	100 00	600 00
Cameron	15	700 00	657′	600 00	240 00	1 540 00
C. B. Junction	2	100 00	....	.....	.....	100 00
Chillicothe	15	700 00	....	.....	.....	700 00
Coal City	3	200 00	....	.....	.....	200 00
Cooper	2	200 00	....	.....	.....	200 00
Corwith	12	1 000 00	....	.....	.....	1 000 00
Dahinda	6	200 00	1369′	1 200 00	.....	1 400 00
Dallas	15	700 00	565′	500 00	100 00	1 300 00
Dana	4	200 00	....	.....	.....	200 00
Decorra	8	400 00	....	.....	100 00	500 00
Drummond	5	300 00	840′	800 00	.....	1 100 00
E. Ft. Madison	8	500 00	....	....	100 00	600 00
Edelstein	15	700 00	855′	800 00	.....	1 500 00
Galesburg	9	600 00	....	.....	100 00	700 00
Gorman	6	400 00	....	.....	.....	400 00
Groveland	3	200 00	....	.....	.....	200 00
Holton	4	200 00	549′	500 00	100 00	800 00
Joliet	6	300 00	....	.....	.....	300 00
Kernan	15	700 00	....	.....	.....	700 00

Location.	Yards. Cap. cars.	Yards. Value.	Stock tracks. Length.	Stock tracks. Value.	Stock scales. Value.	Total.
Kinsman	4	200 00	....	.....	150 00	350 00
Knox	4	200 00	428′	400 00	.....	600 00
La Rose	15	600 00	592′	500 00	....	1 100 00
Laura	15	700 00	664′	600 00	160 00	1 460 00
Leeds	6	400 00	....	.....	.....	400 00
Lemont	1	50 00	....	.....	.....	50 00
Lockport	1	100 00	....	.....	.....	100 00
Lomax	15	600 00	494′	400 00	170 00	1 170 00
Long Point	4	200 00	....	.....	.....	200 00
Lorenzo	6	400 00	....	.....	.....	400 00
Mazon	4	200 00	....	.....	.....	200 00
Media	15	700 00	1103′	1 100 00	.....	1 700 00
Millsdale	19	1 100 00	....	....	.....	1 100 00
Minonk	7	200 00	....	.....	.....	200 00
Monica	15	700 00	393′	400 00	.....	1 100 00
Moon	3	200 00	....	... ..	.....	200 00
Morton	8	100 00	....	.....	.....	100 00
Nemo	15	250 00	....	.....	100 00	350 00
Ormonde	15	700 00	572′	500 00	100 00	1 300 00
Ponemah	15	700 00	565′	500 00	160 00	1 360 00
Pontoosuc	6	300 00	615′	500 00	.....	800 00
Princeville	15	700 00	567′	.....	.....	1 300 00
Ransom	5	200 00	....	.....	.....	200 00
Roanoke	6	200 00	....	.....	.....	200 00
Smithshire	15	700 00	531′	500 00	.....	1 200 00
Streator (Parker's Switch)	5	300 00	300′	300 00	.....	600 00
Stronghurst	15	700 00	603′	500 00	.....	1 200 00
Surrey	15	700 00	598′	500 00	.....	1 200 00
Toluca	8	600 00	569′	500 00	100 00	1 200 00
Verona	5	200 00	....	.....	160 00	360 00
Washington	1	200 00	....	.. ...	.....	200 00
Wilbern	8	500 00	1064′	900 00	200 00	1 600 00
Williamsfield	15	700 00	600′	500 00	160 00	1 360 00
		24 200 00	....	13 800 00	2 460 00	40 560 00

1705*h* Missouri Division.

Location.	Yards. Cap. cars.	Yards. Value.	Stock tracks. Length.	Stock tracks. Value.	Stock scales. Value.	Total.
Agency Ford	4	200 00	....	.....	.....	200 00
Argyle	15	800 00	661′	700 00	.....	1 500 00
Atherton	8	600 00	585′	600 00	.....	1 200 00
Baring	15	800 00	679′	700 00	.. ..	1 500 00
Biddle	10	500 00	766′	800 00	....	1 300 00
Bosworth	15	800 00	745′	800 00	150 00	1 750 00
Bricker	5	300 00	....	.....	.....	300 00
Bucklin	15	800 00	591′	600 00	.....	1 400 00
Camden	4	400 00	....	.....	.....	400 00
Cardy	6	400 00	....	.....	.....	400 00
Carrollton	15	1 000 00	1113′	1 100 00	100 00	2 200 00
Converse	4	400 00	....	.....	.....	400 00
Courtney	9	300 00	....		.....	300 00
Dean Lake	8	600 00	862′	900 00	.....	1 500 00
Dumas	1	100 00	....	.....	... ..	100 00
Ethel	10	600 00	652′	700 00	.....	1 300 00
Floyd	8	900 00	681′	700 00	.... .	1 600 00
Fort Madison	60	8 400 00	2507′	2 500 00	.....	10 900 00
Ft. Madison Dpt.	1	100 00	....	.. ..	.....	100 00
Frazier	7	300 00	533′	600 00	.....	900 00
Gibbs	15	900 00	648′	700 00	.....	1 600 00
Gorin	15	900 00	503′	500 00	.....	1 400 00
Gower	8	700 00	....	.....	.....	700 00

Location.	Yards. Cap. cars.	Value.	Stock tracks. Length.	Value.	Stock scales. Value.	Total.
Hardin	15	800 00	....	.....	100 00	900 00
Hart	6	300 00	796′	800 00	.....	1 100 00
Hurdland	15	900 00	658′	700 00	100 00	1 700 00
Kenwood	6	300 00	...	.....	.....	300 00
La Plata	20	1 000 00	654′	700 00	.....	1 700 00
Lathrop	6	600 00	858′	900 00	100 00	1 600 00
Lawson	10	900 00	....	.....	100 00	1 000 00
Lawson (1½ miles east of Lawson)	6	300 00	....	.....	.....	300 00
Lexington Jc.	15	900 00	....	.....	150 00	1 050 00
Marceline	15	900 00	969′	1 000 00	300 00	2 200 00
Medill	15	900 00	500′	500 00	200 00	1 600 00
Mendon	15	900 00	609′	600 00	.....	1 500 00
Norborne	15	1 000 00	....	.....	100 00	1 100 00
Palemon	4	300 00	....	.....	.....	300 00
Plattsburg	15	1 000 00	....	.....	140 00	1 140 00
Rayville	9	400 00	....	.....	.....	400 00
Revere	15	900 00	687′	700 00	.....	1 600 00
Richmond	5	400 00	....	....	100 00	500 00
Rothville	15	900 00	....	.....	.....	900 00
Rutledge	15	900 00	....	.....	.....	900 00
Scearces	4	200 00	....	.....	....	200 00
Sibley	8	600 00	....	.....	.....	600 00
Standish	15	900 00	85′	900 60	100 00	1 900 00
Vibbard	4	300 00	....	.....	160 00	460 00
Wyaconda	15	900 00	657′	700 00	.....	1 600 00
Total		38 200 00		19 400 00	1 900 00	59 500 00

1706 Mr. COWAN: Mr. Ripley may not want to come back and I wanted to inquire if Mr. Peabody knew the facts and figures and could explain it.

Mr. DAWES: Ask Mr. Peabody, wouldn't that be proper?

Mr. COWAN: I wanted to ask the question awhile ago and was not permitted to.

The COURT: It looks to the Court as if you were trying to beat your own witness.

Mr. COWAN: Not at all.

The COURT: I don't think it would do you any good or anybody else.

Mr. COWAN: Not at all. I didn't ask the witness the other day for example, for a statement with respect to whether these rates were reasonable or not. I asked him in regard to what the relative rates ought to be. Now, in case the *the* witness answers that he claims the rates are too low on each, I am not bound by them, I can make inquiry about it. I certainly have a right to now, in regard to it.

Mr. SEVERANCE: We are going to claim that you are bound by it.

Mr. COWAN: You may, but there is no law that makes it so.

Mr. DAWES: You have got to take the bitter with the sweet.

Mr. COWAN:

Q. What do your other station facilities cost, other than
1707 the stock yards?

Mr. SEVERANCE: What is that?

The WITNESS: I beg pardon, what is that question?

Mr. COWAN:

Q. You made a statement of stock yard facilities between Kansas City and here, and their cost. You have other station facilities used for other freight and other purposes?

A. Yes, certainly.

Q. They are very much more expensive than the stock yards?

Mr. SEVERANCE: I object as a mere conclusion, and not redirect examination.

The COURT: The question is objectionable as to the form perhaps in which you ask your question.

Mr. COWAN: I am just asking the general question. I do not think it is important to this case to prove the exact cost of these other facilities, but there are other facilities used for other freight. I am simply asking in a general way, questions as to whetl. r they are very much more expensive than the stock yards.

The COURT: You may answer.

A. They are.

Mr. SEVERANCE: Our objection is reserved to this your Honor, as not redirect and asking for a mere guess.

The COURT: You may answer—have you answered the question.

1708 A. I said they were, they are very much more expensive.

The COURT:

Q. What is more expensive?

A. As I understand the question, the other facilities generally at the stations.

The COURT: Have you any figures to prove that by?

A. Every station has its——

Mr. SEVERANCE: I reserve an objection to the question of the Court, as immaterial and not redirect examination.

The COURT: Yes, go ahead.

A. Every station has either combination freight and passenger stations, or a freight station and a passenger station separate, some of them are very simple and some of them are very elaborate; but of course the simplest one is more expensive than any facilities we provide for the stock.

Mr. COWAN:

Q. In answering that question in regard to the cost and value of stock yards, I understood you to say that while the cost represented the original cost, the repairs that are made from time to time are theoretically supposed to keep the yards in a state of preservation, so that the present value would be represented by the first cost?

A. Yes sir.

Q. And that consists of repairs and rebuilding and whatever has been done from the time they were built up to the present time?

A. Yes sir.

1709 Q. That goes in the current cost of repairs and support?

A. Yes sir.

Q. Have you estimated, or do you know what it costs you per annum to maintain these stock yards aside from the stock yards at feeding points and division points?

A. No, I do not.

Recross-examination by Mr. SEVERANCE:

Q. Mr. Ripley, you were asked just now about other stations aside from stock yards, you didn't have any other station facilities along the line that are used particularly for the handling of packing house products and dressed meats, I believe?

A. No sir.

Q. All of those products are shipped from one terminus to the other?

A. Yes sir.

Q. And the station facilities that you have are those made necessary for the handling of ordinary merchandise and the handling of your trains?

A. Yes sir.

Q. All trains alike, including live stock trains?

A. Yes sir.

1710 Recross-examination by Mr. BAXTER:

Q. Now, Mr. Ripley, you were asked as to the value of depots other than your stock yards, and as your testimony in regard to the stock yards applies to those located between the Missouri River and Chicago, I wish you would ascertain and give us the number of those depots that are not used for live stock, and what are used for ordinary dead freight and for passengers, and give us the revenue derived by your Company from the transportation of live stock between the Missouri River and Chicago, and the revenues derived by your Company from passengers and ordinary dead freight between the Missouri River and Chicago, so that we can get a comparison between the cost of your depots for live stock and the revenue from live stock with the cost of your depots used for other purposes and the revenue derived from other freight?

A. If I understand the question, it is going to be very difficult, if not impossible, to get that information—to segregate those earnings from our general earnings. For instance, we bring a great many passengers and an enormous amount of freight from the far West to Chicago, which is billed through, which passes over the line between Kansas City and Chicago.

1711 Q. It would not be difficult to get the number of depots and their cost?

A. No, no, that is easy enough. Substantially, the number of depots will correspond with the number of stock yards as already given. There being substantially a station wherever there is a stock yards, and a stock yards wherever there is a station, but to

get the earnings on our line between here and the Missouri River segregated from the other earnings, would be difficult.

Q. Well, your local earnings between here and the Missouri River, would not be difficult to ascertain would it?

A. Yes, they would; it would be a work of considerable magnitude to get at that.

Q. Well, of course, I don't want to make too much work.

A. It would take a good while.

JAMES PEABODY, called as a witness in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. Your full name?

A. James Peabody.

Q. What is your business?

A. Statistician of the A. T. & S. F. Railway System.

Q. Explain, without detail of questioning how long you
1712 have been engaged in the railroad service, and the service you have been in?

A. I have been in the railroad service since 1871 nearly all of the time. I have been engaged in my present position since 1896.

The COURT:

Q. What do you say your present position is?

A. Statistician for the A. T. & S. F. Railway System.

Mr. COWAN:

Q. What positions have you filled and the character of them?

A. During that time?

Q. Yes.

A. I was Agent of the M. K. & T. Railway in Texas; and General Agent of the C. B. & Q. Railway at Cincinnati, in Charge of the central territory. I was Chief Clerk in the General Freight office; I was in charge of the pool traffic in the old days when pools were vogue; and I was in charge of the tariffs for Judge Cooley when he was on the Wabash, and for a few years I was editor of the "Railway Review" and then my present position.

Q. The Court holds that will qualify you as you are an editor. Now, Mr. Peabody, I want to know if you have examined your statistics with respect to the relative cost of handling packing house products and dressed meats from Kansas City to Chicago.

A. I have done so on the basis of the average cost for handling all business.

1713 Q. Is it possible to determine what it costs to handle a given car load or a given train load, for the whole of a given commodity between two given points?

A. It is not.

Q. What is the nearest approximation that can be made to it?

A. The nearest approximation that I have been able to make is on the basis of the gross ton mile, the average cost on the basis

of the gross ton mile, which means the total weight carried, multiplied by the number of miles.

Q. What is the unit of that determination, is it the gross weight behind the engine?

A. The gross weight behind the engine, the number of tons behind the engine multiplied by the miles run.

Q. Under the conditions as they do actually exist in the railroad traffic, is a theoretical train loading attained in actual practice?

A. Do you mean the theoretical rating of the engine?

Q. Well, yes.

A. It is not, because of the varying conditions under which the engines operate. The engine on one day pulls more or less than it can on another day because of the variation in wind, the condition of the track, the atmosphere, various things of that sort. The usual practice is, for the train dispatcher who directs that, I mean the usual practice on our road is, for the train dispatcher,
1714 who directs that to make his own estimate and get as near the theoretical train loading as he can.

Q. And that will depend on whether he has the freight to carry?

A. Of course.

Q. Does it often happen that at a division point there will be more than two train loads and not three, or more than three and not four, to be moved, so that you move the greater number of trains, and yet have less possible loading than the theoretical, or natural tonnage?

A. On ordinary freight, such as does not require any particular dispatch, they usually try to get the movement capacity of the locomotive under the prevailing conditions, but when the freight consists of dressed meat, perishable freight of any sort——

Mr. SEVERANCE: Live stock?

A. Or live stock—they move that as fast as they can; they do not hold it, in other words, to make up train tonnage. It is the desire of every division superintendent to have the fewest possible trains for the amount of tonnage he handles, and he is constantly striving to that end.

Mr. COWAN:

Q. But in the movement of traffic both ways, crews have to return from one division point to another, do they not?

A. They are very often returned dead-head. Perhaps I might explain that: The reason for that is, if they return dead-head, there is no tonnage marked against them, whereas if they run
1715 with a light train, there would be tonnage marked against them and the record of the division superintendent would not show as well in that case as where his crew goes back dead-head and waited for its tonnage.

Q. In making up the average freight loaded train mileage for the accounts of the Interstate Commerce Commission, do you take into consideration and add as loaded train mileage an engine and caboose empty?

A. No sir. Wait a moment, I will not be sure of that, but I think

not. I think that is an exception. It is printed right in the reports, and you can tell by that. I haven't made that up for sometime. My recollection is, no.

Q. You haven't made that up lately? The actual loaded car mileage is representative of the number of miles made by cars which have loads in?

A. Which have some freight in, they may have 100 pounds in them.

Q. Yes.

A. It is a loaded car if it has anything.

Q. And it may not be a car load, but it is a loaded car?

A. It is a loaded car for the sake of determining how many cars are loaded and how many are empty.

Q. That which has less than a car load in it always takes the less than car load rate, which is higher than the car load rate?

A. Oh, yes, always. And it is the desire of the Operating department to make their loads per car as heavy as possible so that

1716 as a rule they load them as much as they can.

Q. Even with the local freight?

A. Even with the local freight.

Q. What is the average train loading, that is to say the per cent. of train loading to the engine rating on the average.

A. I could not tell you that.

Q. What is the average rating of your engines, do you happen to know?

A. I do not mnow that.

Q. The revenue carried per ton is very much less than the rating of the engine, is it not?

Mr. SEVERANCE: I object to that, as he says he does not know what the rating is, he cannot tell.

The COURT: The objection is sustained.

Mr. COWAN:

Q. You made up the figures which Mr. Ripley used in his statement the other day?

A. I presume so. I didn't hear his statement. I furnished him some figures which he wanted and I presume he used them in his statement. I was not here at the time he gave his testimony.

Q. What are the expenses incurred at Kansas City in the transportation from there of packing house products per car, and the transportation from there of live stock cars, both destined to Chicago?

A. On the basis of average cost or on the basis of the cost to those articles?

1717 Q. I am asking you to explain in any way you please what is the relative expense incurred in the two classes of traffic a car of live stock and a car of packing house products and dressed meats?

Mr. SEVERANCE: That is confined to the Santa Fe road is it, Mr. Cowan, that question?

Mr. COWAN: Oh, yes.

A. To do that I would have to explain the method by which I arrive at it, it won't take but a moment or two though.

The COURT: Proceed.

A. We first have what is known as a train report, or wheel report, a copy of which comes to my office, of every wheel report on the road. There it is figured up as to the number of gross ton miles covered by the wheel report and it is assigned to the district where the train operates, or the portion of the road over which the train runs. We ascertain in that way the gross ton miles over every portion of the road. Then we take our expenses, every expense which we pay, we take the voucher for it and analyze it as to where that expense is incurred, locating it as between freight and passenger as far as we can, locating it as to the portion of the road as far as we can. We are able to locate absolutely over 80 per cent. of these expenses as to the service and as to the location.

1718 We then make a distribution of these expenses on the basis of the gross ton miles, and assign to each Division for each separate account, the outlay for that account to that Division, and find what the rate is per gross ton mile for handling over that Division.

Then in the case in hand, I took the weight of the car of dressed meat, packing house product and live stock as furnished by the Interstate Commerce Commission in their report in this case, I took the weights which they gave, 28,000 pounds I believe for the packing house products, and 21,000 pounds for the dressed meat and 22,000 pounds for the live stock, and added to the weight of the car which they also gave, took their weights exactly and applied my figures to those weights, first deducting from the dressed meat and packing house product computation, the average cost of repairing the cars, because we do not do anything to those particular cars except paying for running repairs, we do not maintain those cars, whereas my charge in my general average included the maintenance of cars—so I deducted the average charge for the maintenance of the car from that computation. I added into that computation, the mileage of the car because we pay a cent a mile on those cars. I did not deduct from the computation the cost of running repairs, which at an estimate come somewhere about, well, between $1.50 and $2 per car perhaps, that has never been figured up particularly on those cars.

1719 Mr. SEVERANCE: Per annum, do you mean?

A. No, per car for the round trip between here and Kansas City. A refrigerator car going from here to Kansas City, we sometimes break a column bolt, or arch bolt, or draw bar, and have to replace brake-shoes all the time, and those things go into what is called running repairs. I did not deduct that, I did deduct the whole of my repairs from the computation without taking any account of that that we paid, it being a *amsll* item; but on the other hand, I did not deduct the total mileage which we paid because that when pro-rated over the entire business, is a small item. I have ascertained so far as that is concerned that that amounts to 90.8 cents per car for the round trip between here and Kansas City, which

is more than off-set by the repairs which we deducted. So that in that computation it was shown I presume, as Mr. Ripley read, here are the figures I furnished him—I showed the expense on three bases: One which included the entire transportation cost, including interest and taxes; another which considered only the operating cost, which included maintenance of way and equipment and what is generally known as operating expenses; and a third, which is based on what I term, movement cost, which was figured on an estimate of 55 per cent. of the operating cost.

On those three bases it showed that on packing house products——

1720 Mr. SEVERANCE: It is the same figures that Mr. Ripley had?

A. Yes.

Mr. SEVERANCE: There is no use of reading that.

Mr. COWAN: Whatever it shows, is in the record.

Q. In respect to the item of $4 charged against the item of dressed meat per car for switching, and also $6.80 charged at Kansas City for terminal expenses there, I would like to have your explanation as to how those items came to be both included in the statement.

A. The $4 represents the cost which we pay to other lines for getting the business; some we pay $3, some $4 and some $5. I did not find out how many cars we paid at these various rates, but I took the middle rate, which was $4. That is not included in my charge for terminal expenses, that is a switching charge which we pay out.

The way we arrive at the terminal expenses is to apportion to the Kansas City Division all of the expenses of that Division the same as we do on all the rest of the line, and divide it by the number of cars handled by the Kansas City Division, and that makes a charge for the round trip in and out of $6.80. I took the pains to wire our Kansas City Agent Saturday, and asked him for his estimate of the cost of handling the car in and out of Kansas City.

Mr. SEVERANCE: I object to that as hearsay and incompetent.

1721 Mr. DAWES: We object as incompetent.

Mr. COWAN: I take it that it is a statement received in the natural course of business.

The COURT: Put it in for what it is worth.

Mr. SEVERANCE: I think it is an unnatural course of business.

The COURT: Go ahead and read it.

Mr. SEVERANCE: I object to the statement on the ground that it is hearsay and incompetent and not rebuttal.

The COURT: Are you serious about that Mr. Severance?

Mr. SEVERANCE: Yes sir.

The COURT: How much of your testimony is at first hand?

Mr. SEVERANCE: It went in without any objection.

The COURT: Sir?

Mr. SEVERANCE: I don't know of any that went in under objection.

The COURT: There was no witness shown here, no one witness sworn to anything without taking a good deal of it second hand.

Mr. DAWES: Your Honor, the particular objection to this I think,

was not shown by your Honor's differentiating. If this were perhaps a table of statistics acquired by him in the ordinary course of business from a subordinate, it would be admissible. This is the estimate of some man, not based upon figures, but is his
1722 general estimate of the cost. We cannot cross examine this man. This it would seem to me would be a very wide rule.

The COURT: You can cross examine this witness. This man is an expert man, and he gets these figures, relies on these figures the same as he relies on any other figures he gets.

Mr. DAWES: If they were figures, your Honor, I think they might perhaps go in, but the estimate should not.

The COURT: Let them go in for whatever they are worth. I consider them proper the same as in any chancery case.

The WITNESS: My question to him was: "Take a car of meat coming from any packing house as compared with a car of stock from the stock yards, I want the estimated cost to us outside of the switching paid to other lines, to get same to Sheffield"—that is where the end of the Kansas City yard is. His answer is: "Stock from trains at Argentine to Sheffield, $9.50; stock from stock yards including loading and disinfecting, $11.40; stock from stock yards not unloading, not including the loading and so forth, $7.50; meat from Twelfth street, $10.50; meat from other points to Sheffield, $7.50. Above on basis of single car handled. If more cars handled at one time, cost correspondingly decreased. Such business will probably come one and two cars at a time in such shape as not to allow consolidation and of course would have to have special service. This without counting use of car if our own stock car, but
1723 counting wages of crew, supplies, maintenance of engines and so forth, and counting Kansas City Belt trackage at 50 cents per car.

Mr. COWAN:

Q. Does that include or exclude the $4?

A. That excludes the $4.

Q. Now, the $4 you pay for getting it to your line, where you get it, is that right Mr. Peabody?

A. I beg pardon?

Q. The $4 is what you pay up to the point where your general expenses begin?

A. According to the rate, that costs three, four or five dollars as the case may be.

Q. Either three, four or five dollars, in addition to other expenses?

The COURT: What do you mean by "getting the business?"

A. We take it where the other road delivers to us, our junction with the road that switches to us. We do not reach the packing houses at all, and some other road has to switch those cars to us, and the point that we take it from the other line is where these expenses begin. We have to pay three, four or five dollars as the case may be for the switching by the other line, from the packing houses to our line.

Mr. COWAN:

Q. Was that $4 embraced in Mr. Ripley's figures, furnished by you a part of the $6.80?

A. Not at all.

1724 Q. Now, from your general knowledge of the subject independent of the exact figures, is it more or less expensive for you to receive and haul a car load of packing house products or dressed meat from Kansas City to Chicago than a car load of live stock from Kansas City to Chicago?

A. My own opinion is that it costs more to handle dressed meat and packing house products than it does the live stock.

Q. Now, have you made up any statement relative to the cost of handling live stock from stations this side of Kansas City like Carrollton, or a train picked up between Kansas City and some point 100 to 150 miles out compared with the dressed meat and packing house product?

A. I have not made up a statement, it would be a simple thing to make, I did not know as it was wanted.

Q. Independent of the statement showing exactly the relative cost, is it more expensive to you to haul a packing house product train from Kansas City to Chicago than it would be to pick up a train of live stock at Carrollton and haul it to Chicago?

A. A train originating at Carrollton and any other train originating at Kansas City?

Q. Yes.

A. I should say it would cost us less to haul the live stock from Carrollton to Chicago.

1725 *A. I should say it would cost us less to haul the live stock from Carrollton to Chicago.*

Q. I have here two statements that I want you to prepare to file and bring them down so that you can be cross-examined if desired: one is the cost of handling a train of live stock from Carrollton to Chicago as compared with the cost of handling a train of dressed meat from Kansas City to Chicago; the other is the cost of picking up a train say in the distance of 150 miles out from Kansas City at intervals, of live stock, and I will hand you the memorandum when you leave the stand and ask you to make that statement up.

A. You understand of course that I can only make it on the basis of the average cost, I cannot make it on the basis of particular cost.

Q. I understand. Now, if you receive a car at the stock yards at Kansas City, or ten cars of live stock to be brought to Chicago, what service have you to perform in doing so?

A. I do not know that I catch the drift of that question.

Q. If there are ten cars of live stock at the yards, and you are notified of that fact, for you to bring to Chicago from Kansas City, what service have you to perform in doing it?

A. We send a switch engine over to the yards and get the cars and bring them to where the train is made up and put them into the train and start it for Chicago.

Q. And where is the place it is made up?

1726 A. Well, that depends. It is not always made up at the same place, it depends on whether it is going in a solid train of live stock. A part of a train of live stock may stand up in the Argentine Yard, and it may be pulled up and put in that; or part of a merchandise train may be standing in the lower yard and they may be put in there. It depends altogether where the rest of the cars are.

Q. At all events a switch engine goes to the yard and gets the cars and brings them out and puts them in a train, wherever that is, and you pay 25 cents a car for the loading?

A. Yes, sir.

Q. Now, in case you have the same number of cars of dressed meat and packing house products, what service have you to perform with those?

A. Well, the switch engine has to take hold of them to make up the train. They are delivered to us at the junction of the road that gives them to us, and the switch engine has to put them into the train and they are sent to Chicago.

Q. Substantially the same service in both cases?

A. I should say that the service in connection with the stock cars was a little more than it was in connection with the dressed meat or packing house product.

Q. Why?

A. Well, that packing house product is usually delivered to us in the lower yards nearer to Sheffield than the stock would come from.

Q. Simply the difference in the length of the switching?

1727 A. Just a little difference in the length of the haul in the switching.

Q. Is that very much or inappreciable?

A. Not very much.

Q. Very well. Before you receive the packing house product you have to pay this three dollars or four dollars or five dollars?

A. Well, we have to pay for every car we receive.

Q. You have twenty-five cents in the case of the live stock and have three dollars or four dollars or five dollars in the case of the packing house products in each case? They are put in the train, may be in the same train and brought into Chicago?

A. Possibly.

Q. Except these statements that I want to get you to make up, I have no other questions.

There is one other question, Mr. Peabody: In a general way I will ask you to state what is the comparative cost per carload, of maintenance and expenses, of expenses incurred in the freight received at local small stations compared to the expenses per car at large cities like Chicago and Kansas City.

Mr. SEVERANCE: I object to that as immaterial.

A. I don't know; I could not answer that.

Mr. COWAN: Well, are the expenses generally greater at the large centers per car?

Mr. SEVERANCE: The same objection, your Honor. He says he don't know, he should not be asked to guess.

1728 The COURT: The objection is sustained.

A. I know nothing about what it costs at the smaller places in detail.

Cross-examination by —— ——:

Mr. SEVERANCE: What is this statement you asked him to make up, Mr. Cowan?

Mr. COWAN: The cost of handling a train of live stock from Carrollton, Missouri, to Chicago compared with a train of fresh meat and packing house products from Kansas City, Missouri, with the same gross tonnage.

Second, the cost of picking up a train of live stock at points east of the Missouri River, making, say, ten stops to pick it up, the first stop fifty miles east of the Missouri River, and the last stop 150 miles, of thirty cars, compared with a train of fresh meat and packing house products of the same gross tons from Kansas City, Missouri, both destined to Chicago.

Mr. SEVERANCE: Wouldn't it be better to defer cross-examination until this comes in? This seems to be most of his testimony.

Mr. COWAN: That is agreeable.

Mr. SEVERANCE: Do you want to examine him now, Judge Baxter?

Mr. BAXTER: Yes.

1729 Cross-examination by Mr. BAXTER:

Q. Mr. Peabody, on the examination of Mr. Ripley, he put in as exhibits to his testimony the following: "Comparative Exhibit of average revenue per car load by commodities on A. T. & S. F. Ry. system for the year ending December 31st, 1903; and comparative exhibit of average tons per carload by commodities on A. T. & S. F. Ry. system for the year ending December 31st, 1903. I wish you would examine those two papers here handed you and state whether you caused them to be made up and whether they are correctly compiled?

A. Those are two diagrams I made and they are correct for the dates named.

Q. Now, I hand you a paper headed, "cost of revenue and profit on Texas cattle traffic marked Exhibit C-1. I wish you would state whether you also made that paper and whether it is correct?

A. Yes, that was also made by me and put in as my exhibit on that case.

Q. Mr. Peabody, are you in a general way familiar with the operation of other railroads west of Chicago and running through the same country with the Atchison, Topeka & Santa Fe System?

A. I have examined the reports of a great many, most all of the western roads and am somewhat familiar with their business both from the reports and by actual view of the road.

Q. Now, how do you think the cost of operation and maintenance

and the cost of doing business generally on those roads would
1730 compare with that of the Atchison, Topeka & Santa Fe?

A. If you will exempt the maintenance, I would say that the roads that run through the territory which is somewhat like the Atchison, the roads of the southwest, the operating expenses were not very different; but the question of maintenance is an arbitrary proposition. The roads spend what they please in that regard. Some roads spend five thousand dollars and some twenty thousand dollars a mile. Of course that is all reflected in operating expenses. The road that spends five hundred dollars a mile would not of course be as much as the road that spent a thousand dollars.

Q. Now, will you kindly explain to the Court the principle on which you made up the two exhibits filed by Mr. Ripley, and this additional Exhibit C-1 which I now hand you so that His Honor will be able to take those exhibits and understand how to apply them to any question that may occur to him in the examination of the case?

(Here follows facsimile, marked p. 1730*a*.)

EXHIBITS

NOT

SUITABLE

FOR

MICRO-

FILMING

A. The exhibit showing the average revenue per car load is arrived at by ascertaining the total earnings on the particular commodity shown and dividing by the total number of carloads of that commodity handled. There are quite a number of commodities shown on these exhibits and they are all arrived at in the same way.

Q. Now, will you read those commodities off so that the Court can understand the scope of that comparison?

1731 A. On the total of carload freight we earned $65.35 per car for the year ending December 31, 1903.

On agricultural products as a whole we earned $85.75.

On grain we earned $82.83.

On flour and mill products $63.15.

On cotton and cotton seed products $61.00.

On fruit and vegetables $154.51.

I might explain right here that this only represents the amount we earned on the car regardless of the distance we hauled it. Fruits and vegetables are hauled from California, a long distance, whereas cotton and cotton seed products are hauled a comparatively short distance, and this merely represents the total we earned on the car load.

The other agricultural products than those mentioned, $67.98.

Animal products average $50.55 a car.

Horses paid $54.16 a car.

Cattle $42.43 per car.

Sheep, 54.49 per car. That includes some double deck sheep.

Hogs $28.39 per car.

Dressed meat and packing house products $98.04.

All other animal products $123.37.

Mine products average $45.52.

Coal and coke pay $47.84.

1732 Ore and concentrates $62.47.

And all other mineral products $30.77.

Forest products $47.63. That is lumber, and all other forest products.

Manufactured products pay an average of $85.84.

Petroleum and other oils $73.87.

Sugar $106.17. That also comes from California.

Iron and articles of, $139.83.

Earth and stone products $38.63.

Agricultural implements and vehicles $112.15.

Household goods and furniture $89.50.

All other manufactured products $84.36.

These two diagrams should be read and considered together, one showing the tonnage and the other earnings, and the difference in the earnings will in some measure be accounted for by the difference in tonnage; it will not be altogether accounted for because there is a difference in the length of the haul.

The tons of the car load freight, the total carload freight is twenty tons, almost twenty tons—19.99.

Agricultural products average 18.84 tons, grain 26.40 tons to the car; flour and meal products 18.03 tons; cotton and cotton-seed

products 12.13 tons; fruits and vegetables 14.05. Other agricultural products 12.89 tons.

Then comes animal products averaging 11.27 tons; horses
1733 load 10.77 tons, ten tons and 77/100ths; cattle 11.32; sheep 10.36; hogs 8.92; dressed meats and packing house products load 12.92 tons. All other animal products 12.84 tons.

Mine products load 26.29 tons; coal and coke loading 25.57 tons; ore and concentrates 25.51 tons. All other mineral products 29.35 tons.

Forest products average 21.54.

All manufactured products 20.61.

Petroleum and other oils 30.01 tons.

Sugar 18.35 tons;

Iron and articles of, 21.40.

Earth and stone products 23.39.

Agricultural implements 12.93 tons.

Household goods and furniture 10.68.

All other manufactured products 16.52 tons.

Q. What do you find to be the average earnings on all carload freight on Atchison, Topeka & Santa Fe System for the year ending December 31, 1903?

A. 19.99, almost twenty tons.

Q. No, I mean the earnings?

A. The earnings, I thought you said tonnage. $65.35.

Q. Now, what were the average earnings per car load of cattle?

A. $42.43.

Q. Less than the average of all?

A. Less than the average of all.

Q. Now, what are the average earnings per carload of hogs??

A. $28.39.

1734 Q. That is below the general average?

A. That is below.

Q. What is the average weight of loading of all carload freight?

A. 19.99 tons.

Q. What is the average weight of a load of, car-load of cattle?

A. 11.32 tons.

Q. And the average weight of loading of a carload of hogs?

A. 8.91 tons.

Q. Is is not shown by your exhibit that the proportion of dead weight to the revenue tonnage hauled is very much larger in the case of live stock than it is in the case of any other commodity hauled except furniture?

A. That is true. Furniture is 10.68 tons which is between cattle and sheep.

Q. Now, Mr. Peabody, in making up your Exhibit C-1 you have one column headed 15.5 weight of car, 11.3 weight of load, and 2 bedding. I was just going to ask you what those three sets of figures mean. 15.5, what does that mean?

A. 15.5 is the weight of the car, 15.5 tons.

Q. The empty car?

A. The empty car, weight of the car. 11.3 tons is the average

weight of the load in the car, the cattle, and two tons is the average weight of the bedding.

Q. Now, does your Company furnish the bedding?

A. Yes, sir; mostly sand, most of the bedding is sand.

Q. What is it worth to your company, what does the Company have to pay for it?

A. Oh, it varies, depending on where we get it, how far
1735 we haul it. Over on the Pecos we haul it sometimes well onto a hundred miles, and it is only what it costs to shovel it into the car and haul it to delivery point. It is pretty hard to tell what that is worth per ton.

Q. At the rate you charge for hauling sand for other people, what would it cost, if you have got in your mind the average length of haul?

A. If we haul on an average of thirty miles it would cost perhaps—I don't know, I have been out of the rate business so long it is pretty hard to tell. I should not want to haul it less than about four cents a hundred, which would be eight dollars a ton.

Q. And at $8 a ton two tons would amount to $16.00?

A. I don't imagine it would cost us that; that would be a revenue proposition, of course. I don't imagine it would cost us anything of that sort.

Q. But it would cost somebody else that much if you had to haul it for them, wouldn't it?

A. Well, we might haul it that distance for less. As I say, the rates have changed so much since I have been in the rate business, which was some years ago, that I would not like to say anything about rates.

Q. Mr. Peabody, do you know of any other railroad Company in the United States that goes as elaborately as your Company does into endeavoring to ascertain the relative cost of handling different commodities?

A. I think not. I know of none.

1736 Q. Well, is the matter of cost or even of relative cost a factor that has heretofore been considered by railroad companies in making freight rates?

A. Never that I have heard of. The rate is not made on the basis of the cost at all.

Q. Well, why are they not made on the basis of the cost?

A. It would stop the business of the country if made on the basis of the cost. There are a great many things that could not move at all if we made it on the basis of the average cost. Some things we have to haul at less than that, including everything. As I say, it is pretty hard to tell what the cost is, what you mean by cost. I showed three bases of cost, one of the total cost of transportation, the other simply of operating expenses, and the other the movement cost. Now, it pays us to haul business which does not pay the total transportation cost, because it furnishes us something towards paying interest and taxes, although it would not serve to pay the proper proportion.

Q. Now, as I understand the statistics put in by Mr. Ripley, which

were prepared by you, they show that live stock does not begin to pay its proportion of all of the cost of operation including interest and taxes?

A. Oh, no, by no means.

Q. You say it does not?

A. That is take it as a whole it does not. There is some live stock that does pay and some that does not.

Q. I am taking it as a whole.

A. As a whole it does not.

1737 Q. Do you remember how much it falls short per car of paying its proportion of the entire cost including interest and taxes?

A. I do not know; I do not remember. I think it is shown in my testimony in the cattle case, I am not sure.

Q. According to your calculations it does not pay its proportion of the operating expenses including interest and taxes, does it?

A. My recollection is although I have not the figures in mind, that the total of our cattle business falls a little short of paying even the operating cost. I would not like to assert that positively.

Q. Will you turn to Mr. Ripley's figures there?

Mr. SEVERANCE: I am just looking for it.

Mr. BAXTER:

Q. Do you remember whether live stock pays a small profit over the actual cost of movement, excluding its percentage of operating expenses and excluding altogether interest and taxes?

A. Are you now referring to live stock from Kansas City or to our whole live stock business?

Q. I am referring to the movements that you embraced in that calculation, that is from Kansas City?

A. That I gave Mr. Ripley?

The COURT: Yes.

A. That is simply from Kansas City. I thought you meant the whole live stock, that is simply Kansas City.

Mr. BAXTER:

Q. Well, just taking that as a sample.

A. From Kansas City it lacks $18.77 of paying the total

1738 transportation cost, that is on the basis of the average cost; $2.56 less than the total operating cost; but shows a margin of $19.29 more than the 55 per cent. of the operating cost which I estimated as being the movement expense.

Q. Now, then, a carrier in accepting and carrying live stock from Kansas City to Chicago would not be moving that traffic at a loss?

A. No.

Q. As compared with the cost of its actual movement?

A. With the cost of its actual movement, no.

Q. But he would be moving at a loss of $2.56 if it was made to pay its full proportion of all operating expenses, is that true?

A. That is on the theory that the cost of handling that was the

average cost of handling all freight. Of course you cannot apply that to a car of cattle because that might cost more or might cost less—I can't conceive of its costing less than the average, it will cost more than the average to handle cattle, in fact that is admitted in the case, I believe.

Q. And if the carrier were to charge up against the transportation of a carload of cattle from Kansas City to Chicago not only the total operating expenses, but its proportion of interest and taxes it would fall $18.77 short of meeting them?

A. It would, yes sir.

Q. Now, will you explain to His Honor why a carrier can afford to handle traffic which pays something more than the cost of movement, although it does not pay its share of all operating ex-
1739 penses, and still less its share of operating expenses, interest and taxes?

A. There are certain amounts of expenses that go on regardless of whether we handle traffic or not; the maintenance expense is largely a question of the weather, probably eighty per cent. of it is weather, and the track is wearing down and washing out and requires to be kept up regardless of whether any trains go over it or not, it has to be kept up so that trains may go over it. Then the stations are equipped with their full forces of agents and the taking of any particular one car or two cars or ten cars of a train load, makes no difference in the cost of maintaining those agencies at the stations. There is the general expenses of organization of the road and hundreds of other things of that sort that go right along whether we take any particular business or not. The proposition often confronts a traffic manager on the movement of a lot of freight that will pay what he thinks will be, what he knows is less than the average cost of doing the business, but it will pay something more than the cost of actually moving that business, such as the coal that we burn by the engine that moves it, the wages of the train men running the train, the oil and waste that it takes, and things of that sort, the actual movement expenses attaching to the movement of that particular business, and that will not amount to so much as the revenue, and while it will not amount to the total transportation cost, while it will not pay anything on interest and taxes,
1740 and perhaps not pay its proportion of the total operating expense, it will pay something towards that, and by that amount it helps to pay the expenses so much, and they take it if they cannot get any more; but if they took all the business on that basis they would go into bankruptcy in a very short time.

The COURT: How is it with dressed meat and packing house products, do you lose money on that, too?

A. Yes, we lose money on dressed meat and packing house products. On that same basis neither dressed meat nor packing house products, nor cattle from Kansas City pay the rate which the roads could afford to do their business on. It pays less than the average cost of doing it, it is not a question of which we make the most on, but which we lose the least on.

The COURT: Which do you lose the least on?

A. We lose the most on packing house products and dressed meat.

Mr. BAXTER: These calculations that you furnished Mr. Ripley in the item of total transportation cost, I understannd you include not only the operating expenses, but interest and taxes?

A. Yes, sir.

Q. But you make no allowance for dividends at all?

A. Oh, no dividends or anything of that kind in that computation; that isn't in at all, that is a question of cost.

Q. A car load of cattle would fall short by $18.77 of pay-
1741 ing the total transportation cost including interest and taxes, but not including anything for the stockholders of the Company?

A. No, sir; not at all.

Q. How much money did the Atchison, Topeka & Santa Fe System pay out in the year 1903 for damages to live stock and to persons in charge of live stock?

A. I do not recall the figures. They are in my testimony in that case. I can furnish them if you want them.

Q. I will be obliged if you will when you bring in these other statements. I would like for you also to state the amount of revenue received by your Company for the same year for the transportation of live stock?

A. The total amount of revenue?

Q. Yes.

The COURT: When do you want this witness to come back again?

Mr. COWAN: Tomorrow or next day. There are several statements I want him to make up before he comes on the stand. I do not want him to come back at once.

The COURT: Let him come back tomorrow morning.

A recess was here taken until 2 o'clock P. M. of the same day, October 2nd, 1905.

1742 MONDAY, *October* 2, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon W. S. WITTEN, called as a witness on behalf of the complainant in rebuttal, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

The COURT:

Q. What is your business?

A. Assistant General Superintendent of the Union Stock Yards and Transit Company.

Q. Stock Yards where?

A. Chicago.

Mr. COWAN:

Q. What are the duties of your position, Mr. Witten?
A. To see after the outside business, handling the stock in every shape and form.
Q. Does that include the loading of cars?
A. Loading and unloading, yes sir.
Q. How long have you been engaged in that business?
A. In this particular position or in the business of handling stock?
Q. No, in that particular position?
1743 A. I think about three years. Three years as Assistant General Superintendent.
Q. Have you ever been in similar employment at any of the other markets?
A. Yes, I have been in the employment of the Union Stock Yards Company at Omaha, Nebraska.
Q. How long were you in service there?
A. Ten years. I have been with this company ten years here.
Q. What other position did you fill with this company?
A. I was superintendent of the Feed Department.
Q. In the course of your employment have you become familiar with the loading and unloading of live stock at the yards here and at Omaha?
A. Yes sir.
Q. Are you familiar with the matter of the handling, the switching and moving of such live stock and the delivery of the cars and their return?
A. Yes, I look after that part of it at the yards, for the Yard Company.
Q. What is the average car loading in weight? of cattle here, Mr. Witten?

Mr. SEVERANCE: I object to that as not rebuttal.
The COURT: Let him answer.

A. Our records show about 23,600 pounds.

Mr. COWAN:

Q. How is that?
A. About 23,600. You mean the average to the car, do you?
1744 Q. Yes.
A. About 23,600.

Mr. SEVERANCE:

Q. That is cattle?
A. Yes sir, cattle.

Mr. COWAN:

Q. Do the shipments from Iowa run heavier or lighter than the average loading?
A. Well, they are heavier.
Q. About how much heavier?

Mr. DAWES:

Q. Do you know anything about this, did you make any figures on it?

A. Yes sir, some figures, yes sir.

Mr. SEVERANCE:

Q. Is that a matter of record?

A. Sir?

Q. That is a matter of record, isn't it, the weight of the car is a matter of record?

A. Yes sir.

Mr. SEVERANCE: I object to the witness giving any guess on it here. We ought to have the record here.

The COURT: Objection overruled. Go ahead, answer the question.

A. I could not say exactly how much, but I think about 100 pounds heavier.

Mr. COWAN:

Q. About 100 pounds?

A. That would be about a thousand pounds to the car, I mean.

1745 Q. The Iowa cattle are the corn fed cattle?

A. Yes, Iowa cattle come from the corn belt and that is where we naturally get our heaviest cattle, that would be from the Corn Belt.

Q. Now, in what period of the year are those cattle shipped mostly from Iowa, that is what time covers the heaviest receipts from Iowa?

A. Well, I could not tell you exactly but I could just simply give you my opinion on that.

Mr. SEVERANCE: I object to the opinion, if you don't know.

The COURT: Well, give your estimate.

Mr. COWAN:

Q. The best of your knowledge, your estimate.

A. Yes sir. Well, from the first of January to the first of July, the heaviest receipts would be.

Q. The first half of the year the receipts are the heaviest of corn fed cattle from Iowa?

A. Yes sir.

Q. With what are the cars bedded which come from there?

A. Well, they are mostly bedded with straw and hay.

Q. What per cent., in your judgment?

A. I should think 75 per cent.

Q. How often are those cars cleaned?

A. That is pretty hard to tell. I don't think they are cleaned very often.

1746 Q. What will the bedding weigh after the cattle are unloaded?

A. That depends largely on the condition of the car. A car that

has been cleaned out recently I should think would weigh from 200 to 500 pounds.

Q. When a car is used over and over again, how is it then?

A. Well, it is not very heavily bedded then. My experience in shipping and loading cattle is that the car is bedded very lightly and sometimes there is not any, any fresh bedding.

Q. A small amount of fresh bedding put in?

A. Yes sir.

Q. Do you bed cars here?

A. Yes, cars are bedded here, cars that we ship out are bedded by the Stock Yards Company.

Q. How do you bed them?

A. Why, we bed them——

Mr. DAWES: There is no testimony going to the bedding of the cars out of the stock yards. It is not germane to this inquiry. The question relates to the bedding, of course in here from the West.

The COURT: That is the question, I suppose that you are asking about, isn't it?

Mr. COWAN: Well, I will withdraw that then.

Q. You are acquainted with the method and manner of bedding cars at Omaha for shipment on to Chicago?

A. Yes sir.

Q. What is that?

A. We bed entirely with hay.

1747 Q. How much bedding is put in?

A. From 100 to 200 Pounds.

Q. Now are you able to state whether or not the character of the bedding and the amount that comes in here in shipments from Iowa is greater or less than that?

Mr. SEVERANCE: He has already given the figures on that in pounds. 200 to 500.

The COURT: Well, let him answer again.

A. Will you ask the question again?

(The question was then read.)

A. I think when a farmer beds the car, once in a while he puts in a little more hay in the car, but I think it would average about the same.

Mr. COWAN:

Q. How are the hogs bedded?

A. Why, in the summer time they are bedded with—Sometimes the car is clean and sometimes they are bedded with slack and sand, and sometimes I have seen some few cars bedded with clay. In the winter time they are bedded with straw or hay.

Q. Are these cars cleaned in the winter time?

A. Not very often.

Q. Did you ever have any cars cleaned here?

A. Yes, the cars are cleaned that the feeders are shipped out in.

Q. What does it cost per car to clean a car?
1748 A. I never cleaned any cars.
Q. I thought you said you had. I ask you now if you clean the cars?
A. I did not understand the question. You asked me if they were cleaned here, didn't you? I understood you to ask that, when they came in the yards if they were clean.
Q. What is the weight of the hog shipments, Mr. Witten?
Mr. DAWES: From what place?
Mr. COWAN: No, I am talking about hog shipments delivered at the yards here.
Mr. SEVERANCE: From where?
Mr. COWAN: I will ask you the question as I put it, the weight of the hog shipments delivered here at the yards.

Mr. SEVERANCE: I object to that as immaterial.
The COURT: Let him answer.

A. Do you mean——

Mr. COWAN:

Q. Per car?
A. Carload lot.
Q. Yes.
A. I cannot give you the exact figures on that.
Q. Do they run greater or less than the minimum?

Mr. SEVERANCE: I object to that as a mere guess. He says he don't know.
Mr. COWAN: If he does not know he can say so.

A. My opinion is that they run less.
Q. What do you understand the minimum to be?
1749 A. 21,000.
Q. Are they greater or less than 17,000 pounds?
A. They are greater than 17,000 pounds.
Q. How are the trains delivered here, bringing the live stock from Missouri river points to this city?
A. They are delivered by the different railroads at our chutes.
Q. Do they bring them in with their own engines and crews?
A. Yes sir.
Q. How long does it require you to unload a train?
A. About a minute to the car.
Q. About a minute to the car?
A. Yes sir.
Q. Have you got any statement showing the time of unloading of any of these roads coming in from Missouri river points?
A. Yes sir, we have a monthly statement. I have a statement showing the time of the three principal roads, the average time for unloading. That is, for the different hours during the night. I figure up the average on the largest roads here for the month, the C. B. & Q., 6259 cars at an average of one minute to the car to unload, for the month of August.

Q. For the month of August this year?
A. Yes sir.
Q. Who unloads the live stock here?
1750 A. The Union Stock Yards & Transit Company.
Q. What do the railroads do with respect to the matter of unloading?
A. They simply pull the train into the chutes and we do the rest of it.
Q. How many chutes do you have for unloading, I mean now for a train. You bring in a train of 25 or 30 cars and is there a chute for every car?
A. Yes, we have different sized chutes. Our chutes run from 18 up to 15 chutes. We have ten different sets of chutes, and we try as near as we can to adjust the size of the train to the size of the chutes.
Q. You don't unload a car at a time, you unload a whole train at once?
A. We have men stationed at each end of the train and we work with two gangs, two foremen unloading, and they come right together.
Q. How long will this train remain with the empty cars in the yards until they go back out to the Company's tracks?
A. They are pulled right out of the yards as soon as they are unloaded.
Q. Explain what your monthly statement shows and then file it as a part of your testimony with regard to the three roads you have selected.
A. Our monthly statement shows that for the St. Paul, the number of cars—it shows all cars received before 12 o'clock and the time and the percentage of the receipts. It shows the number of cars received from 12 to 4, and the time each car was—It took
1751 to unload it, to unload each car and the percentage of cars received by that road and it shows from four to six and from six to seven and from seven to eight and eight to twelve. Now, the St. Paul road receive from 6 o'clock—That means in the afternoon, 6 o'clock P. M., to 12 o'clock A. M., 186 cars. 5 per cent of their total receipts, and that was unloaded in one and one half minutes. From 12 to 4 o'clock the Milwaukee received 805 cars or 18 per cent. in one and six tenths monutes. From 4 to 6 o'clock the Milwaukee had 917 cars or 21 per cent. in one and five tenths minutes, from 6 to 7, 809 or 18 per cent. in one and one tenths minutes, 7 to 8 o'clock they had 868 cars, 19 per cent. in one minute. From 8 to 12 they had 821 cars, 19 per cent., in one and three tenths minutes. Do you want me to read off all the roads?
Q. No sir. That is an illustration of the time and manner in which the trains were delivered at the stock yards.
A. Yes sir.
Q. Now, do any of the live stock trains carry packing-house products and dressed meats into the yards?
A. Yes sir.
Q. Do you know to what extent?

A. I could not give you the number of cars, no sir. I know that we make notes of it on our train-sheet after the trains reach our yards. They have to stop and switch the packing-house prod-
1752 ucts out and it causes some delay and we keep a note of that on our records.

Q. Is it a frequent or infrequent occurrence?

A. Why, it is frequent, it occurs every day.

Q. What are the sizes of the trains of live stock which come from west of the Mississippi river into the yards here?

A. They run from 25 to 60 cars.

Q. What road brings in 60 car trains?

A. The C. B. & Q. and the Chicago, Rock Island & Pacific.

Q. Are the trains now larger than they used to be?

A. Yes sir.

Q. How does that compare with 6 or 8 years ago?

A. Well, there is quite a difference.

Q. They are heavier?

A. Heavier, there are quite a few more cars that are handled now than there formerly were.

Q. Compared with ten years ago?

A. I did not hear the question.

Q. Compared with ten years ago?

A. Well, I could not say about Chicago ten years ago. I know they are larger in comparison than with the trains in the West ten years ago. They used to run 10, 15, or 25 cars then.

Q. Are any part of the cattle which are brought in here for sale, shipped back out over the roads, which come in from the west?

A. Yes sir.

1753 Q. What trade does that apply to?

A. What we call the "feeders," it is the "stockers and feeders", largely, both sheep and cattle. Very few hogs, in fact, you might say there are not any hogs shipped back, but cattle and sheep are shipped back.

Q. In the annual report of the Union Stock Yards & Transit Company there appears two columns on each page; two paragraphs one is receipts, and the other shipments?

A. Yes sir.

Q. Have you the report there before you?

A. Yes sir.

Q. Take as an example, the Burlington on page 21.

A. Yes sir.

Q. How many cars were shipped in during the year 1904?

A. 55,365.

Q. How many were shipped out?

A. 2,360.

Q. The Burlington only comes in from the West?

A. Yes sir.

Q. It has no lines eastward?

A. No sir.

Q. What class of live stock was this that went back out?

A. Largely cattle and sheep. It gives the exact head there, 55,800 cattle, 1,300 calves, 16,900 sheep, and 902 horses.

Q. So that there is a use for stock cars both in and out, coming from the west, going back out, for live stock?

1754 A. Yes sir.

Q. Your annual reports shows the facts with respect to each one of the lines in the same manner, does it not?

A. Yes sir.

Q. Do you know how that is at the Omaha yards?

A. Why, there is a larger percentage shipped out of the Omaha yards.

Q. Where was the principal feeders, where do the principal feeders from the Omaha yards go?

A. They go to Iowa, the larger per cent., there and Nebraska. I think they are about evenly divided.

Q. Now, where is the largest feeder market and the most live stock shipped out?

A. I think Chicago is. I have not the exact figures.

Q. What is the light weight of the cars?

Mr. DAWES: What kind of cars?

Mr. COWAN: The light weight when cleaned, stock cars?

A. They run from 26,000 to 32,000 pounds.

Q. Who pays for the bedding in case of the feeder shipments either from here or the Missouri river?

A. The man that ships the stock out pays the Stock Yards Company for the bedding.

Q. Hogs shipped in in the winter time, are they bedded with hay or straw?

A. Yes, generally with hay and straw.

1755 Cross-examination by Mr. DAWES:

Q. When you say it takes a minute or a minute and a half to unload a car, that is, after the cars have been set at the chute, isn't it?

A. Yes sir.

Q. You have not taken into account any delays at all in bringing the stock up to the chute?

A. No sir, not in that figure.

Q. As a matter of fact there is—your tracks are very much congested on Mondays and Wednesday mornings?

A. Sometimes, yes sir.

Q. Isn't it the usual thing——

A. No sir.

Q. Wait, I have not finished my question. Isn't it usual for a train of stock coming in there to you, trains of stock on other roads, that they meet trains of stock on other roads waiting for the same chutes, so that they are delayed anywhere from one to three hours?

A. Not that much, no sir.

Q. Well, how much?

A. Well, it would not average an hour.

Q. Well, it would average an hour, wouldn't it?

A. I don't think it would.

Q. Delays of from one to three hours are extremely common, are they not?

A. They have occurred, yes sir.

1756 Q. They occur more than you like to have them or the railroads like to have them?

A. Yes sir.

Q. As a matter of fact, it is a fact that your facilities at the stock yards for the handling of cattle on Monday and Wednesday morning—that it, as I understand when the great rush of receipts comes in, is it not?

A. Yes sir.

Q. —they are inadequate to handle the cars that are in there except with considerable delay?

A. We could handle the cars as fast as they are received if they would come regularly, but if you bring 2,000 cars and deliver to us, to our yards, it is 2 or 3 hours in getting them unloaded.

Q. Does not the stuff come in from these various roads to the stock yards between substantially the same hours? Haven't you got your stock from the C. B. & Q. and the St. Paul and the Great Western and all these roads, don't you get it within three or four hours?

A. Well, no sir, there are times—It depends entirely on the weather conditions.

Q. Well, within those general limits.

A. Of course, we are the busiest handling more stock between 6 and 8 or 10 o'clock but we have the same chutes for handling that stock from 12 o'clock on.

1757 Q. As a matter of fact, the trains coming in and getting in there between 5 and 6 o'clock in the morning, it is your desire and the desire of the shipper to unload that stock in time for that morning's market?

A. Yes sir.

Q. And that makes a very serious congested condition between those hours?

A. Yes, it makes lots of business.

Q. So that when you say it takes a minute and a half to unload a car, is that a fair statement of the amount of time consumed and the amount of delay to the railroad company with reference to that delivery?

A. All that refers to is the time that it takes to unload the stock, the time consumed in unloading after the car is put at our chutes.

Q. The tracks—the stock yards run their own tracks, don't they?

A. Yes, they are covered by the Stock Yards Company.

Q. So the railroads themselves, they have no control over the movement of their trains or the way in which they shall run in after they get into the stock yards?

A. After they get onto our switches.

Mr. BAXTER:

Q. Sometime ago, some years ago, the Union Stock Yards published statistics showing the number of cattle and hogs received at

the stock yards during each year from each of the states from which live stock comes to Chicago, did it not?

1758 A. I never saw a report of that kind?

Q. You do not keep a record of that kind?

A. Not by states, no sir.

Q. And never did?

A. Not to my knowledge.

Q. Are you engaged in the book-keeping department of your company?

A. No sir, I am in the operating department, on the outside.

Q. Will you, as a representative of your company and the only one that has been put on the stand yet, file a statement here showing the number of hogs and cattle received at the union stock yards during the years 1901, 1902, 1903 and 1904 and during the first seven months of 1905, from Iowa, Missouri, Kansas, Nebraska, Minnesota and North and South Dakota?

A. I don't believe we could do that without a great deal of time and work. We would have to go back through all the bills. I don't know whether that could be done or not.

Mr. COWAN: I think Mr. Thompson will supply that.

Mr. BAXTER:

Q. Can you state how much time elapses from the time a train of live stock brought to Chicago, for instance, by the Chicago, Milwaukee & St. Paul, arrives at its point of intersection with the delivering line, until the same train is returned to the rails of that company?

1759 A. No sir, all I keep a record of is the time that it reaches our tracks. I watch that very closely until it reaches our chutes and is unloaded.

Q. None of those railroads, as I understand own tracks running into your yard?

A. No sir.

Q. They connect generally with some belt road, do they not?

A. With our terminal, yes sir, the Chicago Junction.

Q. In some instances, one of those roads (as, for instance the St. Paul) may connect with the Pennsylvania Road, and its trains of live stock pass for a part of the distance over that road?

A. Yes sir.

Q. Now, then, that road will connect with your road and from there on into the stock yards?

A. Yes sir.

Q. When you are talking about handling stock at the rate of a car load a minute, you don't mean to create the impression on this court that it is one minute per car from the time the Milwaukee & St. Paul brings the train out to its terminus here until it gets the cars back?

A. No sir, I mean from the time the train is set at our chutes until it is unloaded.

Q. Don't you know that in the case of that company it sometimes takes two or three or four or five hours to get its cars back?

UP TO CLOSE IN CENTER

A. There have been cases of that kind but it won't average more than an hour.

Q. One further question. Your company is interested in
1760 this case, is it not?

A. I don't know.

Q. Your company feels that it is injured by reason of the live stock being diverted from Chicago?

A. I should think they would, though they never said anything to me about it.

Q. What does the interest of your company in this matter consist of? The only interest in this live stock that you have is that you charge for feeding them and unloading them, do I understand correctly?

A. Yes sir.

Q. And you charge for feeding them and watering them while they are here?

A. Yes sir.

Q. And if it is shipped off for feeding purposes, you charge for bedding and re-loading?

A. Yes sir.

Q. And, that is the extent of the interest that your company has in the question as to whether these live stock rates are too high or too low?

A. I can just speak from my own opinion, of course; I am not expressing the opinion of anyone else, but only my own. I should think that it would discrimminate against our market, that we would be in favor of lower rates.

Q. Your company would have no interest in the markets here except in so far as it carries grist to your mill?

A. I did not understand.

1761 Q. The Union Stock Yards Company has no interest in the Chicago market either in building it up or tearing it down, except what you get out of the handling of the stock that comes here for you?

A. We are anxious to see the market grow, and we would not like to see it discrimminated against.

Q. Isn't the reason that you are anxious to see it grow, that you may get the money that you may derive from the sources I have indicated?

A. Yes sir.

MR. DAWES:

Q. You stated that a stock train of 60 cars came in over the Burlington and St. Paul.

A. No, the Rock Island.

Q. Well, the Burlington and the Rock Island. How often does that occur?

A. That large a train does not occur very often.

Q. How often?

A. We very seldom have a train of 60 cars, but we have 45 and 50.

Q. How many trains of 60 cars did you ever see come in?
A. Three or four.
Q. In how long?
A. They have only been hauling these large trains for the last few years.
Q. You have seen four trains in two years and you desire to give the impression here that the Burlington hauls in 60 car trains?
A. I did not say that, I said they ran from 25 to 60 cars.
1762 Q. What is the average cars that they run in?
A. The average train, I should think would be 45 or 50 cars.
Q. The average?
A. The average train coming from the west. I don't mean the trains that come in with a full train of stock.
Q. I am talking about the full train of stock.
A. Well, a full train of stock, that is what—not a train that comes in mixed up with other stuff.
Q. Well, they load an average of 25 to 30 cars?
A. No sir, between 40 and 50 cars.
Q. Do you know whether those trains have been brought in as one train from western points, or whether they have been consolidated at Hawthorn?
A. All I know is what the shippers tell me.
Q. What other knowledge have you about it, do you know whether those trains were brought in from some far western point of origin or whether they were consolidated in the yards and sent to the stock yards from there?
A. All I know is what the shippers tell me. They might have been made up before they came to our terminal.
Q. So you don't know anything at all, do you, about the number of cars in the through trains of the Chicago, Burlington & Quincy?
A. I know what they tell me. I have never seen it, I
1763 have never been out on the road.
Q. That is true of the Rock Island trains, too, isn't it?
A. Yes sir.

Mr. Severance:

Q. Have you any record down there to show the number of cars per train that come into your yard?
A. Yes sir.
Q. You have that record?
A. Yes, we could not show what percentage came from western points, we could not show that but we can show the number of cars.
Q. As a matter of fact, the trains that come into your yards are simply trains that are switched in there from terminals?
A. Yes sir.
Q. And they are not pulled in there by the engine that pulls the train into Chicago?
A. A great many of them are, yes sir.
Q. As a rule they are not, are they?

A. I couldn't say what per cent. The Milwaukee and some of the roads come right on with some of their cars.

Q. Well, the Burlington don't, does it?

A. I could not tell you.

Q. The Chicago, Rock Island & Pacific, don't, do they, and the Chicago & North-Western?

A. The North-Western comes in with regular trains, I mean they don't use a switch engine. It is a regular road engine that
1764 comes in. The Rock Island, I think are coming in now. They formerly came in with their switch engines.

Q. You have no means of knowing what state the cattle come from that come in there?

A. No sir, I have not outside of the bills. It could be looked up.

Q. Whether a train comes from Kansas or Missouri or Iowa, you don't know whether it comes from one state or another?

A. Not without I hear from the shippers. I know something about it, I know the division on the Milwaukee and on the North-Western, I know what division it is. I get a train report showing that. I know what division that train is off of. The Milwaukee might be off of what they call the Missouri River Division and the other might be off of the Wisconsin Division.

Q. What is the Missouri Division?

A. It is the line that runs between Omaha and Chicago.

Q. Then the cattle might come from anywhere in Illinois or Iowa?

A. Yes sir.

Q. How do you know that Iowa cattle weigh a thousand pounds more than the others, if you don't know anything about what State these cattle come from.

A. I know Iowa cattle that I have seen are, as a class heavy cattle, corn-fed cattle.

Q. As a matter of fact, you don't know anything about it,
1765 do you?

A. I think I do.

Q. You don't know what state those cattle came from?

A. I know a good deal about the states.

Q. Therefore, it is your opinion that you give that they weigh a thousand pounds to the car more than other cattle, that is something that you don't know anything about?

A. I think I do, as much as any of the men down there.

The COURT: You could make a very good guess at that yourself, couldn't you? That corn-fed cattle coming from Iowa weigh more than they do coming from Texas?

Mr. SEVERANCE: Do they weigh any more than they do when they come from Nebraska and Missouri and Illinois, your Honor?

The COURT: That is something everybody, I thought knew.

Mr. SEVERANCE: Maybe the Court can take judicial notice of that, but I did not know it.

Q. You stated here that 75 per cent. of the cattle that come in are bedded with hay and straw. What is the other 25 per cent. bedded with?

A. Sand.

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Q. How much sand to the car?
A. It varies a great deal, it would be pretty hard to give an idea of it.
Q. You can guess on that as well as on all these other things.
1766 A. Freshly bedded sand car would weigh from 300 to 700 or 800 pounds.
Q. Is that all?
A. We bed a great many hogs with sand and we don't put it in quite as thick as they do, the farmer does.
Q. How thick do you put it in?
A. About half an inch.
Q. How much does it weigh?
A. I never weighed it.
Q. Do you know anything about it?
A. I have an idea.
Q. How did you get your idea?
A. I got my idea from the shovelfuls of sand that are put in.
Q. How much does it weigh per shovel-ful and how many shovels-ful do you put in?
A. I did not intend to give you the exact weight.
Q. It is a mere guess?
A. I see it every day.

The COURT: Has anybody else weighed it? It is a guess with all of them, isn't it, it is a guess with all of them.
Mr. SEVERANCE: No, your Honor, I think not.
The COURT: I remember one man talking about the number of yards, bu- the court is inclined to think just as well of the man who has not the nerve to say that he does not absolutely know about everything as he does of the man who pretends to know it all.
Mr. SEVERANCE: I don't mean to be insulting to the wit-
1767 ness or of course to your Honor, but I think your Honor will recall that Mr. Gardner at least testified that he knew what it took because they hauled the sand in by the carload to these points where the cars were bedded and he told the number of tons per carload taken taking the average carload itself.
Mr. COWAN: Mr. Gardner, you say claims that he knew the number of yards he put in?
Mr. LYNDE: He knew the weight.
Mr. DAWES: He did not claim to remember the number of shovels full.

Mr. SEVERANCE:

Q. You say that the cars are not cleaned very often?
A. No sir.
Q. How do you know that?
A. By the books of the car.
Q. Well, none of the cars are cleaned at the stock yards, are they? They are taken back in the country and they have gone back down the road again and been bedded again and cattle have been moved in them after they are cleaned.

TO CLOSE IN CENTER

A. I tell you how I judge that. I have seen lots of cars that I did not think had over 100 pounds of bedding in them. I know those cars had been cleaned out right recently.

Q. Is that the only way you can judge?

1768 A. That is one of the ways and my general observation. I am along the chutes a great deal and I pay a great deal of attention to all the minor details of the work, of all kinds.

Q. Suppose a car comes in loaded with cattle, it is unloaded and in the case of the North-Western Road, it is taken out to a point on the Mississippi river, at Clinton.

A. Yes.

Q. And the bedding is taken out, that is, the stuff is cleaned out.

A. Yes.

Q. And it is re-bedded?

A. Yes sir.

Q. It goes back to a point over in the Missouri valley.

A. Yes.

Q. It is loaded with cattle and comes into Chicago again and the offal accumulates. Can you tell us whether that car has gone through that operation or whether it has made two trips without being cleaned?

A. I believe I can tell whether it had only made one trip. If it made one trip after it made the first trip, I don't believe I could tell, but I believe I could tell otherwise.

Q. You are not very sure of that, are you?

A. I think I could tell. I have observed quite a few of the cars that have very little bedding in them.

Q. You said a little while ago that the average would be about an hour's time consumed in getting from the tracks of the various roads up to the chute?

1769 A. Yes, that is considered, taking in the congestion that we have.

Q. You say it would average about an hour?

A. In my opinion, yes sir.

Q. Going from the terminals of the roads up to the chute and unloading?

A. Yes sir.

Q. Then you also said a little later that the average would be about an hour getting out of there, getting it out again?

A. No, I did not say anything about that.

Q. You were asked that and you said an hour just the same. What is the average time consumed in getting it up to the chute and getting it back onto the roads again.

A. I know we are delayed some in getting it back on account of the roads not taking the cars back promptly, we have that trouble with the C. B. & Q.

Q. Well, without trying to blame the railroads for anything just try and answer my question. Of course, we understand you people are not to blame for anything. I am asking you to give your best judgment as to the average time consumed from the time the

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stock train leaves the railroad, to get it to your chutes and unload it, and get it back onto the railroads again?

A. I will say that I never paid any attention to it after the trains are unloaded, but I have watched very closely and I know that we have some trouble at 19th street and at the different terminals
1770 caused by the different roads. Of course, after they are unloaded, I am not interested in them particularly.

Q. You don't know anything about it, do you?

A. No sir, I don't know anything about how long it takes to get back.

Mr. LYNDE:

Q. You spoke about the North Western trains being moved not with the regular engines or was it being moved in with the regular engine? What did you mean by that?

A. I mean it is not a switch engine, it is a road engine.

Q. It is a large sized engine, not a regular switch engine?

A. No, not a regular switch engine.

Q. You don't mean by that that they don't change crews? You don't profess to know anything about that?

A. No sir.

Q. I notice in your statement of the Union Stock Yards Company—your attention was called to that, I believe—something in reference to the shipments out of the yards?

A. Yes.

Q. Now, there is quite a movement up into Wisconsin, to Cudahy's plant, isn't there, don't they buy a good deal of stuff here?

A. They buy some here.

Q. And that all goes out of the yard here?

A. Yes sir.

Q. And that all appears in these statements of the number
1771 of shipments out?

A. Yes.

Mr. DAWES:

Q. Are there any statistics at the stock yards showing further the length of stock trains shipped in there?

A. No sir. We have the average statement, a statement showing what the average is for each day.

Q. But that does not show the average number of cars per train, does it?

A. Yes sir, the average train, we average that for each day.

Q. Take that average for the month, take this month of August that you talk so much about?

A. Yes.

Q. Will you give us the average of trainloads for that month?

A. I will.

Q. I mean the average of the length of the trains, the number of cars in a train?

A. Yes, I will.

Mr. SEVERANCE: Bring the figures with you.

A. Yes.

TO CLOSE IN CENTER

Mr. DAWES:

Q. Are they made for each company?

A. I can make them that way, for each company. If you are just asking for one month and will give me a couple of days to work it up.

Mr. LYNDE: It is the same month that you referred to, giving the time of unloading at the chutes. That was August, wasn't it?

1772 A. Yes, that was August.

Mr. COWAN: Mr. Dawes, if you would permit just a suggestion from me, the statement of your train conductors' reports out of the Galesburg yard, will fix that exactly.

Mr. DAWES: I know, but he has testified so widely different from the testimony already given by us on that subject that I want to see what his records state. Mr. Rice testified that our cattle trains averaged 30 to 35 cars,—they did not average that, even.

Mr. COWAN: From Galesburg to Chicago?

The WITNESS: I don't say that they would average that, all trains.

Mr. DAWES: You picked out the biggest train your ever heard of, four big ones, isn't that so?

Mr. COWAN:

Q. You stated from 25 to 60 cars.

A. Yes.

Q. Now, when you stated that a stock train coming from the west would run from 40 to 50 cars, you had reference to the average stock train with through freight, other freight?

A. Yes sir.

Q. That were brought in here?

A. Yes sir.

Q. When you make up your statement, separate as nearly as your information goes, trains of that character and the trains in

1773 which dead freight was brought in, if you can do it.

A. I don't think I could on all of it. I can in some cases. It shows the dead freight cars that each live stock train brings in.

Q. Now, you said the average time of a train from the point of reaching your tracks to the delivery back, would run something—I have forgotten whether you said it would be an hour up to the chutes on the average, or an hour to the chutes unloading and back to the railroad track?

A. I meant that it would not average over an hour from the terminals to our chutes.

Q. You don't know what time it takes to go back?

A. No sir.

Q. I will ask you if you were not requested to make, and if you did not make at very great labor, a statement showing the average time, taking certain days in the month during some entire years, for the Interstate Commerce Commission, in the Texas Cattle Raisers case and if from that you won't be able to state what the average time was on those days, of the different roads?

A. Yes sir.

COPY BOUND TO

Q. And that is the time they come onto your tracks till the cars went back off of your tracks to the railroad company?
A. Yes sir.
Q. You are not in any way connected with the manage-
1774 ment of the Stock Yards Company?
A. No sir.
Q. You were subpœnaed up here as a witness by a subpœna from this court, were you not?
A. Yes sir.
Q. You have had no information and no direction whatever from the management of the stock yards in any way?
A. No sir.
Mr. DAWES: Why don't you ask him these questions?
The COURT: What do you say about that, have you?
A. No sir.

Mr. COWAN:

Q. Are you speaking for the Stock Yards Company in any way?

Mr. SEVERANCE: I object to that.
Mr. COWAN: We simply got him up here with a subpœna that is all and asked him these questions, and he told us what he knew about it. There has been no communication whatever between us and the Stock Yards Company about it and in justice to the witness I want to state that he is not here speaking for the company.
Mr. SEVERANCE: Can the witness explain a lot of figures on this statement? None of us seem to be able to make out what they mean.
(Statement handed to witness.)
1775 The WITNESS: This is the per cent.
Mr. SEVERANCE: Wait a minute, we want to get this in the record. On this statement that you filed we will take the first column across. St. Paul, before 12,186 cars, 5—(1.5), what do those figures mean?
A. 5 means 5 per cent. of the receipts came in before 12 and 1.5 means that that is the time it was unloaded in.
Q. You mean that is the length of time it stood at the chute?
A. It took that time to unload at that time in the night.
Q. 1.7 and 1.3, that is what those figures mean?
A. That is the average for the month.
Q. That is what is meant by those figures in the second line in each subdivision of this statement?
A. Yes sir.

Mr. DAWES:

Q. If there are 30 cars in a train, at one minute and a half it makes 45 minutes to unload?
A. Yes sir.
Q. So instead of a minute and a half it is 45 minutes?
A. It would be in that case, but I said the general average. You see the C. B. & Q. cars were unloaded faster.

TO CLOSE IN CENTER

The COURT:

Q. How many men do you have unloading a train of 30 or 45 cars?

A. Well, it varies. We work on each one of our platforms
1776 about 30 men.

Q. You can unload 30 cars at once?

A. No sir.

Q. How many men does it take to unload a car in a minute and a half?

A. We use about 16 men on the platform. The men go along and open up these doors, the car doors and the rest are driving the cattle out. Each man does certain particular work.

1777 Mr. DAWES:

Q. These are unloaded as trains, so, of course, that train cannot move out of there until the last car is unloaded, and that will be 45 minutes after the train gets in there?

A. Provided it is one and one-half minutes yes.

The COURT:

Q. It don't take 45 minutes necessarily. They may unload a dozen cars at once.

A. There are lots of times that we average a train in less than a half minute to the car. It depends entirely on conditions. If we have a large train of double deck sheep cars, sometimes we have a train of western cattle, that we have to take ropes to pull them out of the cars.

Q. What time do you think is the average for them?

A. I have just averaged up the C. B. & Q. and they average a minute to the car.

Mr. SEVERANCE: What are those figures up there for, before the parenthesis?

A. Five per cent. of the total receipts.

Q. That is to say 186 cars?

A. Say five per cent. of the Chicago, Milwaukee & St. Paul cars for that month.

Q. That is five per cent. of the total receipts for the month?

A. Yes sir.

Q. You have 186 cars for the Milwaukee Road?

A. Yes sir.

Q. It takes a minute and a half to the car, that will be nearly 300 minutes to unload these 186 cars. That is right, isn't it,
1778 a little under five hours?

A. A minute and a half to the car.

Mr. LYNDE:

Q. Does each Road use separate chutes?

Mr. SEVERANCE: Just a moment. A minute and a half to the car, and 187 cars, it would be a little less than five hours?

A. Half of 186 is forty-three——

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Q. It would be more than 43, wouldn't it? It would be 93 at least?
A. 93—279 minutes.
Q. That is a little under five hours?
A. Yes sir.
Q. So that instead of unloading these 186 cars in a minute and a half as was my impression, it takes nearly five hours to do it? That is right, isn't it?
A. Yes, that is right.

Mr. LYNDE:

Q. Does each road have separate chutes in your yard?
A. No sir.
Q. You say you have ten separate sets?
A. Yes sir.
Q. Does that mean that when one road is unloading at one chute that the other nine are open for other roads?
A. No sir, the chutes are all kept full during the time we have the trains. We take each train in its turn. The train that is in first comes in next to the first empty chute.
Q. Only one train can be handled at a time at a chute?
A. No, sometimes we set two or three trains at one chute.
1779 Q. How many cars can you accommodate in your chutes at a time?
A. In our chutes at a time?
Q. Yes sir?
A. Something over 400 cars.
Q. In one chute?
A. Oh, no.
Q. I mean in a single chute.
A. Our chutes as I say run from 18 to 50 chutes.
Q. 50 cars?
A. 50 cars that would be.

Mr. LYNDE: That is all.

Mr. COWAN:

Q. How many trains are you unloading at once?
A. Well, we are unloading ten or sometimes more.
Q. Why do you say it takes five hours to unload these cars received there by the Milwaukee & St. Paul?

Mr. SEVERANCE: I object to that, cross examining his own witness.
The COURT: I guess he had better explain that.

A. Well, I did not say it took five hours. It takes that many minutes.

Mr. SEVERANCE:

Q. A little less than five hours?
A. It might have been on several trains.
Mr. COWAN: You added the time of each train to the other train?

TO CLOSE IN CENTER

A. Yes sir, our average time for 186 cars was a minute and a half to the car.

Q. Then with thirty cars it would be ¾ of an hour that that train was at the chutes?

A. What is that?

Q. If it was a thirty car train it would be 45 minutes at

1780 the chutes?

A. Yes sir.

Q. May there not be another train at another chute at the same time?

A. Yes sir.

Q. And so on?

A. Yes. We might have unloaded them all in thirty minutes if they had been there.

Mr. SEVERANCE: You don't mean that, do you?

A. Ten times three.

Q. Well, you just said 45 minutes.

A. If they were set in to the chutes we could unload ten trains.

Q. Are you familiar with the unloading at other markets?

A. With the Omaha market, yes sir.

Q. Is there any other place or any other freight that would be unloaded as promptly and the cars released, as live stock shipments coming to the yards here at Chicago?

Mr. DAWES: That is objected to. He has not shown any knowledge of any other freight in any way.

The COURT: Objection sustained.

Mr. RANSOM:

Q. These feeders that are shipped out from Chicago are kept for a certain length of time and fed and practically all of them returned to the yards, are they not?

A. Most of them that are shipped wes- are, yes sir.

Q. Those that are shipped east, where do they go?

A. Some of them return, and a great many of them are shipped on further east.

1781 Q. What percentage of the feeders shipped out of the Chicago yards are returned to them?

A. Well, I could not tell you exactly.

Q. Do you know how many cattle and hogs, how many heads of cattle and hogs are daily held over in the yards in Chicago and not sold?

A. No sir.

Q. Say for the last year?

A. No sir.

Q. There are cattle and hogs held over daily, are there not?

A. Yes sir.

Q. Every day?

A. Not every day, no sir. There might be one or two head.

Q. What day in the week is there that there is not some held over?

A. It depends on the market.

Q. How many was the greatest number of hogs you held over during the last twelve months say?

A. I could not tell you.

Q. You don't know anything about it?

A. No.

Q. Do you know how many cattle were held over?

A. No sir.

Q. Do you know the largest shipment of cattle received in the stock yards during the last two weeks?

A. Do I know the largest shipment received?

Q. Of cattle, yes?

A. Do you mean in any one day?

Q. Do you know the largest number of head of cattle which came in on any one day or what day the largest number came

1782 in and what it was?

A. I know approximately, yes sir.

Q. What was the largest?

A. I think it was last Monday a week ago that we had—I don't believe I could tell you exactly, but I could tell you approximately.

Q. Don't you know that one day within the last two weeks that you had a greater number of cattle received into the Union Stock Yards in Chicago than had been received for several years?

A. No sir, you are mistaken. We had the most cattle received in one week, 93,000, but we did not break the record at all, not by ten thousand.

Q. That was in the last two weeks?

A. Yes, in one week.

Q. That is the largest shipment you have had for some time?

A. It is the second largest week we have ever had. That was not in one day. It was in 1903, the largest, I think it was September, 1903, we had 44,400 and some odd cattle.

Q. How many?

A. 44,000.

Q. Well, you had 93,000 in the last week?

A. In one week. The most we ever had was 95,000 in 1891, September.

Q. That is the only time that that record was beaten. Do you know the average number of cattle received in the Union Stock Yards here in the last twelve months, daily?

A. I do, yes sir, from our report.

Q. How many?

A. 21 to the car.

Q. 21 what?

A. 21 cattle to the car.

1783 Q. I did not ask you that. I asked you the number of cattle received each day for the last twelve months?

Q. I could by figuring it. I have the figures here. If you want me to stop to figure, I can do so. 3,500,000——

Mr. SEVERANCE: You don't mean you received that many cattle with these discriminatory rates, do you?

A. The books will tell just exactly how many cattle were received.

Mr. COWAN: We will offer that book as a part of Mr. Witten's testimony, the Union Stock Yards report.

Mr. RANSOM:

Q. Where could we inquire for this information as to the number of cattle and hogs held over daily for the last twelve months?

A. We don't keep any record of the cattle. There is a published report of the hogs held over, but it is not correct at all. They count the hogs that are left in the yards, but a great many of those are already sold. The speculators buy a great many hogs that are held in the yards and sold, and the report of held-overs is not correct.

Q. The Stock Yards don't—the speculators don't buy until the packers get through, do they?

A. Yes, they buy in the morning, the first thing, sometimes.

Q. Do they buy the fat hogs?

A. They buy all classes.

Q. Do they buy the fat cattle?

A. They don't buy them as much as—Some people buy all classes.

1784 Q. Whom do the speculators sell the fat hogs to that they buy?

A. They ship them east and sort them out and sell them to whoever they can.

Q. They don't sell them to the packers, do they?

A. Yes sir.

Q. The packers allow them to buy them and then they pay them an advance on them?

A. I don't know whether they pay them advance,—they have to take that chance.

Mr. COWAN: I will just waive putting that statement in, as a part of your testimony, and put it in with Mr. Thomas' testimony. I wish you would leave us a copy of the report here. We may need an extra one.

Mr. JEFFERIES:

Q. Isn't it a fact that your business is growing all the time out there?

A. We hope it is, but we have not broken it for several years.

The COURT:

Q. How is that?

A. There was a time when we received more stock than we are now receiving for the whole year.

Q. What time was that?

A. I can tell you when we had the largest receipt of stock in one year. The largest receipt of stock in one year was in 1892, or 1890, 311,000 cars in 1900.

Q. In 1894 you dropped off on account of the strike?

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A. Yes. The largest number of cattle ever received in one
1785 year, was in 1892, the largest number of hogs was in 1898.

Q. It was during the war, I believe, at that time, the Spanish War.

Mr. SEVERANCE:

Q. How does 1901 compare with 1903?

A. I can give you the statement, show you exactly. 1901 I can give you the cars, but I cannot give you the cattle. 1901 we had 3,031,000, 1904, 3,432,000.

Q. Then you had more cattle after these alleged discriminating rates were put in than you did before. How about the hogs?

A. 1901, 8,290,000; 1903, 7,325,000. In 1901 we received 8,290,000 hogs. In 1903 we received 7,325,000 hogs.

Q. 1904 was the strike year?

A. Yes sir.

Q. That is all.

1784*a* J. A. Spoor, President. A. G. Leonard, General Manager.

The Union Stock Yard and Transit Co. of Chicago.

J. H. Ashby, General Superintendent.

UNION STOCK YARDS,
CHICAGO, *Sept. 26th*, 1905.

Mr. A. G. Leonard, General Manager.

DEAR SIR: Herewith report of the time of arrival and unloading of cars of live stock for the month of August, 1905.

Also showing the number of cars and percentage of cars received between the hours mentioned, and the time per car unloading in brackets.

R. R.	Before 12.	12 to 4.	4 to 6.	6 to 7.	7 to 8.	8 to 12.
St. Paul.....	186 cars 5-(1.5)	805 cars 18-(1.6)	917 cars 21-(1.5)	808 cars 18-(1.1)	868 cars 19-(1.)	821 cars 19-(1.3)
C & N W.....	379 cars 9-(1.7)	567 cars 14-(1.6)	800 cars 20-(1.2)	475 cars 12-(1.3)	811 cars 12-(1.)	1036 cars 25-(1.3)
C B & Q.....	886 cars 14-(1.3)	521 cars 9-(1.5)	952 cars 15-(1.1)	963 cars 15-(.9)	1061 cars 17-(.9)	1876 cars 30-(1.)
C R I & —	137 cars 6-(2.1)	49 cars 2-(1.5)	344 cars 16-(1.2)	331 cars 15-(1.2)	683 cars 31-(.9)	660 cars 30-(1.)
Ill. Cent.....	105 cars 6-(2.)	42 cars 3-(1.5)	819 cars 50-(1.5)	478 cars 29-(1.1)	148 cars 9-(1.2)	57 cars 3-(1.5)
Total.....	1693 cars 9-(1.5)	1984 cars 11-(1.6)	3832 cars 21-(1.3)	3055 cars 16-(1.1)	3571 cars 19-(1.)	4450 cars 24-(1.1)

Respectfully,

J. H. ASHBY,
General Superintendent.

Exhibit — to Widden, trans., p. 1784.

D TO CLOSE IN CENTER

M. P. BUEL, called as a witness on behalf of the complainant in rebuttal having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. Where do you reside?
A. Chicago.
Q. What is your business?
A. Live stock commission business.
1786 Q. Are you in any other business besides that?
A. I handle some cattle and live stock that I own.
Q. What do you mean by that, that you own and pasture?
A. Yes sir, and I feed them sometimes in wintertime, and graze them in summer.
Q. How long have you been engaged in that business, Mr. Buel?
A. More than thirty years.
Q. What is the name of your firm?
A. Edwin Snyder, Buel & Company.
Q. Where does that firm do business?
A. Chicago, Omaha, Kansas City, St. Louis, Fort Worth, Texas.
Q. Is it a matter of any importance to you, so far as your commissions are concerned whether the shipper, which is a patron of your firm ships to you at one of the places or at the other?
A. It does not.
Q. How many commission firms dealing in Chicago are likewise dealing in these other markets similarly situated to you, so far as their interest in the matter of commissions is concerned.

Mr. SEVERANCE: I object to that as immaterial.
The COURT: Go ahead.

A. I could not state definitely, but I would suppose that one-third of the firms in Chicago have connections or offices in various other markets.

Mr. COWAN: In such manner that it is immaterial to which
1787 place their patrons ship?
A. I so understand it.
Q. To what extent are those commission firms engaged in this business aside from the mere matter of receiving live stock upon consignment, and selling it upon the market, what other services and business do they perform in connection with their business?

Mr. RANSOM: I object to that. If they are money lenders, that business is not regulated by the terms of the Act regulating commerce. That is about what it will be when it comes out, and I don't see why we should go into that. I object to it as immaterial. They don't allege anything of the kind in their complaint before the Interstate Commerce Commission.
The COURT: Well proceed.

A. Many of the commission firms are loaners of money and interested in securing the best possible price for the cattle upon which they had made loans for their customers. It sometimes happen

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that they loan more money than his stock brings, even if sold in this market.

Mr. COWAN: What amount of money do some of the large commission firms have out.

Mr. DAWES: I object to that.

Mr. COWAN: Supplying the owners and feeders and shippers of live stock the means to carry on their business?

1788 Mr. SEVERANCE: I object to that as incompetent, irrelevant and immaterial.

Mr. RANSOM: I join in that objection.

The COURT: Let him answer. He shows that they are cattle men as well as commission men.

Mr. SEVERANCE: That would not make them cattle men.

The COURT: I may have loaned money on stuff, as much as it is worth.

Mr. SEVERANCE: Well, then anybody that held a chattel mortgage would be engaged in the same business that his debtor was.

The COURT: Answer the question.

A. A number of the commission firms loaned sever-l millions of dollars to their patrons who take charge of and handle and mature those cattle.

Mr. COWAN:

Q. What position do you hold now with respect to the live stock exchange at Chicago?

A. I am president of the Chicago Live Stock Exchange.

Q. What is that exchange?

A. It is an organization made up of buyers and sellers and purchasers of live stock.

Q. To what extent are the members of this Exchange interested either as owners or otherwise in live stock this side of the Missouri River, in Iowa, Missouri, Minnesota, and Wisconsin?

Mr. SEVERANCE: I object to that as incompetent, irrelevant

1789 and immaterial.

Mr. RANSOM: It is objected to also that it is not rebuttal.

The COURT: Overruled, let him answer.

A. Will you kindly read that?

(The pending question was then read.)

A. Well, I could hardly answer definitely, because they are interested in various deals and the movement of the live stock to this market from those points.

Mr. DAWES: Then I object, if he don't know. He says he c[illegible].

The WITNESS: The percentage that they would have money loaned upon or were owners of, I could not give.

Mr. COWAN:

Q. Are many of them owners and raisers of live stock in this territory we have mentioned?

D TO CLOSE IN CENTER

A. Yes, a great many of them.

Mr. SEVERANCE: Give us a chance to object to these questions. It is not rebuttal. It is immaterial and irrelevant.

The COURT: Objection sustained. Go ahead and tell if you know.

Mr. SEVERANCE: Is the ruling that the objection is sustained?

The COURT: Yes.

Mr. SEVERANCE: Then I move to strike out the answer.

The COURT: The objection to the question was that it was leading. You can go ahead and tell what you know about it.

1790 Mr. COWAN:

Q. You can tell what you know about the matter as to how many of them there are that are interested as owners of live stock in this territory?

A. I know from conversations with many of the members of our Association, I would say at least fifty, that I have discussed the subject with and know that they are owners of live stock and ship them to this and other markets.

The COURT:

Q. How many members are there of your Association?

A. Between 600 and 700.

Q. Is your Association a corporation?

A. Yes sir.

Mr. COWAN:

Q. Did you have anything to do with the bringing of the original complaint before the Interstate Commerce Commission?

Mr. DAWES: That is objected to.

The COURT: How is that material?

Mr. COWAN: It is only material for this purpose. The question was repeatedly put to a number of the witnesses by these gentlemen as to the extent to which persons were interested in this matter. A number of them said that the shippers of live stock were not interested; that the only interest that was shown here was that of an exchange here in Chicago; that the shippers were not making any complaint. That was repeatedly stated and the question repeatedly asked apparently with a good deal of interest. Now, I want to show what the facts are in regard to that. These railroad men have testified

1791 that the shippers of live stock were not making any complaint. Nobody complained to them, in face of the fact that the petition was filed here by the Chicago Live Stock Exchange.

Now, if I show by Mr. Buel, that as a matter of fact, the petitioners and those who were the movers in filing the petition were persons who were interested in the shipment of live stock in that part of the country, as owners, as commission men, and as interested in live stock, and as men who carry on the business, it certainly is plainly rebuttal to whatever was testified by these other gentlemen upon that subject. It was contended, and objection was urged by my friend Mr. Shaver on the other side of the table, that it was imma-

terial whether anybody complained or not. Your Honor desired to hear the whole of this case, and without any criticism whatever from us went on and heard the testimony, what they had to say about it. Now, then, when it comes to prove one of the real facts by one who knows there is a flood of objections.

The COURT: I guess the shortest way is to let him answer and save argument.

Mr. SEVERANCE: I desire to object on the ground that it is immaterial, irrelevant and incompetent.

The COURT: Read the question.

(The question was then read.)

1792 Mr. SEVERANCE: That should be answered by yes or no, and not give any disquisition on the matter at all.

The COURT: Yes.

A. I did.

Mr. COWAN:

Q. What did you have to do with it?

Mr. SEVERANCE: I object to that as immaterial.

Mr. RANSOM: I desire to make the same objection.

The COURT: Objection overruled.

A. I was serving on a Committee which our organization has known as "The Railroad Committee" at that time. I was one of its members at that time.

Mr. COWAN: Proceed, Mr. Buel?

A. I have answered the question, have I not? I have said that I was a member of the Committee.

Q. In whose behalf was that Railroad Committee, who filed that petition, acting?

A. In behalf of its members and patrons, and the——

Mr. SEVERANCE: That was filed on behalf of the Exchange itself, and I object to the witness answering it?

The COURT: Let him tell what there is about it?

Mr. SEVERANCE: This testimony, counsel says, is offered to rebut statements of the gentlemen from the various railroads, who said that there were no complaints made to them. Now, certainly, any private talks between these gentlemen and other members of this

1793 organization out here, complaining one to another, without showing that these complaints were brought to the attention of these gentlemen who testified or somebody representing their road, don't rebut their testimony in any way.

The COURT: Objection overruled. Go ahead with your testimony.

(The pending question and answer as far as given was then read):

A. (Continued:) —and the interests of this Chicago Market.

Mr. COWAN:

Q. Was the motive which actuated you in the filing of that petition solely with respect to the matter of commissions, or did it embrace the interests of the shippers as well?

Mr. RANSOM: The same objection.
Mr. SEVERANCE: It is calling for a conclusion and not for a fact.
The COURT: Objection sustained.

Mr. COWAN:

Q. You mentioned being in the cattle business yourself. Have you had any experience with respect to the matter of shipping to the different markets for sale?
A. I have.
Q. What experience have you had in that particular?
A. Since the first day of January, myself and my associates have marketed about 5,000 head of cattle.
1794 Q. Where did you ship them to?
A. Principally to Kansas City, and St. Louis, and some into Chicago.
Q. What proportion to Chicago?
A. A very small proportion, not to exceed five per cent. I should say?
Q. Why?

Mr. SEVERANCE: I object to that as immaterial.
The COURT: Yes, I think so.
Mr. COWAN: It will lead up to another question. Being engaged in the business in those several markets, we will assume that you know what you deem to be the best market. What is the best market for cattle, Mr. Buel, so far as the price paid on the market is concerned?
Mr. SEVERANCE: Will you kindly restrain yourself until I make my objection?
The WITNESS: You must be quicker with your objection, quicker to get your objection in. I did not understand that you were going to make one. I cannot look at you and Judge Cowan at the same time.
Mr. SEVERANCE: Well, just slow down to six miles an hour when you are in the city limits. My objection to that is, that it is not rebuttal. That don't rebut anything that was brought out as a part of counsel's case in chief.
The COURT: Objection overruled.

1795 The COURT: What do you mean?
A. I mean that the price obtained, Judge for cattle is higher in Chicago than in the other markets. Of course, it would cost more to transport them, to bring them here, but the price of a light grade of cattle would be higher here.
Q. Without taking into consideration the cost which it takes to get them here.
A. Yes, I so understood the question.
Mr. COWAN: Then why didn't you ship your cattle here, that you marketed in Kansas City and St. Louis?

Mr. SEVERANCE: I object to that.
The COURT: Objection overruled.

A. Because there is—because the freight is greater in bringing them to Chicago than it would be to the Missouri river.

Mr. COWAN:

Q. Are there any other elements of difference or loss incident to it?
A. There would be the shrinkage in the weights of the cattle.
Q. About how much per head?
A. From fifteen to thirty pounds from this territory over these other western markets.
Q. What is the different in rate when you ship from a Texas point for example, to Kansas City, if you come on to Chicago?
1796 What additional amount do you have to pay?
A. I think the rate at this time is between sixteen and seventeen cents per hundred more to come to Chicago than to stop at the Missouri River markets.
Q. That is where you bill them through to Chicago?
A. That is on through billing, I mean.
Q. And that applies to the Texas and Indian Territory country?
A. Yes sir.
Q. What is the difference from St. Louis?
A. Between ten and eleven and a half cents. I could not state exactly.
Q. Are the same buyers of live stock, that is, cattle and hogs engaged in the business of buying and slaughtering on the markets on the Missouri River, and at St. Louis who are also engaged in the business at Chicago?
A. The class of buyers that we usually speak of as packers are represented largely in all of these markets. We have other buyers who are located here that perhaps don't buy at the Missouri River points.
Q. Is there more competition in the buying here than there is at those markets?
A. Yes, because of a greater number of buyers.
Q. Now, what do these buyers that you have here purchase the cattle for?
1797 A. Some of them are purchased for slaughtering here in Chicago at the large slaughtering houses. Others are bought on orders for export trade for the markets throughout the east, such as New York, Boston and Philadelphia.
Q. Are many cattle shipped on the hoof from here to points in the east fro slaughter?
A. Oh, a great many.
Q. In the complaint, in this case, Mr. Buel, it is claimed that there is an advantage that Missouri River markets have by reason of the higher rate on the packing house products—the lower rate on the packing house products and dressed meat than upon the live stock shipped locally from that territory and shipped locally from points this side of there. Will you state whether or not there is such an advantage, and if so, explain wherein the advantage lies?

Mr. SEVERANCE: I object to that as not rebuttal.
Mr. RANSOM: It is immaterial and it calls for a conclusion and not for facts.
The COURT: Objection overruled.

A. Necessarily there would be an advantage in favor of the slaughterer who slaughters his cattle at Kansas City, because they would have a less amount of weight to transport than they would have in the live animal. In other words you take a one thousand pound steer, and ship in here and you would pay for—if he was bought locally there, you would pay 23½ cents, I believe that is the rate. If you slaughter him, he would not give more than
1798 550 pounds of beef. Then the freight that the packer would pay on would be simply that 550 pounds. In other words they reduce or save 450 pounds on a single animal.

Q. Well, he has that advantage naturally, hasn't he?

A. He has that, yes sir.

The COURT: He is entitled to that, isn't he?

A. Yes sir.

Mr. COWAN: He is entitled to that?

A. Yes sir.

Q. Now, then if he ships that carcas- cheaper than the cattle owner can ship the animal per hundred pounds, is that a still further advantage or not?

Mr. SEVERANCE: I don't think counsel ought to testify that way, and lead the witness.

The COURT: The objection is sustained.

Mr. COWAN:

Q. You may proceed to explain wherein there is any advantage between the 23½ cents on cattle and the 20 or 18½ cents on the carcas-.

The COURT: If there is any advantage. I do not understand him to say that there is any. What is the fact about that. Are there any other advantages?

A. Well, the advantage is the different in the freight rate paid on the live stock.

The COURT: That is what you are to explain.

A. The advantage would be the difference in the rate of
1799 freight charged by the railroads, between the live stock and dressed beef or packing house product rate. That would be a further advantage.

Mr. COWAN: Well, suppose a man ships in there or drives in there from Iowa, Missouri, to Kansas City or to Omaha, what would be the relative position of the man who drives the cattle in with respect to shipping to Chicago (if he should see fit, after he had got in there to do so) to the packer who ships or would propose to ship the carcas- in case he bought the animal? What would be the advantage or disadvantage in respect to the equality of trade as between them?

Mr. RANSOM: Between who?

Mr. COWAN: Between the buyer who intends to slaughter and ship and the one who does not intend to slaughter, but who intends to ship the animal?

Mr. SEVERANCE: Is that a question for expert testimony?

The COURT: Let him give his opinion.

A. The man who drives the cattle into Kansas City he would have practically no expense in delivering them into the market.

Mr. COWAN: Suppose he did not sell them there, but shipped on?

A. If he goes on, then he has got to pay the local rate from Kansas City to Chicago, which is 23½ cents.

1800 The COURT: Why isn't that a fair rate?

A. Because the product would be shipped at a much lesser rate by the packer than the owner of the cattle could bring his cattle into this market for.

Q. Why isn't that fair that it should be?

A. I don't hardly know Judge how to answer it other than to say that it looks clear to me that it gives the packer an advantage over the man who wants to ship the live stock, because of the fact that the railroad is making him a lesser rate than he makes on the live animal.

Mr. COWAN:

Q. Are there any cattle driven into Kansas City and Omaha?

A. There is a great many driven into Kansas City that are fed near by there.

Q. And they are shipped into Kansas City or driven into Kansas City for the purpose of sale on the market or for shipment out?

A. Yes sir.

Q. Do they ship those cattle out, do you know?

A. Sometimes, but not often.

Q. Mr. Buel, what do they bed cars with that are shipped in here from Iowa?

A. I cannot testify, because I do not know.

Q. Do you know whether or not in any case the railroad charges the shipper for the beding?

A. Yes sir. I have seen that on our expense bills that us
1801 commission men take up from the yard company, which is turned over by the railroads to them. I have seen the charge.

Q. You paid those charges yourself for your customers?

Mr. SEVERANCE: I would like to know what road that is?

Mr. COWAN:

Q. What road is that?

A. I noticed it on the Chicago, Burlington & Quincy very recently.

Q. How much per car?

A. I think some of them was 75 cents a car, and perhaps some were less.

Mr. SEVERANCE: What other road?

A. I noticed the charge on the Rock Island Road recently.

Mr. COWAN:

Q. In what way are the prices of live stock fixed at these various markets? In what way does the price come to be known?

A. The seller or the commission man who represents the owner, takes the buyer and goes into the yard and examines the cattle. The

buyer says, "What do you ask for these cattle"? The salesman is expected to put a price on them. Then the buyer, if they are cheap, he tells him that he can weigh them. If he thinks they are not worth that money he offers him less, a less price than he asks. Then the salesman will get some other buyer and he may show them to a dozen or two dozen buyers before he sells that drove of cattle.

Q. How does the salesman know what to ask, and how does the buyer know what to offer?

1802 A. The salesman, from experience he becomes in a measure a judge of the article, and he puts a price that his judgment tells him would be the market value for the stock that day.

Q. Judging it by some other price on some other day?

A. No, judging it by the supply and the demand. If our receipts are light and we have not had many cattle for a few days before, we know there will be a more urgent demand that day than there would be under a heavy supply or at a time when the receipts had been heavy for several days.

Q. But he measures his price by what is paid the day before, or the week before or the price that is being paid at some other market, doesn't he?

A. Well, I don't—of course, a salesman who is posted keeps track of the market east of here and the export cattle, the number of cars of cattle that go for export trade. A good salesman keeps in touch with the situation in Liverpool, to illustrate, and with what I term the demand and the supply and that enables the expert salesman to form an idea as to what he thinks the cattle are worth that day.

Q. How does the man that buys the cattle get the idea of what he ought to pay?

A. He judges from the same standpoint, I think. He knows how many cattle he wants and he has his orders.

Q. Does he know what he wants to pay?

A. No sir, not always, he buys them as best he can.

1803 Q. Now, taking it at Kansas City, or Omaha, or Fort Worth, what factor rules the offerings on the market there?

A. The offerings?

Q. The offerings. Say at Kansas City to-morrow morning there is 3,000 cattle, and your salesman goes out into the yard and Mr. Armour's buyer comes out into the yard, how will the two or them determine what the one will ask and what the other one will pay for that cattle? What facts will they ascertain first?

A. I might illustrate by saying that I think most all commodities, it is a chance that the salesman has to take, what he shall ask for it, just like buying or selling a horse. The owner of the horse will always put a price on his horse. The purchaser will say "I will give you so much," or if he thinks he is cheap, he will *will* take it and pay him, and I think the same conditions will prevail in any business.

Q. Is the market at Fort Worth, Kansas City and St. Louis, determined in whole or in part upon the market in Chicago?

A. I think so. Chicago is the controlling market, because of its largeness.

Q. And that applies likewise on trains, does it not?

A. I presume so, but I am not very conversant with that subject, however.

1804 Q. Chicago is much the largest and most important market in the country?

A. Yes sir, on live stock.

Q. Do you know whether or not the receipts in the yards here of a morning and the price at which the cattle and other live stock is sold, immediately telegraphed to those various markets?

A. The receipts of live stock is always telegraphed early in the morning to the other markets, as to what it is in Chicago.

Q. Do you know whether or not anybody telegraphs the prices to be paid?

A. The big slaughtering houses, those big concerns advise their buyers in the other markets, the conditions, and give them a general idea, as I understand it as to what they are buying cattle for on these markets at that time.

Q. In your experience in selling cattle for customers at Kansas City and cattle that are sold for the same customers at Chicago, does it happen that cattle which are offered for sale by you and kept in Kansas City are shipped on to you in Chicago for sale, not being sold there?

A. That they often send them on?

Q. I say, does it happen that cattle that are offered for sale at Kansas City are not sold and then shipped on to you at Chicago for sale?

A. Yes, they are shipped on if they are not sold. There
1805 is a very small percentage of cattle that are forwarded us from Kansas City.

Q. It happens though that that is done?

A. Yes.

1806 Q. In such cases is it a fact or not that the price which you receive, which you are able to obtain here, will not generally exceed the difference in freight?

A. More frequently we do not get enough additional price in Chicago, over the price offered in Kansas City to pay the freight and the shrinkage and incidental expenses that would follow the consignment from those markets.

Q. What result has that had on the shipment of live stock on to Chicago, we will say from the Indian Territory and Texas points?

Mr. SEVERANCE: If the Court please, that is immaterial. This witness has already testified that the rate from Kansas City, Indian Territory and points beyond is between 16 and 17 cents a hundred; the rate of packing house products is 20 cents. If they have a better market down in Kansas City that cannot be urged against the contention of the defendants in this case. The testimony of this witness shows a rank discrimination in favor of Chicago and against Kansas City, of a difference between 16 and 17 cents on the one hand and 20 cents on the other. If we are going to consider these differences in rates, there is no discrimination at all, it makes no

difference what has brought about this situation, so far as the issues in this case are concerned, and I object to this as not rebuttal.

The COURT: Objection overruled.

(The last question was read.)

1807 A. It has discouraged the shippers from forwarding cattle from those markets on to Chicago.

Q. How many cattle were received, say five years ago, per annum, from Texas? Do you recall in a general way—at the Chicago market?

Mr. SEVERANCE: I object to that as immaterial, because no cattle are forwarded to Chicago from those points, via Kansas City, as the question states; they are all forwarded at 16 and 17 cents; consequently 23½ cent rate cannot have anything to do with preventing shipment of those cattle.

The COURT: Objection overruled.

A. I can't answer that to a definite point, because I don't remember as to the exact receipts of cattle that might have originated in that territory, that came to Chicago five years ago, but I would testify that there is not five per cent. of as many cattle shipped from Oklahoma, Indian Territory and Texas to Chicago that there was shipped five years ago, and I am satisfied that would be——

Q. Per annum?

A. Per annum, yes.

The COURT: Is it five cattle now, whereas it used to be 100?

Mr. SEVERANCE: What is that question?

(Question was read.)

The WITNESS: Yes, sir.

1808 Mr. COWAN:

Q. I will call your attention to some statistics. Is it not a fact that the Garfield report shows only 73,000 cattle from Texas were marketed in Chicago during the year 1904 against 350,000 four years before?

Mr. SEVERANCE: I object to that.

The COURT: Objection sustained.

Q. Are there any cattle shipped to Chicago from Kansas?

A. Yes, sir.

Q. What portion of Kansas?

A. Various portions, largely, I think, from the northern part of the state, though.

Q. Northern and central part of the state?

A. Yes.

Q. Do you know whether the proportion of shipments of hogs and cattle from Kansas has declined, shipments to Chicago?

Mr. SEVERANCE: Same objection.

The COURT: Same ruling.

Mr. COWAN: If you don't know——

A. I don't know. I can't answer that question.

1809 Cross-examination by Mr. BAXTER:

Q. Mr. Buell, I understand that none of the stock yards here at Chicago is interested in having the live stock rates reduced because it pays for unloading, for feeding, reloading and re-bedding where cattle are shipped out, and that that is the extent of the interest of that company. I have heard mention of speculators. Who are they, please?

A. Speculators?

Q. Yes.

A. They are a class of men who buy stock from the commission man and assort the stock, put cattle and hogs of a like class together and re-sell them. It would largely apply to what we term speculators who deal in stock cattle, and feeding cattle. The countrymen come here and go to these people and want cattle of a particular flesh and quality to take out in Illinois or some other country to feed them.

Q. Wherein do they differ from the life stock commission merchants that do business here?

A. The commission merchant does not buy the stock in the market, you know. He is simply the agent or representative of the owner of the stock in the selling of it.

Q. Then the live stock commission merchant, as the agent of the seller, sells the stock to the speculator, is that the idea?

1810 A. Yes, if that is the kind that suits them, and they are the best bidders for that stock, they sell them to them.

Q. Who else bids for the stock except the speculator?

A. If the countryman who wants a bunch of cattle to feed, is here in person, he will go direct to the commission firm and buy, or at least endeavor to buy a particular lot of cattle, that is such as he wants.

Q. The animals that are slaughtered here at the packing houses in Chicago, are they bought by the speculators and commission merchants?

A. Not at all, no, sir.

Q. Then the packing houses have their own agent?

A. Yes, sir.

Q. So then we have, it seems, an exporter—who is he?

A. He is a man who buys cattle in this market to send to foreign markets?

Q. Does he buy from the commission merchant direct or does he buy through the speculator?

A. Always from the commission merchant direct.

Q. Then the patrons of the commission merchant are the speculators proper, the packing house purchasing agent and those that are purchasing for export, is that correct?

A. All classes of buyers trade with the commission salesmen.

Q. What I am trying to do, Mr. Buell, is to ascertain the various classes of buyers of live stock that is brought here to

1811 Chicago?

The COURT: He has named three kinds. Are there any other kinds?

The WITNESS: We have what we term "order buyers," men who represent slaughter houses in New York, Boston and other Eastern markets. Those men buy cattle on a commission, just the same as the commission salesman sells them for a commission. The salesmen sell cattle and get 50 cents a head for selling them. There is a class of men stationed in Chicago who buy export cattle and cattle for Eastern markets and they receive a commission for their services.

Q. Those are all the classes of buyers of live stock that are sold in Chicago, so far as you know?

A. Yes, I think that would cover them. We have the exporter the men who represent the big slaughter houses and the little slaughter houses, the speculator who is a buyer often of feeding cattle, at times, when there is no countryman here that wants those cattle, he buys them and holds them until the next day when there are some countrymen here who want that cattle.

The COURT: The order man?

The WITNESS: The order man, yes, sir.

Q. Are they on the market all the time, every day?

The WITNESS: All the time, every day.

Q. Is the exporter on the market every day?

The WITNESS: Yes, sir.

1812 Q. And the special order man?

A. There might be occasionally a day that they wouldn't be, Judge, but as a rule they are here, they are stationary here.

Mr. BAXTER:

Q. I understood you to say that the price of cattle is higher, or at least generally higher here in Chicago than in other markets; to what markets do you refer, Mr. Buell?

A. I was representing two Western and Southern markets at that time. I did not mean New York, because cattle would be higher in New York than they would be in Chicago. I only referred to our Western markets.

Q. And they would be still higher in Liverpool than they would be in New York?

A. Correct, they should be.

Q. Under the ordinary workings of commerce it would be that way?

A. Yes, sir, if the man kept even and made a profit he would have to add the expenses of transporting the stock to Liverpool from New York.

Q. If the prices on cattle are natural, under the laws of commerce, higher in New York and higher in Liverpool than in Chicago, upon what do you base the claim that Chicago is the live stock market of the world?

A. I base the claim from a matter-of-fact standpoint, that it is the volume of business, the receipts of cattle, hogs and sheep, each of those classes of live stock is greater in Chicago than in any other market in the world.

1813 Q. I will come to that presently. I am now trying to get at how you claim Chicago to be the best market in the world

when you admit that the prices of cattle are higher both in New York and Liverpool than in Chicago?

A. I don't think I testified that it is the best market.

Q. You don't think Chicago is the best market.

A. I didn't testify that way.

Q. Well, what do you think that way?

The COURT: It is the largest market?

The WITNESS: It is the largest market.

Mr. BAXTER:

Q. But you don't think it is the best?

A. I don't, Judge, I don't intend to testify that cattle in Chicago will bring a price as great as they should bring in New York, because you must allow for the cost of transporting the cattle from market to market, but in comparing Chicago with Western markets the prices I stated were higher for the same grade of cattle in Chicago than they would be in Kansas City, Omaha, or St. Jo.

Q. We will get back to that presently. We want to look eastward now. I understood you to say that the gentlemen who are purchasing for export look to the Liverpool market, the purchaser looking for stock to send to the slaughter houses at Boston and New York, to be slaughtered there would look to the New York market?

A. Yes, they should take that into consideration I should
1814 think.

Q. Now, then, if those export prices and New York prices are at a certain figure, doesn't that have an influence upon the price of all the cattle brought here to Chicago? Now, suppose the price on New York cattle is away up, wouldn't that elevate the price here in Chicago?

A. It would only affect the value or the price of the class of cattle there for that particular purpose, what we term export cattle. It would not affect the price of a grade of cattle that would not do to export. We would have more of those than we have of cattle suitable for that trade.

Q. You said something about having to ship some of your own cattle to St. Louis and Kansas City, did you not?

A. Yes, sir.

Q. Will you furnish tomorrow a list of the stations from which you make those shipments and show the roads on which they are located?

A. Yes, sir, I will do that.

Q. Now, why did you ship to Kansas City and St. Louis as against Chicago?

A. Why did I ship there?

Q. If Chicago was the best market?

A. Because the net result is better at those points than if they had come to Chicago, when I add the difference in the freight rate and incidental expenses to bring them on from those points here.

Q. What do you mean by "incidental expenses"?

1815 A. A man has to accompany those shipments to look after them. There is a feed bill on the cattle, and there is a

shrinkage on the cattle. When they come on they won't weigh as much in Chicago as they did in the other markets.

Q. Then a person by selling in Kansas City would save the shrinkage, he would save the freight rate to Chicago, and he would save the feed in transit and he would save the expense of employing men to travel with his cattle to Chicago?

A. Yes, he could do that.

Q. And the freight rate to Chicago—and those were the circumstances that induced you to send them to these markets; am I correct in that?

A. Yes, sir, that is correct, the net results, when you add—even though you get a quarter of a dollar a hundred more for cattle in Chicago than you would get in Kansas City for them, you have less net money for your cattle, if you send them on here, than you would if you have sold them in Kansas City for a quarter of a dollar a hundred less.

Q. If when you made those shipments you looked first to Kansas City to see what your rate into Kansas City would be, and what your expenses getting your cattle to Kansas City would be, and on the other hand you looked to the rate to Chicago and the expenses getting the cattle to Chicago, then you looked to the prices prevailing in the Kansas City market and the Chicago market re-
1816 spectively—didn't you go through that process? Wouldn't you have to do it?

A. That would be a general basis, Judge, yes, sir.

Q. Then how do you say the Chicago market controlled the Kansas City market in the case of your own shipments?

A. How is that?

Q. Why is it you say the Chicago market ought to control the Kansas City market, when you yourself were controlled by the prices prevailing in the Kansas City market?

A. Well, the reason of that—it seems to me I am endeavoring to make it plain, but I undertake to say that I have tested to my own satisfaction—you take ten carloads of cattle and *leave* them in Texas, bill half of them to Kansas City, five loads, and five loads to Chicago; we figure how much these cattle will net per head and experience has taught me and other men who are shippers, that those Southwest cattle bring more dollars and cents per head if we sell them there than if we bring them on to Chicago.

The COURT: How long has that been so?

The WITNESS: That has been so—it has been increasing for the past ten years. Ten years ago we had very large receipts of cattle from that country, they have all been dropped out practically.

The COURT: Have you seen any difference since August, 1902?

The WITNESS: There is less cattle coming on to Chicago from that Southwest country than there was in 1902.

1817 Mr. BAXTER:

Q. Do you think, Mr. Buell, as a business man, interested in this question, that a man who has raised a carload of cattle in Southern Texas or Oklahoma, and who has transported them for one thou-

sand miles to Kansas City, where he finds a slaughter house, should be compelled, by an adjustment of rates, to bring those cattle 450 miles further to find a market at Chicago?

A. No, sir, I do not think he should be compelled to do it.

Q. Do you think any rate adjustment would be a just one that would force that man, by a mere difference in rates, to travel with his cattle five hundred miles further?

A. I wouldn't think it would be best to force a rate that would force—make a rate that would force him to come on here. The trouble is now that a rate is made to force him to sell them there.

Mr. BAXTER: I will discuss the rates further along.

The WITNESS: If you want to get in the rate——

Mr. BAXTER: Certainly.

Q. You said, for instance, you had to pay 23½ cents if you shipped from Kansas City to Chicago?

A. That is the local tariff, according to my understanding.

Q. Now, is it a fact that any cattle actually move on that paper local rate of 23½ cents?

A. Is there any moved?

1818 Q. Yes.

A. Yes, sir.

Q. Do you know of any shipment of cattle from Kansas City to Chicago that has paid that 23½ cent rate?

A. Now, I don't look at these expense charges made by the railroads, but I know we get cattle out of Kansas City billed on the local rate out of there. I had some myself last week.

Q. How about the amount of them? There may be few cattle driven into Kansas City but the Commission in this case, in its report, states that there was practically no cattle moved from Kansas City to Chicago on the rate of 23½ cents, and that it is of no importance in this case except as being the maximum limit of the intermediate rate; now, do you differ from the Commission in that?

A. The few shipments of cattle that come out of Kansas City on to Chicago now, I feel most inclined to say, pay 23½, but as a matter of fact I don't make account sales and don't watch that freight rate, but it is generally understood that is the rate.

Q. The question I am putting to you is that if any do actually move on the 23½ cent rate from Kansas City to Chicago, is it but an insignificant proportion of the total movement from Kansas City to Chicago?

A. No, sir, I shouldn't think it was because the Western shipper or the Southern shipper who wants to come to Chicago, is inclined to avoid going into those markets.

Q. Are not the rates so adjusted that a man from a point
1819 down in Texas or Oklahoma can consign his cattle to Chicago, have them carried to Kansas City and there try the market and if it is not satisfactory bring them on here for not exceeding 20 cents per 100 pounds, and in many cases as low as 16, and in some cases as low as 12 cents, being the balance of the through rate from point of origin to Chicago?

A. That would be true, but the volume of business that is handled

in that way is very small, because the owner of cattle has learned to know that it is not to his interest to take cattle into Kansas City and offer them for sale and then ship them out here, whether his freight is 16 cents or 23. He doesn't do that.

Q. Then, as I understand you now, it is not the rate that he pays from Kansas City to Chicago that induces him to come on to Chicago at all. You think it would be the same whether the rate he paid was 23½, or 20, or 16, or 12?

A. The man who comes on from the Western Market to Chicago, comes on because he has not received an offer for his cattle according to his ideas of their value.

Q. Well, he knows by telegram exactly what the price is here in Chicago?

A. Not by any means, no, sir, he don't know, because there is no man that lives that can tell what cattle will bring in Chicago if he is in Kansas City. The markets fluctuate from day to day.

1820 Q. I know, but he knows the price of yesterday, doesn't he?

A. He knows what it was of yesterday.

Q. What time do your sales commence in Chicago?

A. About eight o'clock in the morning.

Q. What prevents him knowing by nine o'clock at Kansas City what the prices in Chicago are?

A. If he does he don't know what his particular class of cattle would bring.

Q. Well, he knows to what class his cattle belong, does he not?

A. No, sir, he does not know.

Q. Don't you have a regular grading of cattle here, which is generally understood throughout the community, throughout the country?

A. We don't handle live stock. I have tried to testify in my direct examination—we don't have a schedule of prices. We can't handle live stock as they handle the grain in this market. They have inspectors and they make a grade, and it is No. 1 or No. 2 wheat, something of that sort. The grade of a bunch of cattle is simply a matter of judgment between the salesman and the buyers. For instance, I take a man a drove of cattle this morning and ask him five cents a pound for them. He says, "I will give you 4¾."

Q. What sort of cattle are you talking about?

A. I am talking about native cattle this morning.

Q. Native?

A. Yes, sir, I mean cattle near-by. Now, because I ask him five cents a pound don't signify that those cattle have any particular grade or that they are like any other drove of cattle in the

1821 yards. The chances are there was not another drove of cattle in the yards that was identical with those that I was trying to sell.

Q. I notice in your newspapers here, a classification of cattle, several classes; I don't remember the names of them. Don't you classify cattle in some general way?

A. Oh, in a general way.

Q. Native is one class, you have mentioned?
A. Yes.
Q. Give us the other classes.
A. We have natives and Western, and we have Southern cattle, and another grade called Western cattle.
Q. Don't you have them graded by their age or weight, something like that, or tell how old they are?
A. No, sir, that wouldn't apply in those grades.
Q. If there be no classification of cattle, like there is of cotton and wheat, by which the world can know what your prices are, how can Chicago claim the right to control the other cattle markets? How would any man anywhere know how to buy on Chicago market if nobody knows what kind of cattle or prices apply?
A. Well, in answering that question I will say that Chicago is the great market of the world, because of its large receipts, which are heavier than any other. We have more of a variety of all these different grades of stock coming here.

1822 Q. I understand that, Mr. Buell, but I understand the claim to be set up in this case that Chicago is the great cattle market of the world; that it dictates the prices that are to be paid elsewhere, and therefore it ought to be fostered and encouraged. Now, if Chicago doesn't publish any grades upon her stock, if it is a free masonry arrangement that you gentlemen have and that nobody anywhere else but right in the Stock Yards can find what is being done there, that might be a different institution from being the best market in the world, and I am trying to get at what it is.
A. Anybody can go out there and see what is being done.
Q. But he can't find out unless he does go there?
A. You can't find out, because one drove of cattle brings six cents a pound, and another drove that you might think is just like them, yet the buyer will only give 5¾. You can't understand why that is, yet that buyer claims to be an expert and says that drove is worth 6 cents and this drove 5¾. The cattleman, not well trained in his business can't see any difference between the two.
Q. When your Chicago Board of Trade publishes a lot of information in regard to your packing and cattle business here and quotes the prices on cattle, the range of cattle, cattle prices, what does it mean?
A. I presume those prices are quoted after the sale has been made of those cattle, and the packers report to them what they give

1823 for their cattle, and it is cattle of certain weights.

Q. How would that help anybody to know tomorrow what price to pay next week?
A. It won't help him at all, it wont be any advantage to him, because the market is liable to be a quarter higher or a quarter lower tomorrow.
Q. That goes without saying, but I want to know how would anybody anywhere know what the price was at Chicago yesterday on any given grade or kind of cattle?
A. How would they know?

Q. How would anybody know? Could he find out from the newspapers?

A. Yes, sir, he gets a general idea as to the condition of the market from the newspapers. Those reports are made up from the cattle sales.

Q. You say 4½ cents a pound or 5 cents a pound? Would that mean an old cow that can hardly stand up, or does it mean a fat beef ready for the slaughter?

A. Let me answer that by saying that any cattle bringing today 5½ cents a pound, they may be a bunch of yearlings that will weigh 800 pounds; they might be a drove of cattle that will average 1,500 pounds and sell at the same price.

The COURT: The export cattle are supposed to bring the highest price, aren't they?

A. No, sir, not these days.

The COURT: Unless it is the calves?

A. Export cattle are a grade of cattle that usually weigh 12½ to 13½, and these cattle on present markets are selling from
1824 4¾ to 5.40, depending on the quality.

The COURT: What kind of cattle do bring the largest prices?

A. What we call our choice, well matured cattle, that go for our best hotels and best restaurants.

Q. How much do they weigh?

A. They will weigh anywhere from 800 to 1,600 pounds.

The COURT: From one year old to three years old?

A. Up to five or six, probably.

Mr. BAXTER:

Q. Any man that owns a bale of cotton can know what the price of low middling in New York was day before yesterday; any man that has got a bushel of wheat to sell can tell what No. 2 sold for in Chicago yesterday?

A. Yes, sir, he knows what it is if his stuff will grade that way.

Q. I understand that there is now analogous method by which anybody outside of the Union Stock Yards can tell what the price of cattle is?

A. Don't put it that way—outside of the markets.

Q. I am not putting it at all. I am trying to get an understanding from you. You are the person to put it. I am trying to find out how a gentleman in Kansas City can be controlled by the Chicago price when he can't tell out at Kansas City what you paid yesterday, or what you are paying today for cattle of a particular kind?

1825 The COURT: See if you can answer that.

The WITNESS: There are men in Kansas City who take their chances of being able to say that this is a similar bunch of cattle, or equally as good as the bunch that brought five cents a pound in Chicago yesterday.

Q. Yet it may turn out that the five cents was paid upon a bunch of cows, or upon a bunch of middling stiffs?

A. If he has the weights of those cattle he will know different from that.

Q. That is not telegraphed, is it?

A. Sir?

Q. That is not telegraphed to Kansas City or anywhere?

A. Our daily reports show the weights of those cattle.

Q. Getting back to that,—that answers my purpose as well. Then your prices are made according to the weights of the cattle?

A. No, sir.

Q. What are they made from?

A. They are made by the conditions and the demand that exists for a particular kind of cattle.

Q. Will you for the purposes of this record, describe a transaction that you had Saturday, or the last transaction that you had, and describe the character of the cattle for which you got a particular price?

A. Can I describe?

Q. Yes.

A. Yes, sir, I can readily do that. I can describe some I sold today. I sold some cattle from Montana today——

1826 Q. Your description is for the purpose of being telegraphed to Kansas City tomorrow, to let them know what that kind of cattle brought.

A. I sold cattle today from Montana. I don't know just what they weighed, but I would say they weighed 875 pounds, for 3.30 a hundred; I sold other cattle from Montana that would weigh 11½ to 11¾, what we term fair quality, at 3½ cents a pound.

The COURT: For Montana or from Montana?

The WITNESS: From Montana, shipped in from there. I sold some other cattle from Montana that I call a little better quality than those, and the buyer seemed to think they were about the same weights for 3.60, and I sold a few cattle from Montana that would probably weigh 12½ at 4½ cents a pound.

The COURT: All grass fed?

A. All grass fed cattle, yes, sir.

Mr. BAXTER:

Q. You said something about charges for bedding appearing in some expense bills that you have handled, showing that some of these roads had charged the shipper for bedding, Mr. Buell, did I understand you right?

A. Yes, sir.

Q. Did the shipper complain of the amount of the charge, do you remember?

A. I don't remember. I think we were looking over the expenses that were added to his shipment, and we discovered that it was a charge for bedding the cars.

1827 Q. Well, he made no complaint as to the size of the charge, that it was too high, or anything of that sort?

A. No, sir, I don't know that he did.

Q. You speak about Chicago being the best market, and being generally so believed in the country, and that is one reason why it holds the position that it does as a market. Are you not aware that

it is quite generally believed in the United States that there is a combination of packers here in Chicago that arbitrarily thinks the prices on the live stock brought here, and that that is one reason why many people are afraid to ship to this market?

A. I have heard many men say that they believed that there was a combination between some very large packers who agreed upon a method for controlling the market. Those same packers, large packers as I understand it, are interested, in fact I know they are, in such markets as St. Paul, Sioux City, Omaha, St. Joseph, Kansas City, St. Louis and Fort Worth. They have got slaughter houses in all of those markets, the same men that you are asking about.

1828 Q. Now, if these men fix the prices in all of the markets by combination between themselves, what is the use of coming to Chicago? They would not be any better off here than they would be anywhere else, would they?

A. They might come to Chicago and find some one else who would buy their cattle outside of these people. They do not buy all the cattle that comes to Chicago, they only get a portion of them, a pretty large proportion.

Q. They buy enough to fix the price of the balance, don't they?

A. On certain grades of cattle they do.

Q. All that are worth slaughtering?

A. They do not fix the price on what we call shipping cattle to send to the eastern market, nor do they fix the price as I understand it on our export traffic.

Q. Are there not this same class of bidders at Kansas City as there are at Chicago, foreign exporters?

A. Yes, sir; but not so many of them.

Mr. BAXTER:

Q. Didn't I understand you to say that the first thing that was done in the morning when the stock market opens here is that the buyers for these packing firms come around with the prices they are willing to pay that day?

A. No, I didn't state that. I stated that the method of sale of these cattle is for the salesman to take a buyer, whether he is a big packing house buyer or a shipper, whoever he happens to first meet, and who thinks he has got a drove of cattle that would please him, he takes that buyer, irrespective of who he is, in to these cattle

1829 and if he bids a price that the salesman thinks is a good price, especially if the owner is standing by and says it is more than he expected, you sell these cattle, then the salesman will sell it. In such instances as that the big packers as they term them have not seen the cattle. A great many cattle are sold to the first man that goes in then. As I say, it is an expert proposition between the man selling them and the man that buys them, and if they can agree the trade is made then and there.

Q. Isn't the packer's agent, that has the price that those people are willing to pay that day, isn't he the first man that you do see as a matter of fact?

A. No, sir.

Q. Well, don't you ascertain in some way what the packing house people are going to pay that day before you sell to anybody else?

A. No, sir.

The COURT: Why don't you?

A. Because I risk my judgment, Judge, as to the value of the particular drove of cattle I have got. I have had personally twenty-nine years' experience as a salesman in the market. It might be egotistical to say that I thought I am an expert, but I am not afraid to go in a drove of cattle and price them and sell them to the first man that looks at them if he bids me a price in my judgment that is as large as they will bring.

Mr. BAXTER:

Q. I do not question you being an expert, on the contrary I think you very evidently are. But the point I did not understand
1830 is why an expert that has been handling cattle and live stock traffic in Chicago thirty years has never devised any system of grading by which the public at large can know what you are doing.

A. I would answer that question by saying that there is no way by which you could get a uniform grade for cattle or hogs. It is simply the judgment of the owner or the representative of the owner and the man who makes the purchase.

Q. That is all.

The COURT: Can't you fix this matter up some way so you can compel people to bid and not make combinations, can't you avoid that?

A. I wish we could sometimes when I cannot get what I think a drove of cattle is worth.

Mr. BAXTER: One thing further I forgot. Are you a member, or your firm, a member of the Board of Trade of Chicago?

A. No, sir.

Q. Do you recognize this volume which purports to be the 47th Annual Report of Trade and Commerce of Chicago for the year ending December 31, 1904, Board of Trade, George F. Stone, Secretary, as a publication that is generally consulted by the business men of Chicago and is recognized as reliable?

A. I recognize this as a book that is prepared by the Chicago Board of Trade. I do not know that I ever saw the report
1831 for 1904, but I have seen them for other years. It contains statistics that I presume are reliable; so far as I know I would say that they are.

Q. And they would be so accepted generally by business men. You would act on anything you could see on here that you could not get any more direct or better information, would you?

A. I don't believe I would act on it, Judge, no; I wouldn't want to put money up on a report of that kind, especially on live stock.

Q. Suppose you wanted to find the receipts, or the number of hogs packed at the various large cities of the United States from 1850 or 1851 down to 1903 or 1904?

A. I would accept that as authority, yes sir, for that.

Q. Now, will you kindly hold that before you, and looking at that page and that column, I wish you would state according to that publication the number of hogs packed at Chicago in 1850 and 1851, and 1903–4. You will find it in the first column?

A. In 1850-1 it is 20,000 head.

Q. What was it in 1903-4?

A. In 1903-4, 2,925,960.

Q. Now, at Cincinnati what were the number of hogs shipped in that year, 1850-1?

A. 334,000 in 1850-1, and 247,497 in 1903-4.

Q. At St. Louis in 1850-1 and 1903-4?

A. At St. Louis in 1850-1, it is 82,274. In 1903-4, it is 247,947.

Q. Now, the same information as to Louisville?

1832 A. Louisville in 1850-1, it is 196,000; in 1903-4 there is 126,251.

Q. Indianapolis?

A. In 1850-1 there is 18,000, and in 1903-4 there is 479,380.

Q. Now, there are no statistics there for Milwaukee prior to 1853-4, are here?

A. That is what it shows here.

The COURT: Is there any in Galena for 1850?

A. No, sir; it don't seem to be here.

Mr. BAXTER:

Q. Now what was the number packed in Milwaukee in '53-4?

A. 43,000.

Q. How much in 1903-4?

A. 423,024.

Q. Now, there are no statistics as to Kansas City prior to 1867-8, are there?

A. Yes it is 1868-9, I think, isn't it. May be I am wrong.

Q. Now, what was the number packed there in 1867-8, at Kansas City?

A. 2,500.

Q. And what was it in 1903-4?

A. 861,674.

Q. I believe there are no statistics for Omaha prior to 1872-3, are there?

A. No, sir; I think not.

Q. How many hogs were slaughtered there in 1872-3?

A. 7,500.

Q. How many in 1903-4?

A. 746,596.

An adjournment was here taken until the following day, Tuesday, October 3rd, 1905, at 10 o'clock A. M.

1833 TUESDAY, *October* 3, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon A. L. AMES, called as a witness on behalf of the complainant in rebuttal having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. State your name?
A. A. L. Ames.
Q. Where do you reside?
A. Buckingham, Iowa.
Q. What is your age?
A. Forty six years old.
Q. How long have you lived there?
A. Forty six years.
Q. What business are you in?
A. Farming and feeding cattle.
Q. How long have you been in that business?
A. As long as I have been able to do business.
Q. Has it been a part of your business to ship cattle and other live stock to Chicago and other markets?
A. Yes sir.
Q. And buy at other markets and ship in for feeding pur-
1834 poses?
A. Yes sir, I have.
Q. In the conduct of that business, over what roads have you shipped live stock to Chicago?
A. Shipped over the North-Western, over the Rock Island, the C. B. & Q. Those are all the roads probably in Iowa. I have used the Santa Fe and Rock Island in Kansas and other roads from Dakota.
Q. Do you hold any position in connection with any organization of live stock feeders and producers of the state of Iowa?
A. I am president of the Corn Belt Meat Producers Association of Iowa.
Q. Of what is that composed?
A. It is composed of feeders and farmers and shippers of the state.
Q. How many members have you?
A. There are something over one hundred organizations varying from 20 to 200 members to the organization. The exact number I could not give you.
Q. Those organizations are by counties?
A. By counties and local positions.
Q. And you are the president of the organization which represents the whole?
A. The whole state, yes sir.
Q. You have your local organizations and then you have your state organizations?

A. Exactly.

Q. How long have you been president of that association?

A. The organization was formed in March 1903.

1835 Q. What are the purposes of the organization?

A. To look after the shipping interests, the service, the rates and all connected with the live stock interests of the men of Iowa.

Q. Have you devoted any time and attention to the study of the freight rates, the relative rates and the matter of service and the general conditions applying to the shipment of live stock from Iowa to Chicago and other markets for shipment into Iowa?

A. I have.

Q. To what extent have you given attention and study to those subjects?

A. I have devoted a great share of my time for the past—or from that time until now, in the study of those questions and a great deal before that, for that matter.

Q. How is that?

A. For some time before that for private reasons, of course.

Q. Are you acquainted with the railroad rate situation in Iowa on live stock at various points?

A. I think I am.

Q. Are you acquainted with matters pertaining to the service in connection with the transportation of live stock in the state of Iowa?

A. I am.

Q. To what part of the state does the 23½ cent rate apply on live stock shipments to Chicago, geographically speaking, in a general and approximate way?

1836 A. Taking a line running parallel with the Missouri river and locate it approximately 15 miles west of the city of Des Moines, the 23½ cent rate will apply on both hogs and cattle.

Q. From west of that to Chicago?

A. From west of that to the Missouri river, between the Missouri river and Chicago.

The COURT: The rate in that belt is 23½ cents to Chicago.

A. Exactly.

Mr. COWAN:

Q. That belt would be then just about how wide, as a general proposition?

A. About one third of the state.

The COURT:

Q. How much is that?

A. Approximately 100 miles.

Mr. COWAN:

Q. Within that distance what proportion approximately, if you have it in mind in a general way, of the live stock is shipped to Chicago and what proportion is shipped to other markets, west?

A. When you say "live stock," you have got to give the cattle and the hogs.

Q. Well, I will put first the cattle.

A. I would say 75 per cent. of the cattle moved to Chicago and if there is any difference it will be greater rather than less.

Q. And of the hogs?

A. I will say 50 per cent.

1837 Q. In point of the price received per hundred pounds, what is the best market for live stock from that territory?

A. Chicago on cattle, without any doubt. On hogs, it will vary with the season of the year and the quality of the animals that are marketed.

Q. In your opinion, from the investigation you have made of the subject, are the rates on live stock from that territory too high or too low?

Mr. SEVERANCE: I object to that as incompetent and no foundation laid.

The COURT: There is foundation enough laid, but what do you mean by "too high" or "too low?"

Mr. COWAN: Well, I will put the question in a different form.

Q. In your opinion, are those rates reasonable or unreasonable?

Mr. SEVERANCE: The same objection.

The COURT: He said he had made a study of the rates.

A. I did, yes sir.

Mr. COWAN: He is fully qualified.

Mr. SEVERANCE: The witness has not shown that he has any knowledge of the cost of transportation or transportation facilities. He is not shown to have any knowledge of the shipment of other commodities, which must bear part of the general expense. He is not shown to have any knowledge of anything except that he

1838 says that he has devoted some time to the study of the service given in the shipment of cattle and hogs and to the rates on that particular commodity. Clearly, having no knowledge of those various matters or of any of the fundamental things that underlie the making of rates, his opinion would be no better than that of any other man.

The COURT: I think you had better inquire a little more what he does know about it. Objection sustained.

Mr. COWAN:

Q. Mr. Ames, you said you had given some study to the subject of rates and the matter of transportation and the service?

A. Yes sir.

Q. To what extent have you given attention and study to those subjects? In what manner have you undertaken to inform yourself with respect to the question of whether the rates are reasonable or otherwise?

A. Well, in the first place I have read all that I could read that has any bearing on these questions.

Next, I have investigated the rates from different roads, not only

of live stock but of other commodities, such as the grains that are moved from different parts of the country and the meats that come in direct competition with the live stock from the Missouri river markets east. I have ridden on the stock trains——

1839 The COURT: Have you read the railroad reports? Do you know anything about what they claim about it and what facts they present?

A. Yes sir.

Q. To what extent?

A. Well, I have read the reports that have been made by the various Commissions and also by the railways.

Q. Have you learned anything about the cost of building a railroad and the cost of carrying a ton a mile?

A. Yes sir.

The COURT: Well, I reckon he may answer.

(The question was then read as follows: "In your opinion are those rates reasonable or unreasonable?")

A. Well, I should say that they are unreasonable rates.

Mr. COWAN:

Q. By that do you mean unreasonably high or unreasonably low?

A. I mean—Now this is in reference to the live stock, is it?

Q. Yes.

A. That the rate on live stock from the state of Iowa is unreasonably high when compared with——

Q. Well, then——

The COURT: Compared with what?

Mr. SEVERANCE: Yes, compared with what?

1840 A. When compared with the weights on like products that are moved from like points.

Mr. SEVERANCE: Will the witness be willing to state what he means by "like products?"

The COURT: "Like products" moved from "like points."

Mr. SEVERANCE: What does he mean by "like products?"

The COURT: That is an answer to the question and a very intelligent answer.

Mr. COWAN:

Q. You mean the rates from that territory in Iowa to Chicago?

A. I do.

Q. In your investigation have you ascertained whether the rates on live stock from points in Illinois to Chicago and from points in Nebraska to Chicago, considering the distance in each case, are relatively higher or lower than your Iowa rates?

A. You mean per mile, the distance taken into consideration?

Q. Yes.

A. They have a higher rate from Iowa than they do from either Illinois or Nebraska, distance considered.

Q. Now, have you ascertained whether the rates on the live stock product, that is to say the dressed meat, is higher from Missouri

river points and from points in Iowa, or lower than on the live stock?

A. They are lower.

Q. How many cars have these rates been in force substantially as they are today, in Iowa?

1841 A. I don't think there has been any change in the rates per cents. per hundred pounds. There have been a change in the rates made this way.

Formerly, we shipped by carload, so many dollars per car. That was changed to cents per hundred pounds. The next change, that was an addition to the rate, was in extending the time of marketing, that is on the road, that our stock was on the road to market. The next change was made in taking away the return transportation which has since been replaced.

Q. Do you know of any complaint made to the railroads with respect to the amount of the rate from Iowa to Chicago? If so, state when and where it took place and the circumstances of it?

A. In March when our organization was formed.

Q. March of what year?

A. March, of 1903, when our organization was formed, the State Legislature was in session. There was a bill before that body looking after the reduction of rates, the return transportation and to endeavor to secure better service. All of those points were brought before the attention of the railway people at that time.

Q. Did you have any conference or meeting with the railroad men at that time?

A. There was.

1842 Q. Where did that take place?

A. In the city of Des Moines.

Q. In March, 1903?

A. Yes sir.

Q. What railroads were represented there?

A. As I remember there were nearly all or all. I have not a list of them, but I think they were all represented, The North-Western, The Milwaukee, The Rock Island and the C. B. & Q.

Q. In what manner were the stock men represented?

A. They were represented by men from all over the state, probably 250.

Q. How many were there?

A. About 250 stock men.

Q. State whether or not at that time the facts were pointed out to the railroad men, that the rates on the live stock were too high?

A. They were.

Mr. SEVERANCE: I think, your Honor, it is fair to ask the witness what was done, rather than to tell him.

Mr. COWAN: I can hardly interrogate the witness without the question being somewhat leading.

Mr. SEVERANCE: Other people could.

Mr. COWAN: You gentlemen have not done it, others might.

Q. Now, Mr. Ames, what all were the matters of discussion be-

tween the railway representatives and the live stock men at that time and place.

1843 A. The first thing that was under discussion was the return transportation, that being the last addition that we have received in our freight, to our freight rate. The principle thing that the people of Iowa thought they were imposed upon about was the fact of the poor service given by all the railroads of the state at that time.

Q. Poor service how?

A. Poor service in taking the live stock out of the state and delivering it to the stock yards in Chicago. Prior to January 18th, 1903, the roads had been handling this live stock in a very creditable way with very little complaint being made by the shippers. For instance, in the central part,—I am living about the center of the state,—we could load our stock between 3 and 4 o'clock on a regular train and almost invariably be on the market at 7 in the morning.

Q. That is at Chicago?

A. Yes sir, I am speaking of the Chicago market entirely. After that date, for some reason, all of the roads together added six hours to the fore part of their run, making us load six hours earlier. In addition to that, in place of arriving at the yards as they used to, in time for that day's market, they frequently, more times than otherwise, we were delayed until we could not use that day's market and had to hold over until the next day, making us 24 hours plus 6 hours in the — longer on the road than was necessary, which

1844 was a thing that the stock men of the state of Iowa could not understand the reason of. That was the principal thing that we objected to at that meeting. Secondly, was the return transportation which had always been in effect and was always considered part of the rates, and which is now in effect, today.

Q. Is that the meeting at which the complaint was made that you spoke of, in regard to the rates being too high?

A. It is.

Mr. SEVERANCE: That is objected to. He asked him to state what the complaints were and he has left out the matter of rates entirely.

Mr. COWAN: Mr. Severance invariably misunderstands the witness. Now the witness had stated a while ago that they had complained of the rates at that meeting. I asked him is this the time and place at which the complaint was made of the amount of the rates, with reference to the amount of rates he had already testified to.

Mr. SEVERANCE: Just one suggestion. As long as counsel has said that I misunderstand the witness, I wish to say that the witness said that complaints were made about the rates. He has explained that by saying what he meant was that they had taken away the

1845 return transportation which is included in the rate and the only matters that were discussed there were the return transportation and the better service.

Mr. COWAN: Was that the only matter that was discussed there?

The COURT: Ask him another question. There is nothing before the court.

Mr. COWAN: Read the question.
(The question was then read.)

A. The matter of the rate was spoken of, was talked of, at that meeting.

Q. Are you able to state what the general opinion is of the members of your organization and the live stock shippers of Iowa, with respect to whether or not those rates to Chicago are reasonable or unreasonable.

Mr. SEVERANCE: I object to that as incompetent and immaterial.

The COURT: Objection sustained.

Mr. COWAN: I offer in this connection to make the proof, but I don't want to infringe upon the ruling of the court, that the witness will testify that he is acquainted with the opinion of the members of the organization of which he is the president, embracing the principal live stock shippers of the whole state of Iowa, and that that opinion is that these rates are too high, that they are not satis-
1846 fied with them. That they believe it will be of no importance to make any complaint to the railways with regard to it. I simply make that offer.

Mr. SEVERANCE: The same objection.

The COURT: Objection sustained.

Mr. COWAN:

Q. In the course of your official position with the organization you have mentioned, have you had occasion to make investigation into the matter pertaining to the claims for damages that are made against railroads on live stock shipments and the causes for which those claims are made?

A. I have.

Q. What is the causes of the claims which are made?

Mr. SEVERANCE: I object unless he fixes the particular claims and gives the circumstances under which they are made.

The COURT: Objection sustained unless you divide it up some way to show against what roads they are and what kind of claims they are. You had better find out a little more of what he knows about it.

Mr. COWAN:

Q. Well, state all you know about it, Mr. Ames.

Mr. SEVERANCE: That is just as objectionable as the other question.

The COURT: Well, let him go ahead.

1847 Mr. COWAN:

Q. State all you know about it with respect to each one of the roads and to what extent what you do know about it, applies to all of the roads or to each one of the roads?

The COURT: Limit the roads as you go along. If you know anything about the road, name it.

A. One part of the duties of the organization was to secure, if

possible a better method of getting our claims settled or method of doing away with the claims that were presented by the stock men to the various roads, altogether. With that in view I have taken up the matter with the stock men along the different lines. Over the North-Western and the Milwaukee and the C. B. & Q. particularly, and so far as I have found——

Mr. SEVERANCE: I object to that. It is not proper unless it is brought to the attention of the railroads.

The COURT: Well, we will see when he gets through. Let him go ahead. Objection overruled.

A. And from the claims that have been presented to me for settlement by the individual members of the association located along these different lines, that invariably they are made through some fault in service. That is, if the stuff was handled as promptly as we expect it to be, and as it may be, there would be no claims practically on any of the roads any more than the ordinary accident
1848 claims that are incident to all traffic. In other words, the claims that are made by the stock men are for damages that occurs through negligence of the roads in handling their stuff and delivering the articles to the market on time.

Mr. COWAN:

Q. Is there any claim on the part of the stock men represented by you that the railroads are liable for any of these claims except for negligence?

Mr. DAWES: I object to that.

Mr. SEVERANCE: That is immaterial.

The COURT: I sustain the objection.

Mr. COWAN:

Q. State what you know with respect to these matters being called to the attention of the railroads?

Mr. SEVERANCE: What matters?

The COURT: That he has just testified about in answer to the last question, I suppose.

A. Last spring Mr. H. M. Letz and myself, in order to endeavor to secure better service on the C. B. & Q. came to Chicago and appeared before the officials of the Burlington Road. In taking up the matter of claims they made the statement that they had in their office at that time 131 or 130 odd clerks and were away behind in getting the claims in shape to be returned.
1849 The result of that meeting was that the C. B. & Q. increased the efficiency of their service over their lines, and that from that time until now the claims have not been as much as they were prior to that time.

The COURT:

Q. What were those claims for, delays?

A. Claims put in for delays for the injury to the stock because of no arrivals at the yards on time, and shrinkage.

Mr. DAWES: Missing the market?

A. Missing the market, all claims that would come from poor service.

The COURT: You say the C. B. & Q. were better after that they did better?

A. They did.

Mr. COWAN:

Q. Did you have any conference with any other railway representatives beside the Burlington?

A. I live on the North Western and I have conferences with the North Western people very frequently about some things that we want changed. Sometimes I am able to secure them and sometimes not.

Q. Are you able to state whether the service has improved or not within the last year?

A. It has very greatly. It is nearly back to its old place.

The COURT: How about the Great Western, do you have
1850 anything to do with that?

A. I only live 12 miles from the Great Western but I am not acquainted with the Great Western people.

Mr. SEVERANCE: We are exonerated then.

Mr. COWAN:

Q. Previous to the time of this bad service that you spoke of, from your investigation of the matter, were the claims greater or less than they were during the period of the bad service?

A. You mean prior to the time——

Q. Of the poor service. You say——

A. The claims were nearly double during that time.

Q. And that was due to what?

A. The better service, less complaints.

Q. You mean that double the amount of the claims was due to the better service?

A. No, the other way.

Q. Are you able to state what proportion of these claims were paid, Mr. Ames.

A. No, I am not. I know there are not a very large proportion of them paid and a great many claims that are entitled to be paid are never entered.

Q. You mean never filed?

A. I mean never filed.

Q. Do live stock shippers always make a claim every time they miss the market?

A. No, it is the rule the other way. It is the exception that they make a claim.

1851 Q. If the railroads would give to the live stock shippers of Iowa, that service which they purport to give, leaving your place for example, when you load expecting to make the next day's

market, you load, say at nine o'clock in the morning, would there be any claims for damages?

A. There would be no claims for damage except in cases of accident or wreck or things of that kind.

Q. Any freight is liable to that?

A. Anything.

Q. Are you acquainted with the matters pertaining to the service of receiving and loading the cattle in the state of Iowa?

A. I am.

Q. Do you know the character and value of the stock yards in use in the state of Iowa, the expense of the maintenance of those, that is to say, the things that are done in the way of the maintenance of those stock yards on the lines of the Burlington, The North-Western, The Milwaukee & St. Paul, The Great Western or the other roads, and you can name such roads if there are not, where you are not acquainted with the stock yards facilities and those where you are.

A. Well, in answering a question of that kind it would have to be on the basis of averages.

Q. The first part of the question——

The COURT: Do you know about it?

A. I do.

1852 Q. You had better tell what you do know.

Mr. SEVERANCE:

Q. Tell what you do know about it on any of the branches or whatever way you please.

The COURT: I would describe what I knew about the different roads and give some of the details.

A. I will take the North-Western Road first because I am more familiar with that than the others, having been along nearly their entire line, and I will say that the North-Western Road, I will say for them that their stock yards are in the best condition of any roads in the state. That their pens are white-washed once a year and are cleaned once a year. They are nearly all paved with ties and cinders so that the man that handles his stock in them has a reasonably comfortable place to do his work. The pens will average over the lines, four pens to the yard. By four pens, I mean four pens that will hold two loads of cattle. Those pens are shedded 16 feet wide. The whole yard is 96 feet square, as a rule. Taking the cost of the material at the retail price, a pen of that kind now would be worth a thousand dollars, as near as a person could estimate. Then this estimate is on the new yard including the water supply, the pipes and tanks and approaches, the gates and all that goes with it.

1853 Mr. DAWES: The scales?

A. Scales and scale-houses.

Mr. SEVERANCE:

Q. The side track?

A. No, not the side track, I am talking about the yards.

Mr. COWAN:

Q. Now what is the cost, the approximate cost of repairs?
A. Oh, it is very little.
Q. And the maintenance of those yards?

Mr. SEVERANCE: I object to that as incompetent and immaterial and no foundation laid for it, and as it is not rebuttal.
The COURT: I think he may answer. These North-Western yards he seems to be well acquainted with them. I think he has given them a pretty fair show.
(The question and answer were then read.)
The COURT: That don't amount to much.

The WITNESS: I can enlarge on that answer and I will say that my feeding yards are a quarter of a mile from our stock yards; that before the North-Western came in I was shipping continually from the yards at Traer on the Rock Island, the old B. C. R. & N. at that time. The repairs on our home yard will be the expense of white washing the yard once a year; the cleaning of the yards, which, in our case, is done by the section men as a rule.

1854 The COURT:

Q. You nail on boards once in a while when they break off?
A. I was just coming to the boards. There is only one or two places in our yards that need repairs so far as breakage is concerned. They are built of posts and plank and the planks stand. Some of the gates will get out of repair and a hinge now and then and it will be necessary to repair that but with the exception of the loading gates—they will have to be repaired once a year. Outside of that there is very little repairing in connection with the stock yards when well built.

Mr. COWAN:

Q. What in dollars and cents would you estimate it per year or a longer period of time, if you please?
A. Well, I don't think that the repairs and improvements on the stock yards of my town would be to exceed ten dollars a year. I think I would undertake to do it for that.
Q. What sized pens are they?
A. They are the pens that I described.
Q. And that is the average of the North-Western pens?
A. That is the average of the North-Western pens outside of the terminals, and the feeding pens.
Q. Outside of the terminal yards?
A. Yes sir.

1855 Q. Now, Mr. Ames, will you compare the yards on the North-Western which you have described with the yards on the Milwaukee and the Rock Island, and other roads that you are acquainted with in point of their value, and the sort of the yards.
A. On any road, whether it is the Rock Island or the Milwaukee or any road that goes through the state of Iowa or in any other country as far as that is concerned, wherever you find a good feeding

district, you will find well equipped yards, but in localities where they are moving other kinds of freight, grain or where they are not feeding, the yards are much less expensive than the yards I described. They are often times—invariably made of inch boards and have been there from the time that the road started, and the wear and tear of the elements has placed them in a condition that is not—They are not worth a great deal of money.

It would not have cost very much to build them of the kind and often times too, in a locality of that kind, in place of being four pens there are two and sometimes one.

Q. What would be the average of the value of the pens on the Rock Island road, leaving out the division points?

Mr. SEVERANCE: He has not said that he knows that.

The COURT: Find out what he knows about that.

1856 Mr. COWAN: I had understood him to have already answered that he was acquainted with the stock yards at the very outset.

Q. Are you acquainted with the stock yards on the Rock Island road?

The COURT: He has explained his acquaintance with the stock yards on the North-Western road. Now, let him go on with the others?

A. I will take the Rock Island Road, with the exception of a few principal points.

Mr. DAWES: The question is what do you know about it, that is the first question.

Mr. COWAN:

Q. Have you seen the pens on the Rock Island?

A. I have shipped out of them. The yards that I speak of are yards that I have used and shipped out of.

Mr. DAWES: Be kind enough to say where they are located.

A. The yards at Traer on the Rock Island road is above the average and they will cost more than a thousand dollars because they are equipped with cement floors and are white-washed and built in an up to date manner, but Traer is a comparative point and in order to get the shipments they have made the stock yards——

Mr. DAWES: I object to that, assigning motives to us.

1857 The COURT: Objection sustained.

The WITNESS: The yards are in good condition, but in other points, the average up the road, further up the road, the yards are not worth, are not as good as the yards that I have described on the North-Western road.

Mr. COWAN:

Q. How do the yards on the Chicago, Rock Island & Pacific—You have seen them clear along the line, have you?

A. Yes sir.

Q. How do those yards along the line of the Rock Island compare in point of cost, on the average, with the yards on the North-Western?

A. Well, I would place the average at 60 per cent. less—or 40 per cent. less, 60 per cent. of the price.

Q. With respect to the matter of cost and maintenance?

A. Oh, I don't think there is any more cost of maintenance in one than the other. The more a yard is used the more expense there will be possibly in breakage and cleanage.

Q. How is it on the Milwaukee & St. Paul?

A. Well, the custom in all those yards on all these roads, when it comes to a small yard, is much the same there is very little difference in them. If it is a large enough shipping point so that they require four or six pens, they will put them in but if it is not, they will only build one or two, those are the pens that are built
1858 very cheaply and it costs very little to keep them in repair.

Q. When you say "very cheaply" how much is a two pen yard worth such as is actually used in Iowa?

A. I don't think a two-pen yard would be worth over $500.00. It could be built for less money because it is not floored, and often times there is no water.

Q. And a one pen yard?

A. It would be half of that.

Q. What proportion are the one pen yards that you were speaking of to the whole number of stations in the state of Iowa, what proportion are the one pen yards and what proportion are the larger yards, in point of number?

A. I would not want to answer that question of proportion because I have not made an accurate count. I would not know but I will say there is quite a number of what we consider one pen yards.

Mr. DAWES: I object to that. That is so indefinite.

The COURT: Let the witness be conservative. The question is objectionable, and he says he cannot answer it.

Mr. COWAN: And what of the two pen yards?

The COURT: If you don't know, say so.

Mr. COWAN:

Q. Do you know whether or not there are more two pen yards than there are four pen yards?
1859 A. No, I would not think there were.

Q. Are there more four pen yards than there are one and two pen yards?

A. There are more four pen yards than any other number, of all the yards, I think.

Q. If you were placing an average on all the stock yards in the state of Iowa, take it just as it ran, what do you believe the average would be?

Mr. DAWES: He has just said that he could not tell. I object to that. He definitely said that he did not know.

The COURT: Objection sustained.

Mr. COWAN: I did not understand that he said he could not tell.

The COURT: Well, what would it amount to?

Mr. COWAN:

Q. Now, in the amount of dollars and cents, did you state how much per year?

A. I said about ten dollars a year.

Q. That was for the maintenance of the yards?

A. Yes sir.

Q. To what extent are the railroads interested in the matter of receiving the live stock that are loaded at their stations in Iowa for shipment to Chicago, what expense are they at?

A. The maintenance of the yard is all.

Q. The shipper loads the stock?

A. He certainly does.

Q. Who furnishes the bedding?

A. The shipper.

Q. What sort of bedding is used?

1860 A. As a rule, hay or straw.

Q. There has been something said here in regard to the spraying of hogs in shipment to market. Explain how, when and where that is done?

A. A shipment of hogs in the hot weather of the summer time, it is very necessary that those hogs be kept damp or they will become overheated and die.

As soon after we get them loaded as possible, we have got some means of getting water on them, sprinkling them so as to keep them from getting too hot. In a great many of the yards, not all, but in a great many, we have a force pump and hose.

Mr. DAWES:

Q. Do you mean the company or an individual?

A. The company has a force pump, the individual usually furnishes the hose and after the hogs are loaded we will take this hose and spray the load of hogs.

1861 Mr. COWAN:

Q. That is right at the place where they are loaded?

A. That is right at the place where they are loaded. Of course, if it happens to be at a water-tank where we have a water supply in place of the force-pump, they use that pressure, and wherever there is facilities for pressure, it is used in place of the pump.

Also when the hogs are in transit, they become warm and particularly if they are — a division end, where they have to lay between two trains for any length of time, as they nearly always do, from one to three hours, it is almost absolutely necessary that those hogs be got to water as soon as possible, and on the line of roads about every fifty miles, or natural stopping place for a stock train, they have a pipe equipped with a spray nozzzle.

As they pull the train by, at a slow rate of speed, about as fast as they do for the scale, a man stands there who elevates this nozzle and throws a stream of water right in on to the hogs as the train is pulling by.

That is the custom of watering on nearly all of the roads. I might say all of the roads. Some use a hose in place of the stand pipe, but it is immaterial, it operates the same.

Q. Who does that?

A. The man that loads does that at home. The company, the railway company, the brakeman, the head brakeman usually
1862 on the train attends to the spraying of the hogs en route.

Q. Do they stop a train for the purpose of doing that?

A. No sir.

Q. They do that at the same place where the train is stopped?

A. It is always at a water station, and the engine will take water and as the train pulls out, the spray is turned on the hogs as they come by, and shut off when the cattle come.

Q. Simply a pipe and a nozzle there for the purpose of throwing that water in?

A. Yes sir.

Q. And the head brakeman does that as the train pulls out?

A. Yes sir.

Q. And gets on the train, and you go on?

A. Yes sir.

Mr. SEVERANCE:

Q. How is it done at the division points that you spoke of?

A. We don't get it at the division points as a rule. At the division points we are laid in on the siding, usually between two other trains, and that is the time that our hogs smother. That is, we cannot get water there, it is impossible. I don't know of a division point anywhere where we can water our stock.

Mr. COWAN:

Q. You said that hogs or other stock lay from an hour to three hours at division points. Why?

A. We shippers think it is because they had not made their arrangements just right.

1863 Mr. DAWES: I would like to have that stricken out. If he knows a definite reason, that is different. I do not think we ought to have what he thinks.

The COURT: Well, I know.

Mr. COWAN: Have you made inquiry to ascertain the fact of railroad men at these division points so as to know?

Mr. DAWES: That is objected to.

The COURT: Do you know of the reason, do you know of any fact of your own knowledge?

A. The best way I can answer that, your Honor, would be to give the history of the last load of stock that I brought into Chicago. That is a fact that I do know.

Mr. COWAN: Well, go ahead.

A. We left Buckingham on time at 11:20.

Q. A. M.?

A. A. M., on train No. 124.

Mr. DAWES: On what road?

A. On the Northwestern. We ran 29 miles to the division end, and arrived there on time at half past one. We laid there until half past three waiting for No. 132 to come from the west to pick our stock up and go to Clinton.

On No. 132 we found stock men that had stock cattle loaded from Omaha at four o'clock the previous day, also from Leschwig, Iowa, at four o'clock on the previous day. This was on September 5th and they loaded on September 4th at five in the afternoon. We arrived at Clinton with 35 cars of stock at half past nine.

1864 Mr. COWAN:

Q. P. M.

A. P. M. making 27 hours and a half from Leschwig and Omaha and with a slight delay went on to Chicago, arriving here at 7:30 the next morning, picking up four cars in Illinois, on the way. We laid out at Clarence an hour for another train to go by.

Q. Going which way?

A. Going to Chicago?

Q. Going in the same direction?

A. Going in the same direction we were.

Q. What sort of a train was that?

A. It was a dead freight. The quality of the shipments I could not say.

Q. Do you know whether they were refrigerator cars?

A. Part of them were.

Q. How many cars did you arrive at Chicago with?

A. 39 cars.

Q. Live stock?

A. Live stock.

Q. How far is it from Clinton to Chicago?

A. 138 miles.

Q. Now, you may state whether or not that is a fair sample of the——

A. That is a fair sample of the runs, yes sir.

Mr. DAWES: The question here was what was the reason that there were delays at division points. If there is the slightest indication of a responsive nature in that answer to that question, I would like to have it pointed out.

1865 The COURT: Well, what was the reason?

A. The reason was *before* No. 132 was not there and did not arrive at Belle Plain until two hours after our stock was there, and there was no way of getting the stock to Clinton until that train arrived.

The COURT: Well, let that stand.

Mr. COWAN:

Q. Did your train lay at Clinton any time?

A. Not any.

Q. Do you know the relative schedule or the relative time that is taken in the transportation of a train carrying dressed meat and the

transportation of a train carrying live stock to Chicago over that line of railroad?

A. I do.

Q. State it.

Mr. SEVERANCE: I would like to have him first state what he knows.

The COURT: I did not hear that.

Mr. SEVERANCE: I would like to have him first asked how he knows.

The COURT: Yes, tell how you know first.

A. In buying my feeding cattle, cattle for the feed yard, I buy a great many of them in Kansas City and Omaha or on the range. When I am in either Kansas City or Omaha, in order to get my cattle home, if it is a possible thing, I get them loaded out on a meat train. I necessarily must find out what time that train starts,
1866 and it is a very easy matter to find out what time the train is scheduled into Chicago. That is the knowledge that I have in regard to the meat trains so far as their time is concerned.

Mr. COWAN:

Q. Now, on the stock trains, how do you know about them?

A. The stock trains, I know about them from handling and loading stock on the different trains and the different roads all my life. I think I know about how the stock trains are run from the State of Iowa to Chicago.

Q. Now, you may answer as to the relative speed at which the stock trains and the meat trains are run?

Mr. DAWES: He has said definitely that the only information he has as to the speed of the meat train is from the tariffs.

The COURT: And from riding on both of them?

A. Yes sir.

Mr. DAWES: As I understood his answer he could tell from the tariff the time of arrival of the meat trains in Chicago, and that was the way he knew the speed of the meat trains. Am I not right?

A. I wanted to say——

Q. Wasn't that your answer?

A. My answer was this, if I remember correctly, that I knew the time the train started, and it was very easy after once being
1867 on that train and riding for a half or 2/3 or 3/4 of the distance to Chicago, to know the time the train was scheduled.

Q. You get that from the tariff, do you not, the timetable?

A. I have not ridden on a meat train all the way from Kansas City to Chicago.

Q. All you know then about the speed of meat trains to Chicago is from the time-table is it not, isn't that so?

A. No, not all that I know about them.

Q. Or what people have told you?

A. I know—I see these trains on the road. I know the time they start, and I am here in Chicago when they arrive. I think I ought

to know something about—I could not say any one definite thing, but those trains are all coming in regularly the same as a passenger train does. If I am here at the depot and see a passenger train come in that I know comes from my part of the country——

Q. Of course, when you are down at the depot, you know what time a passenger train starts?

A. You know that from the schedule.

The COURT: Can you tell from riding on both trains about how fast each one is going?

A. I think I can.

Q. Which is going the faster?

A. Yes.

Q. Have you ridden on both of these trains enough in order so that you can form a judgment on that?

A. I have.

1868 The COURT: Well, you may answer. What is the question. How do they compare in speed?

Mr. COWAN: Yes sir.

The WITNESS: I will say that after the stock is once assembled and consolidated into one solid train, and lined up on the main line, that there is very little, if any, difference in the speed of the two trains. The delays occur in the live stock from the assembly trains and from holding those trains at division points to get them into line. There have been incidents in my shipments, many of them, where a meat train will go by our stock train. But I don't think that is the rule, that is rather the exception.

Mr. COWAN:

Q. Now, do you know of any instance wherein a stock train has pulled by a meat train in the absence of some accident to the train?

A. Oh, no, we are never so fortunate as that.

Q. You have been giving special attention to the matter of service for the last few years, Mr. Ames?

A. I have.

Q. Are you able to say whether or not the matters you have related in respect to it are applicable to the live stock shipments and the shipments of dressed meat and packing house products which pass over those roads coming to Chicago?

A. I did not catch that.

Q. Generally from the State of Iowa. You have given certain instances. You have detailed certain conditions that exist.

1869 I want to ascertain whether or not those instances apply to the traffic from the State of Iowa to Chicago both as to dressed meat and as to live stock?

Mr. DAWES: I object to that, unless he is more specific.

Mr. COWAN: Take the point of the relative speed, which you have just described.

Mr. SEVERANCE: He should give nothing except what he has seen himself.

The COURT: Answer the question from your own knowledge.

Mr. COWAN: Were you going to make some answer about it?

A. I was going to say that there is no reason——

Mr. DAWES: Now, I object. It is not reasons we want, but facts.
The COURT: Overruled. Let him answer.

A. There is no reason after the trains are consolidated why one train should run faster than the other train unless it would be that one train was heavier than the other train or else the engine is not as good.

Mr. COWAN:

Q. Previous to the time that the live stock train is assembled and consolidated into a solid train, what is the character of the speed then as compared with the dressed meats and packing house products train?

A. Well, the assembly trains never are scheduled for so high a rate of speed. They have to allow for the picking up of a stock car and putting it into the train which occupies possible from
1870 one to five minutes.

Q. Take some instance which is illustrative of the whole of your experience with respect to the assembling and picking up of live stock cars, and putting them into the train and explain to the court, the manner in which it is done and the service performed, and the time it takes. Take some branch line, or a main line where that is done.

A. I will take a train which starts from Mason City in the morning. I cannot give you exactly the time it starts but it is my impression it is eight o'clock. It is very near there, may be a few moments one way or the other. They will start out with the stock that has been brought in off from the north division of the road, to that division end. It may be two to five or eight cars.

Q. Is there any other freight in there in that train?

A. The balance of the train—it is usually a light train when it starts, but if there is any dead freight, that comes that is to go down the line, of course, it is put in on to that train. It is not a stock train entirely. It handles all the freight with the exception of way freight.

Mr. DAWES:

Q. Is there any carload freight from Mason City into Chicago?

A. Yes.

Q. How often?

A. Well, we have a train that comes down from Mason City that takes all from the other side——
1871 Mr. DAWES: On this train, I mean.

A. It may not be loaded exactly at Mason City, but it will be noted at Cresley or some near by point.

Q. I am talking about outside of live stock, does this train get any carload freight outside of live stock?

A. It gets oats, and barley and corn in season.

Q. How often?

A. This time in the year there is never a train comes down without a carload of something like that.

The COURT: Now, go on and answer the question.

Mr. COWAN: Go on as to the manner in which that trains performs its service?

A. At every station where there is a car of either live stock or grain to be put into the train, the engine is taken off, goes to the switch, backs up to the siding, hitches on to the car, and pulls it out and puts it on to the train.

Q. And then goes on?

A. And then goes on to the next station.

Q. And the same thing is repeated there?

A. Exactly. One station after the other, wherever there is any freight to be added to the train.

Q. How far is it to the first division point?

A. The divisions are usually in the neighborhood of 100 miles. I think from Mason City to Belle Plain it is 109 miles.

Q. By the time it gets to Belle Plain will the train generally be full?

A. They have a full train, but not always of stock.

1872 Q. That is a mixed train?

A. That is a mixed train.

Q. What is done there?

A. If there is a train west of there on the main line, or if there is enough stock comes in from the south branch, enough stock and freight, they combine the two into a heavier train on the main line and carry that direct to Clinton. If we happen to be on No. 132 we will pick up from Belle Plain to Clinton stock that is intermediate, at intermediate points, add one, two, three cars as the case may be.

Q. How many cars would there be in that train ordinarily?

A. About forty cars is what they would average from 35 to 40, as the case may be.

Q. Do they make it all stop at Belle Plain?

A. Not always, no. Usually not. We hardly ever get out of Belle Plain with a full train of stock. We do sometimes get a train that comes from Dakota or Minnesota or some of the western trains that will be a full stock train.

Q. How many cars is that, a full stock train?

A. Well, there is very little difference. I think the Northwestern trains as a rule run a little lighter in cars, about thirty, than the trains that are made up through Iowa.

Q. How is that?

A. I think the trains that come from the Northwestern Territory, the average stock trains, are as a rule, a little lighter trains

1873 than the trains that are made up through our State.

Q. Take a train that has been made up in your State and not hooked on to one that has come through from the Northwest, at Belle Plain, and you have got a full stock train, how many cars will it be?

A. Forty cars, that is a full train.

Q. That is, then you come on to Clinton as a live stock train.

A. Clear through, if we have forty cars, we hardly ever have any additions.

Q. In coming through what stops does that train make?
A. Not any except for water or for crossings.
Q. Only for water and crossings?
A. That is all.
Q. Say, it has a regular run right on through?
A. It has.
Q. What is the usual speed, the average speed in point of miles per hour of that train?
A. On the main line, Belle Plain to Clinton, the speed of that train will vary from five and a half to six hours.
Q. How far?
A. That is 114 miles.
Q. Five and a half to six hours?
A. Yes sir.
Q. And from Clinton to Chicago?
A. From Clinton to Chicago we are from seven to eight hours.
Q. How far is that?
A. 138 miles.
Q. How long is the usual stop at Clinton?
A. Well, usually not long. If we have anything like a
1874 full train, or if there is a train coming in, two trains that are half stock each, they are combined together, and we start as soon as they get hooked together. Not to exceed half an hour.
Q. Do you know whether or not there are any rules or regulations with respect to the time that these stock trains are supposed to stop, or are directed to stop at division points?
Mr. LYNDE: Regulations of whose?
Mr. COWAN: The railroads, of course.
Mr. LYNDE: Who do you mean?
Mr. COWAN: I often am not exactly specific, I suppose.
Mr. LYNDE: You asked him if he knew.
Mr. COWAN: Yes, I mean the railroads which direct the trainmen as to how long stops shall be made at division points.
Mr. LYNDE: Do you know, Mr. Ames?
The COURT: Do you know or not, about the rules and regulations?
A. I know——
Mr. LYNDE: Just answer the question.
The COURT: Do you know the rules and regulations? Did you ever see them or did any railroad man ever tell you about them?
A. I have been told, yes, by railroad men.
1875 Q. Who told you?
A. Railroad men.
Mr. SEVERANCE: I think the best evidence would be the printed rules.
Mr. LYNDE: We will produce any rules you want, if we can.
Mr. DAWES: We will produce any rules we have.
The COURT: Answer the question.
A. The rules are to get the stock out just as soon as they possibly can.
The COURT: They wont deny that, I guess.
Mr. LYNDE: We claim that ourselves.

Mr. COWAN: I know what the rules are on some of the roads, but not on all of them.

Mr. LYNDE: We will produce any rules that we have got.

The WITNESS: I don't think there are any printed rules on that subject, because it is a question that is very flexible.

Mr. COWAN: When you come on from Clinton to Chicago, what is the time that you usually arrive in Chicago?

A. We will vary from four o'clock in the morning until ten.

Q. Does the same crew which brings you in carry your train to the stock yards?

A. It does.

Q. The same engine?

A. The same engine.

Mr. SEVERANCE: On what road?

1876 Mr. COWAN: I think they do on nearly every road.

Q. You said with the Northwestern, did you, or how is it with the Northwestern?

A. Well, the Northwestern does, I know.

Mr. LYNDE: Which do you say?

A. The Northwestern do, I know.

Mr. LYNDE: You are in direct conflict with the General Manager of the road on that proposition.

Mr. COWAN: You are mistaken about that.

The WITNESS: That is easily settled, if any of you will take the time to go down there and ride on one of the trains you will find out.

Mr. COWAN:

Q. How is it on the other roads, what crew brings the train into the stock yards?

A. Well, nearly all the roads do. I have not been on the other roads recently enough for me to say, but I think they have made some changes. I cannot say and I would hate to testify on that.

Q. When you were on the other roads, how was it?

A. The Rock Island trains used to bring in their stock as far as——

Q. Blue Island?

A. Blue Island. Then they put on their switch engine and bring it in from there, but I am almost positive, and I would not want to testify about it. I was out there yesterday——

1877 Mr. SEVERANCE: Then don't testify about it.

Mr. COWAN: You were down there yesterday?

A. I was down there yesterday, and I am satisfied that it is.

Mr. SEVERANCE: I move to strike out the gentleman's satisfaction.

The COURT: If I strike that out, I will have to strike out most of your testimony if I follow the same rule.

Mr. SEVERANCE: I am sorry to disagree with your Honor's view. The witness said that he did not know.

The COURT: Isn't most of your testimony hearsay, now answer that question?

Mr. SEVERANCE: No sir.

The COURT: Was there any witness on the stand that knew all that he stated of his own knowledge?

Mr. DAWES: We have objected to testimony, and the fact that the other side did not object to testimony which has been made up on the information——

The COURT: It would not have been any good any way. If you will read this law you will see that the object of the law is for the court to get all the information he can.

Mr. DAWES: What, by asking any one on the street?

The COURT: Yes, if he wants to do that. That would not be error. That is the first proposition. The second proposi-
1878 tion is that this is a chancery case, and the court is presumed to consider only competent evidence. It is not necessary to make such technical object-ons.

Mr. DAWES: Not withstanding the familiarity of the court with the rules of evidence, I think your Honor is aware that the impression made by testimony upon a receptive mind or upon a judicial mind is somewhat variable. You are unable to separate the wheat from the chaff. We are not introducing these objections for the purpose of delay, or for any other reasons, except what we believe to be our duty.

The COURT: I understand all that. The objection is overruled.

Mr. COWAN:

Q. You were at the yards yesterday, and you saw a Rock Island train come in?

A. It is my impression that the Rock Island train came in——

The COURT: He has been over that. He says he wont swear to it.

Mr. COWAN: How was it with the C. B. & Q., that is the Burlington, the Milwaukee & St. Paul when you last came in with live stock over those roads?

A. The C. B. & Q. ran their crews to the yards also, and the Milwaukee and the Great Western I could not answer for.

Q. Having given a description of one train, Mr. Ames, without taking the time in respect to the customary method of the
1879 handling of the live stock trains from points of origin to Chicago on that road and on other roads, state whether or not the instance which you have given is similar to the customary method of handling the live stock over these roads to Chicago.

Mr. SEVERANCE: At the risk of displeasing the court I am compelled to object to that as incompetent, and as asking for a conclusion of the witness.

The COURT: Objection sustained.

Mr. COWAN:

Q. In regard to the matter of return transportation, Mr. Ames—First I desire to ask whether it is necessary or not for the shipper, that is to say the owner or some one representing him to come along and look after his live stock?

A. It certainly is, particularly with a man that feeds and markets his own cattle. So much so that many times a man will come in with one carload and pay his fare back in order to see that his stuff, his stock is properly handled, yarded, weighed and sold.

Q. To what extent is that done, men coming in with one car and pay their fare back?

A. Well, more often than is generally supposed. On this train that I mentioned there were two men to my knowledge that came in with one car and paid their fare back.

Q. Has it been the general custom or not in the entire
1880 experience of your life time that live stock men have gone with their live stock in the shipment of them?

A. Always.

Q. Who looks after the stock and transit, for example, you are shipping in two carloads of live stock and I want to know who looks after those stock at the different places where you stop in the yards, or in case you get behind a wreck?

A. If there is any looking after the stock to be done, of course, it is the owner that has to do it.

Q. Are live stock trains stopped for the purpose of permitting stock men to get the stock up after they get down in the car?

A. Not now, no.

Q. How is that?

A. Not now.

Q. Do the cattle ride on their feet?

A. Yes sir.

Q. How do the hogs ride, do they lie down?

A. They lie down most of the time.

Q. What is the weight of the bedding, if you have a clean car, and loaded at your place, and shipped in here, and after you have unloaded your cattle, what is the weight of the bedding and refuse in the car?

Mr. SEVERANCE: I will object to that question unless the witness can state that he has weighed it or knows.

The COURT: Let him tell what he knows about it.

1881 Mr. COWAN: State whether or not you know approximately what the weight of the bedding is and how you know, how you estimate it, if you do estimate?

A. Well, I know the amount of bedding that goes into the car approximately. I know, because I know what the load weighs of the kind of material that we use. We would put on a load of straw or hay from 1200 to 1400 pounds, and that would be used for four cars. That is the amount of straw or hay that goes into a car and is about the usual amount shipped in that country, for a clean car.

For hogs, many shippers do not use any bedding at all, except coal and corn. In some parts of the state the shippers use some sand, a small amount of sand over the car, but the hog men through the state don't like sand so well as they do coal or slack, something of that kind. They put in probably 300 pounds or 200 pounds of slack and ten or fifteen bushels of corn into a hog car.

Mr. COWAN:

Q. Now, back to the question of the -eight of the bedding, and manure that is left in the car when you unload? How much will it weigh?

A. I stated that we put into the car not to exceed 500 *points.*

Q. You said 1200 to 1400 pounds for four cars?

A. From 1200 to 1400 pounds for four cars, that was the statement, that is the way we usually bed them. If we use any
1882 sand, if we use sand at all, we will take a yard of sand for about three cars. A yard of sand will weigh a little over a ton.

Q. Do you think so?

A. Yes sir.

Q. Now, then there is left in the car in addition to the bedding, except that which has worked out in transit, what?

A. The natural shrinkage of the cattle, the natural offal.

Q. Except what is evaporated or worked out?

A. Exactly.

Q. What do you think it will weigh?

Mr. SEVERANCE: The same objection.

The WITNESS: I don't think it would weigh very much, because, as the cattle leave the car and come in and out, there is not very much difference in the car. You can take a drove of 200 cattle and drive them over the scales and after you have got the first two or three drafts on your scales, your scales remain about the same. They will carry off as much as they carry on. It is the same way with the car. You put your cattle in, and they tramp it up and they carry it out on their feet until I would estimate that the car weighed about the same as without the bedding in.

Q. Is it a fact that a good deal of the bedding and stuff works out under the slats en route?

A. It certainly is, yes sir.

Q. The urine and dung leaks out?

A. It is a tight board floor, and if it is water it will run
1883 away.

Q. What do you think would be a conservative estimate of the weight of the bedding from a clean car as you would put it in there at your place, after you have unloaded your cattle, if taken out and weighed?

A. 500 or 600 pounds.

Q. Now, in regard to the matter of the abuse of the return transportation. Have you made any investigation in regard to that matter in connection with your official position?

Mr. SEVERANCE: I object to that as immaterial. The transportation is used any way. The transportation is used and the railroad is liable for the expense, no*t* matter who uses it.

1884 Mr. COWAN: The point on that, if your Honor please, is this: I think it is important, and I propose to show by the witness the fact that at the conference they held at Des Moines, that the return transportation at that time had been taken out, and the

question in regard to the abuse of this transportation was then discussed between the railway representatives and the stock men of Iowa. I propose to show what that discussion was; I propose to show that the stockmen then stated to the railways that if the return transportation was abused, it was the fault of their agents, and explained to them how it was, and the stock men did not themselves want to abuse the transportation, they only wanted to use it for legitimate purposes, and if the merchants and doctors and lawyers traveled upon it, it was because the agents at those stations made uses of it for the purpose of permitting their friends and acquaintances to travel, and the stock men were not to blame for it. I think that is certainly material.

The COURT: The objection is sustained.

Mr. COWAN: I propose, further, to show that it was then suggested that the stock men would be perfectly willing for the railroads to make any reasonable regulations that would insure it that only stock men or some one employed by them to look after the stock, made use of and secured the use of this return transportation.

1885 The COURT: The offer is overruled.

Mr. COWAN:

Q. Mr. Ames, are these cars cleaned on every trip, so that you are furnished a clean car every time you ship; if not, to what extent are they cleaned, and what seasons of the year does the cleaning apply to?

The COURT: Ask one question at a time, Mr. Cowan.

Mr. COWAN: Strike that question out.

Q. Are you furnished a clean car for every shipment?

A. No, sir.

Q. What proportion of the time are you furnished a clean car?

A. Well, a very inconsiderable portion of the time the cars are cleaned. During the winter time the cars get in very bad condition. It is almost impossible to get the doors open, particularly cars that have been loaded with hogs. In the spring of the year, the cars are, as fast as they can be handled to the yards, I presume, are cleaned. They are cleaned at the spring of the year, and after that if the car is used for hogs continuously, possibly once more, but not very often. The shipper does not object to that so much, however. It is oftentimes a benefit, rather than not, if the car is not filthy; but, as a matter of fact, the cars are not cleaned to exceed twice a year, I would not think they were to average that much.

1886 Q. When you receive a car that has been used before, do you put as much bedding in it as if it were a clean car?

A. Oftentimes I do not bed it at all, that is one advantage.

Q. Yes.

A. Oftentimes no bedding is used.

Q. Who sets the cars at the place where they are loaded?

A. If we have one car, if we are only loading one car, the way freight that brings in the empty car will usually set it at the chute, or very nearly the chute. If we are loading six or seven cars, or ten,

or part of a train, we set all the cars except the first one, do the switching ourselves and get them ready to put onto the train when the train comes along with as little delay as possible.

Q. How do you do switching yourself, you don't have any engine, do you?

A. No; we will use our horses, our teams. We usually have, in shipping that many cars, we will have six or eight or ten men, and we will have a pinch bar and pinch the cars to start them, and push them on down on the siding, as many as the siding will hold. In my own case I had a span of horses that I switched 12 or 15 or 16 cars with.

Q. Is that usual and customary throughout the state?

A. It is. That is the usual custom wherever a man is shipping, is to have his cars ready to put onto the train, if it is possi-

1887 ble.

Q. Who furnishes the bedding that goes in the cars?

A. The shipper.

Q. How are your live stock cars distributed? Take, for example, say, 800 or 1,000 cars brought in here on a Monday by the Northwestern or the Burlington, do you know the method and manner of distributing those cars for another heavy shipment?

A. I think I do.

Q. State it.

A. These cars are put onto a train, started back to the other end of the divisions, other end of the road; put in heavy trains, twice—sometimes three times as many cars as are coming in loaded, empties going back. At a division end so many of these cars are left to go up that line to be distributed along at different points where there are shipments in prospect. For instance, at Belle Plain, there will be 30 or 40 cars dropped out of a train, and they will be started up the next morning on the Belle Plain and Mason City branch.

Q. In an extra train or a regular train?

A. An extra train. In heavy traffic times; a regular train when it is not so heavy. Sometimes two trains, I have seen two and three trains of empties pulled by to be distributed between Belle Plain and Pierre, of those empty cars.

Q. Well, now, what becomes of those engines that distribute

1888 those trains, do they come back light or pick up other stock and bring it in?

A. They usually pick up other stock or other freight, although they do sometimes dead head back.

Q. Now, Mr. Ames you live in a corn country, don't you?

A. I do.

Q. Are there extensive shipments of corn in that country?

A. Yes, sir.

Q. Does that run regularly or is it shipped in spells?

A. Well, it is more regular than some of the other kinds of freight, commencing the last—during the winter months, the last part of winter.

Q. Now, how do these cars for corn, how do they get there?

A. For corn?
Q. Yes.
A. Many of them come in empty. Some few are loaded with coal or with lumber or with posts. Many of our stock cars are brought back with coal in, posts as well.
Q. And how are they distributed for the purpose of getting the corn?
A. Well, the empty cars are distributed in the same manner, perhaps on the same train, if it is the mixed train, as the stock cars.
Q. And how are they picked up to be brought back?
A. The same way, and on the same train that picks up your stock, almost invariably.

Q. In the heavy movement of the corn traffic, are there
1889 any greater portion of cars that come there to get corn which are loaded already when they come than of live stock cars, which come to get live stock, in proportion to the total number?

Mr. SEVERANCE: What do you mean, loaded live stock cars?
The WITNESS: Empty cars for live stock loads.
Mr. SEVERANCE: That isn't what he means.

Mr. COWAN:

Q. Whether the live stock cars that come to get your stock have a greater or less proportion empty?

The COURT: Compared to the number of empties.
Mr. SEVERANCE: That is what he means.

Mr. COWAN:

Q. Whether they have a greater or less number loaded when they come there than the cars that come for corn have loaded?
The WITNESS: Can I answer that?
The COURT: Yes.
A. I would have to answer it on a comparative basis, because the location that ships the live stock seldom ships the grain and the corn. There will be a live stock vicinity that feeds the corn, and here is another one within twelve miles, as it is in our place, Dysart, that ships the corn. Now, each one of them will get empties in the heavy traffic time, but they are in two different places, and comparing the two——

1890 The COURT: How as to the comparative number?
A. The comparative number would be but very little different.
The COURT: That is what he wants.
Mr. COWAN: In both cases most of the cars come empty?
A. In most cases, in heavy traffic time.
Q. Now, when this corn is picked up along the Division, that is, one station ships corn and one station ships live stock, is it put in the same train with the live stock and carried on to the main line or divisional point?

Mr. SEVERANCE: He has already testified that, he stated that a few moments ago.

The COURT: Yes; the objection is sustained.

Mr. COWAN:

Q. Mr. Ames, in the manner and method of ordering the live stock cars for the shipments, what rule is pursued with respect to the time before the day of shipment that you give the order for the cars?

A. Why, it is customary to order 24 or more hours ahead, although if we put in an order for a less time and can get it, why, we are that much better off; but we have to take our chances on that.

Q. Is that satisfactory to the railway and railway agents?

Mr. LYNDE: I object to that.

The COURT: The objection is sustained.

1891 Mr. COWAN:

Q. Do you order more cars than you want for the shipment?

A. No; there would be no object in ordering more cars than we want. We know how many loads we are going to load, and we simply order to cover that many pounds.

Q. When cars are ordered, are they sometimes not used for the shipment?

A. Once in awhile such an instance will occur, not often.

Q. And when that does occur, what becomes of that car?

A. Why, they are either used by some one else, or used by the shipper possibly, the next day.

Q. What is the average car loading in point of weight per 36 foot car of shipments from Iowa into Chicago, of cattle?

A. Fat cattle?

Q. Yes.

Mr. SEVERANCE: Now, would he know that your Honor.

Mr. COWAN: Of course, I am assuming that he knows from his extensive experience.

Mr. SEVERANCE: I would like to know his experience, as he is asked not as to his own loading, but the average from Iowa.

Mr. COWAN: Take his extensive experience, I am assuming that the witness knows what it is.

The COURT: Won't it serve your purpose to ask him on 1892 his own?

Mr. COWAN: I will ask you then what you know about the other.

The COURT: Ask him about his own first.

A. Well, my shipments, we make our car loads as near 24,000 pounds as we possibly can. A shipper by experience will find that a certain load will ride more comfortably with less shrink, less damage to the cattle than pounds either more or less.

Mr. COWAN:

Q. How does he ascertain that?

A. By experience, by actually loading, actual shipping.

Q. What sort of a load does that?

A. 24,000 pounds with fat cattle.

Q. Now, with respect to filling the car, do you attempt to simply fill the car?

A. We want the car so that the cattle will ride without any shake or slack, so that they will ride comfortably and we find that with 1200 pound cattle, that twenty cattle will do it; and with 1350 or 1300 pound cattle, it will take one out; and the greater the weight, we reduce the load so that the average load will be 24,000 pounds for a 36 foot car.

Q. You load them so they touch each other and touch the car?

A. Yes, so that they will be neither wedged in or neither put
1893 loose, so that they can weave in the car. If they do, they will get to one end, and then when the slack of the train comes, they will be thrown against the end of the car and bruise them, and get more down that way than they will if they are loaded comfortably so that they will ride close together.

Q. What do cattle weigh—between what weights are the fat cattle shipped from Iowa to the market, fat cattle or other cattle?

A. That will depend on the quality of the cattle. A fat yearling steer will weigh around a thousand pounds; a two-year-old, will weigh from 1200 to 1300; a three-year-old Western steer well fed will weigh 1500 pounds.

Q. How many 1500 pound steers do you load?

A. About 17 cattle.

Q. How many 1400 pound steers do you load?

A. About 18 cattle.

Q. How many 1300 pound steers do you load?

A. Nineteen cattle; and 1200 pounds, we load 20 cattle. That is the average load of cattle as it comes from the corn district.

Q. Do the live stock cars lie around idle to any extent?

A. Not in our country.

Mr. SEVERANCE: He testified to that.

The COURT: He has been over that.

Mr. COWAN: Not in that form. I asked him when a car was ordered and not used that day, what becomes of the car.

1894 Mr. SEVERANCE: That is simply a conclusion from what he testified.

The COURT: **The objection is sustained.**

Mr. COWAN:

Q. In your observation of the stock cars returned for loading, to what extent are they loaded with other freight, and what sort of freight do they come there loaded with?

A. Well, in the busy season of the year there is very few of the cars that are used for other freight.

Mr. DAWES: He has been over this, your Honor, he said they came with coal, posts, and so on.

The COURT: I think so.

Mr. COWAN: I didn't ask the extent that they came.

Q. Now, in the season that is not the busy season, how is it?

A. We get more cars loaded with other things at that time.

Q. What other things do you see them loaded with?

Mr. SEVERANCE: He has already stated that.
The COURT: I think so, unless there is something different.
Mr. SEVERANCE: Coal and posts.
Mr. COWAN: I didn't ask him the question, he stated it in connection with his answer.
The COURT: Do you think there are other things?
Mr. COWAN: Yes, I think so. I did not ask him the
1895 specific question.
The COURT: Well, go on.

The WITNESS: I don't think of anything at the present, although any commodity, such as barrel goods, or melons or things of that kind, I have seen loaded in that kind of cars, it depends upon the shipment.

Mr. COWAN:

Q. Did you ever see rails loaded in them?
Mr. DAWES: Do they load melons in these dirty stock cars?
A. Yes.
Mr. DAWES: I am sorry to know that.

Mr. COWAN:

Q. Did you ever see rails and ties and lumber loaded in the Northwestern cars?
A. Yes, sir.
Q. Do the shippers from Iowa in your part of the country unload en route to the market at Chicago?
A. No, sir, unless we have to.
Q. How is that?
A. Not unless we have to.
The COURT: Do you mean unload to feed, water and rest?
A. Not to feed and water and rest, no, sir.

Mr. COWAN:

Q. Under what circumstances is there any unloading for that purpose, and how does it happen?
A. The only time when a man will unload and rest his
1896 stock from Iowa shipment, is because he is compelled to load at a time in the morning or a time in the day when it will throw him into the market here at night in place of the morning, then he would prefer to stop at Clinton and some junction point and feed the 12 hours there, and reload, so as to get here in the morning rather than to get here in the evening before; if the trains ran so that the shipment could arrive here in the morning between four and eight o'clock, in place of between four and six in the evening. I don't think there is any shipper in Iowa but what would prefer to have his stock come to Chicago.
Q. Do you know what proportion of the shipments are unloaded en route for the purposes of feeding and water?
A. From Iowa?

Q. Yes, sir.

A. Very small. There are two locations in the western part of the state where they do that, but they do it for the reason I have stated.

Q. In the course of your experience and investigation, concerning the rates, relative rates, on live stock, have you investigated those matters as they pertain to relative rates of dressed meat and packing house products as compared with live stock?

A. Yes, sir.

Q. State, if you know, whether there is any preference or advantage given the shipper of dressed meat or packing house products over the shipper of live stock from Missouri river points or
1897 points intermediate, to Chicago?

Mr. SEVERANCE: What do you mean, in rate or train?

Mr. COWAN: Whether there is any preference given in the rates.

Mr. SEVERANCE: There is no question about the rate, your Honor, why should we spend time on that.

The COURT: I think he has been over that before, anyway, hasn't he?

Mr. SEVERANCE: There isn't any question about it, no controversy.

Mr. COWAN: He was only asked about the reasonableness of the rates.

The COURT: What else is there? The rate is fixed, unless you claim a rebate?

Mr. COWAN: I am asking now whether there is any preference in the amount of the rate. The next question will be to explain how the preference comes to be.

The COURT: I don't understand it, I guess there will be no harm come from it, let us see what there is to it.

The WITNESS: If I understand your question, it is on this basis: That cattle that are slaughtered, that are sold in the market and slaughtered, will dress, on an average, 55 per cent., that is, they will dress out 50 to 60 per cent., but they will make an average of
1898 55 per cent. of dressed meat to the live weight of the animal. Now, if I take a drove of cattle to Kansas City and sell them, half to the packer, and half to the local man who kills and slaughters there, and retain half and ship to Chicago, it places me in a position that I am paying for my rate of freight, from 3½ to 5 cents a hundred weight more than the man that kills the cattle there. He should make a profit on his business, but there is no reason why he should ship two cars——

Mr. SEVERANCE: I object to the argument.

The COURT: Let him finish, let us see the point.

A. Why he should ship two cars for 3 cents a hundred weight, 3½ cents a hundred weight, less than I can ship my one. He condenses two into one, ships them to Chicago and pays a less rate of freight than I have to pay on my live stock, the live animal.

Mr. COWAN:

Q. Now, wherein comes the advantage that he has aside from the advantage that he can reduce the weight?

A. It comes in the advantage of the rate; he is handling the same kind of product for 3½ cents to 5 cents a hundred weight cheaper than I am getting it, putting it onto the same market and competing with me.

The COURT:

Q. Supposing it costs more to carry the live stock, then what?

A. Of course there is a supposition.

1899 The COURT: If it costs 3½ cents more then you would be even?

A. It would if it did cost that, but I doubt very much its costing any more.

Mr. SEVERANCE: I move to strike out the witness' opinion on that, because it appears he has no information.

The COURT: I think I ought to sustain the motion.

Mr. COWAN: I will ask another question for the purpose of the record, not intending to trespass upon the ruling of the Court.

Q. Has the shipper of the dressed meat any advantage in the rate of freight and in the circumstances in addition to the rate of freight in shipping it to Chicago, as against the shipper of live stock from Missouri River points and from points intermediate between the Missouri river and Chicago?

Mr. SEVERANCE: I make the same objection to that, as incompetent.

The COURT: I will sustain the objection; it simply calls for a conclusion. I think it would be proper, the same as the witnesses on the other side have done, to state the two sets of facts applicable, if he states he knows those facts, and then the conclusion after that.

Mr. COWAN: I will put it in another form, another question.

Q. Is the preference of 3½ cents or 5 cents, as the case
1900 may be, in the rate of freight per hundred pounds on the dressed product, given to the shipper of the dressed product, as against the shipper of live stock who has to pay the higher rate from the Missouri River and from points intermediate to Chicago, an undue and reasonable preference or not?

Mr. SEVERANCE: I object to that, that is not the Court's question from the facts.

The COURT: The objection is sustained.

Mr. COWAN:

Q. Do you know of any facts in the investigation which you have made which would justify a higher rate of freight upon the live stock than is charged on the dressed product of live stock from Omaha to Chicago?

Mr. SEVERANCE: I object to that.

The COURT: You can state what the facts are in reference to sending to market, cost of preparing them, and make a comparison such as was made by the other witnesses, not a conclusion but the distinct fact.

A. The comparison that would have to be made would be in the equipment of the cars and the cost of repairing the cars and the expense of the cars. It certainly is cheaper to build a stock car and keep it in repair, than it is to build a refrigerator car. They
1901 can gather the freight, the volume of it is gathered for them, they know they cannot help but get the amount of freight. If the country does not produce the cattle and the stock, and it turns to the corn and grain entirely, why, the country will depreciate, we have got to have the live stock industry in order to get the rotation of crops to hold up the value of the ground, and the equipment for carrying this stock from the feed grounds to the market is less expensive than *it* is the dressed meat—the dressed meat product is more condensed and the train equipment is no greater; the cost of the fireman, and the engineer and conductor and train crew, are just the same, and how it could be made to appear to cost more for the dressed meats than it does for the live stock——

The COURT: Have you heard the testimony of the witnesses here in this case?

A. No, I have not.

Mr. DAWES: Not that the dressed beef costs more than the live stock, as you say.

The COURT: Supposing it appears that they are both too low; supposing the evidence shows that they carry it all and lose money on it, if you figure in everything, have you anything to show that that is not true?

A. You can take a train and start it from our country,
1902 figure the rate on the amount of goods hauled, and you will estimate a train is worth to the railroad company from $1,000 to $1,500 or $1,600, according to the number of cars; you know how many men are employed, you can take the interest on the equipment and it seems to me that that ought to cover the expense and give us the profit or loss on the handling of that kind of product.

The COURT: Are you able to figure this out and show a profit?

A. I don't want to set myself up as a railroad expert, but I can figure out the approximate value of a train running from our part of the country to Chicago surely.

The COURT: It is contended that they lose money if they figure interest and operating expenses, that they lose money on both kinds; some claim they lose the most on live stock, some claim they lose most on dressed beef, what do you know to show that is not true?

A. I, as a farmer and a feeder, your Honor, have been losing money on feeding cattle, but I cannot afford to stop feeding cattle, for the reason—because of the way I have my farm equipped. I have to maintain the fertility of my ground, I have it equipped for doing a certain line of business, and in a series of years I will come out ahead; but if I would segregate, take out one item and say that
that one thing has got to make all the money that I expect
1903 to make off of my plant, it would not be a fair test. There are seasons of the year when some things will lose money, and some seasons of the year when it will make money.

The COURT:

Q. But if they are losing money, can you say that their rates are too high?

A. I can say the rates are too high, because, if the rates were not—if the rates were too cheap, they would refuse to haul the goods.

Q. You don't believe, then, when they say they are losing all this money?

A. I don't do business for nothing, your Honor, if I can help it.

Mr. SEVERANCE: In raising live stock or feeding cattle, you say you are losing money?

The COURT: Some years they do.

The WITNESS: In 1903.

The COURT: That is, when you figure part of it, but when you figure from one year's end to another, figure the manure, and change of crop, and all of that, you think you make money?

A. Exactly. You cannot take any one part of it and make a definite statement covering it all.

The COURT: I understand, go ahead.

Mr. COWAN:

Q. Is it a fact, or not, Mr. Ames, that there is a strife and
1904 a desire among all these railroads each to secure as much of this live stock traffic as they can?

A. Why, of course, if they can get it they are that much ahead, their trains are running, they might just as well haul my stock as not to haul it.

Q. I believe I asked you in regard to the rates in Nebraska and Kansas in proportion to the distance rates in Illinois to Chicago?

A. Yes, sir.

Q. I was going to ask you what the Iowa distance tariff was, I won't ask you that, we have got that tariff which shows what they are.

Cross-examination by Mr. BAXTER:

Q. You spoke about the rates on live stock from Illinois points to Chicago, in comparison with the rates or belt or zone which carries the 23½ cent rate to Chicago, were not those rates from Illinois points to Chicago made by the Illinois State Railroad Commission?

A. I could not say as to that.

Q. You stated that the rates on live stock are too high, the 23½ cent rate on live stock is too high, in your opinion: is it your opinion that the rate on packing house products and fresh meats are also too high?

A. I don't think so, for this reason: if they had been too
1905 high the other fellows would not have paid it, they would not have paid it, they would have got it down to a point where it would not be too high.

Q. You think, then, that the rates on packing house products and fresh meats are reasonably low?

A. I would think so.

Q. Can you give me your idea as to the difference in profit to the

railroad between handling a train load of packing house products and a train load of live stock? I understood you to say you could figure out the profits a while ago that the railroad company could make in handling a particular train: can you figure out the profits on each of those trains so we can see the difference?

A. I think the difference would be just the difference in the rate. They are practically the same kind of goods, handled in the same territory, should bear the same rate. Now, if circumstances have been so brought to bear that a reasonable rate has been established on the dressed meat, we contend that the rate on live stock should be reduced to that point, because it shows by its operation that it is a reasonable rate.

Q. You think that the circumstances and conditions which compelled the reduction of the rate on packing house products and fresh meats have operated to the same extent as affecting the rates on live stock?

A. I think this, that had the people of the State of Iowa,—
1906 had it been possible for them to assemble their live stock and give the shipments to the railroads in the same manner that the dressed meats are given, that they would receive the same rate, if the same pressure was brought to bear.

Q. As a matter of fact, the people of Iowa have not been able to assemble their live stock, cattle and hogs together at particular points like these packing houses have assembled their goods and demanded of the railroad companies the reduction of their rates?

A. But in every instance the stock comes from a less distance, and they get it without any labor. They must have it because it is there for them to get. The only reason why we don't get the rate is because us fellows haven't come together and made a demand for it.

Q. I am glad to hear you say that, because I think myself that is exactly the condition that affects the transportation of these different commodities. The packing house people have got their plants where they have got their shipments concentrated, where they can put pressure to bear on these railroads to force them to accept lower rates on packing house products than the farmers have yet been able to force them to accept on the live stock. I think you are entirely right about it. Now, will you state the width of that belt between the Missouri river and some point that you mentioned out in the state, about a third of the way across the state, how wide is that in miles, from the Missouri river to the eastern edge of the belt, from which the 23½ cent rate is in force?

1907 A. It would vary, I could not draw a definite line.

Q. One hundred and fifty miles, would you say?

A. No, it would be from 100 to 150.

Q. You spoke about a meeting held between the railway officials and the live stock men of Iowa where you had discussed certain grievances; were the proceedings of that meeting taken down in short hand or afterwards published?

A. Not that I know of.

Q. You spoke about the claims for damages that are made by the live stock people; did I understand that you said that one of these

railroads had as many as 130 clerks employed in keeping accounts of the claims and damages made against that company alone?

A. Yes, sir.

Mr. DAWES: And then increased them thereafter?

Mr. BAXTER: Yes.

Q. You spoke about the water at the different stock pens, will you give us an estimate as to how many gallons of water per day are used on an average at a four-pen stock yard?

A. Oh, it would not be very much, it would be very little, perhaps a barrel of water.

Q. A day?

A. Yes, I don't think it would average that the year through, because in the winter-time they don't use it except watering what stock happens to be there, hogs—cattle, never.

1908 Q. How long are cattle in the pens before they are loaded on the cars?

A. It depends upon the location in the State and the time we have to load.

Q. Give us an average.

A. If the train leaves in the morning, eight or seven, or eight,—six, or seven or eight o'clock. These cattle have to be in the night before, because we cannot drive cattle when it is dark. They are then held in the yards there over night and loaded out the next morning.

Q. About what time the next morning?

A. Oh, that will just depend upon that the train that is to pick them up.

Q. Well, will they be in there on an average from 8 to 14 hours?

A. No—you mean on the whole line?

Q. Yes.

A. No, sir, because the majority, the Eastern part of the State, the Eastern two-thirds of the State, or half of the State will drive them in and load out the same day; the Western half of the State will have to drive in the night before and hold them over night.

Q. Now, from your great experience in the matter, can't you give us an estimate of about how long cattle are retained in these stock yards before they are loaded onto the cars?

A. Well, I would judge from the Western half of the State that they would be in the yards 8 hours.

Q. Now, how many cattle will one of those four pen stock

1909 yards contain?

A. Each pen will hold two loads, if built properly.

Q. About 40 cattle?

A. 20—we estimate 20 cattle to the load, when we are figuring a car load, it is always 20 cattle to the load.

Q. Then four pens would hold 160 head of cattle, would they?

A. It would be 160 cattle.

Q. And you think that 160 cattle can be kept in pens for 8 hours on an average without consuming more than a barrel of water?

A. They are never watered in the pens, very seldom.

Q. Well, what do they provide wells, and windmills and tanks for if cattle do not use it?

A. For the hogs.

Q. Then that is for the expense on the hogs?

A. Yes, sir.

Q. Now, then tell us how many gallons of water would be used by hogs occupying the four pens at the stock yards?

A. Well, in the first place the pens are very seldom full at the same time, you build these pens for the accommodation of the local buyer, he will buy perhaps during the week and ship out the last of the week, he will accumulate during that week a car load of animals, cattle or hogs, and he ships them out then on the last of the week for Monday morning's market or for Wednesday's market.

Q. How many hogs will those four pens contain, assuming
1910 that they are all full at the same time?

A. About four loads, if they are handled that way, you can crowd them in.

Q. How many hogs will a car load average?

A. A load of hogs will average right close to 70, 65 to 70, I think the average will run about 70 head.

Q. Then about 280 hogs?

A. You cannot put two loads of hogs in a pen and keep them any length of time, you might yard them that way but it would be a damage to the hogs.

Mr. DAWES: It is more than 70.

Mr. BAXTER:

Q. You said about a barrel a day, was that intended to include the water used by the hogs, as well as for cattle in stock pens?

A. I think so, per yard.

Q. What is your estimate as to the number of gallons required to spray a car load of hogs?

A. They use an inch nozzle, and it takes perhaps 30 seconds to the car, not over a half a minute, and as the train goes by, 30 seconds—it doesn't take that long, it don't take over ten minutes to water 30 cars of hogs. Half of the train will be of hogs, and half cattle, and it is the length of time for the inch nozzle to run that much water.

Q. Well, what is the head on that water, how high is the water tank?

1911 A. It depends on the location of the tank, whether it comes from the City, or whether it comes from the railroad tank, or where it comes from.

Q. Well, take the lowest head, a railroad tank, that would probably be less.

A. About 40 feet head.

Q. And you think that a stream of water going through an inch nozzle——

A. I will not be sure about the sixe of the nozzle, it may be an inch and a half, I wouldn't say definitely as to that but it is not a large stream of water in the spray.

Q. You spoke about a train on which you were traveling, taking a side track to allow another to pass it, both trains moving in the same direction, and, as I understood you, both of them moving towards Chicago.

A. Yes, sir.

Q. Your train had stock in it as I understand?

A. Yes sir.

Q. The other train had some refrigerator cars and dead freight, you say?

A. Yes.

Q. Did you ascertain why the train upon which you were riding stopped at that station?

A. Our train was a schedule train, the other train was an extra.

Q. And do you know whether the engine and any cars on your train were out of fix?

A. There was nothing the matter with our train.

1912 Q. Will you give me the name of the road and the date? And the number of your train and the number of the train that passed you?

A. I can't give the number of the train that passed because it was an extra, it was not numbered.

Q. And the point at which the passing was done?

A. The point of passing was at Stanwood, our train was No. 132, and the passing point was at Stanwood, the train that went by was an extra.

Q. What road was that on?

A. The Northwestern road.

Q. Now, the date?

A. The date was on September 5th.

Q. What year?

A. This year.

Q. Do you live in the belt which you have described as one hundred and fifty miles wide, and from which the rate to Chicago is 23½ cents?

A. No sir, I live just this side of it.

Q. What is the rate on live stock from your station to Chicago?

A. 21 cents on hogs and 22 cents on cattle.

Q. What is the rate from your station to the nearest Missouri River market?

A. Just about the same, there is very little difference, our three-quarter rate is 15 cents.

Q. Do you have a lower rate per 100 pounds to the Missouri River than you have to Chicago?

A. Just about the same.

1913 Q. About the same

Mr. DAWES: What do you mean by "three-quarter rate"?

A. That is stock cattle rate from Missouri River points to our yards.

Mr. LYNDE: That is the feeder rate.

A. The feeder rate.

Mr. BAXTER:

Q. I understand your rates to Chicago per 100 pounds on your live stock is the same as the rate from your place to the Missouri River on live stock, am I correct about that?

A. It is practically, I have not ascertained the fat cattle rate, I don't believe there is a schedule of fat cattle rate from our part of the country to the Missouri River points; there is no train service anyway.

Q. Now, you assumed a case if I understood you correctly, where you would carry live stock to the Missouri River and you would sell half of it at a Missouri River market, say for instance, Kansas City, and you complained that the purchaser of the half that you sold there could convert the portion that he bought into packing house products, and ship those products back here to Chicago at a lower rate than you could ship the remaining portion of your live stock from the Missouri River market, did I understand you correctly?

A. That is right, yes sir.

1914 Q. Do you know the rate on live stock and on packing house products from your place to Chicago and from your place to Kansas City, or to the Missouri River?

A. I know from the Missouri River to our place, yes.

Q. Well.

A. Not the opposite way, I don't think the rate is published.

Q. Now, if you thought the adjustment of rates was against you, to your injury as you have stated, why would you make any such shipment as that, if you have got a rate on live stock to Chicago as low as your rate to the Missouri River, why would you carry a car load of live stock, and pay the rate on it, first to the Missouri River, and then pay the rate on it from the Missouri River to Chicago when you could ship it from your house to Chicago at the same rate that you shipped it to the Missouri River, why would you make an experiment of that kind?

A. Suppose these cattle were located on the other side of the River?

Q. I am talking about the case you put; let us get through with that, then we will think of the other.

A. I didn't say that those cattle were to be shipped from my country into the Missouri River market, I said, if I took a drove of cattle at the Missouri River market and sold half of them and shipped the other half, was the comparison that I made. We

1915 never ship cattle from our country to the Missouri River market; in the first place, there is no published tariff, and in the next place there is no train service, and in the next place the market would not justify it for our class of cattle.

Q. Well, I understood that you had assumed a case where you were going to carry live stock from your home market.

A. Oh, no, no.

Q. And then ship from there back to Chicago as against the packer.

A. No, no.

Q. Then let us take the case you have got now. Assume that you own some live stock at Kansas City?

A. Yes sir.

Q. And the question with you is whether you will ship it as live stock to Chicago, or will sell it in Kansas City, and let the product be shipped from Kansas City to Chicago. Now, whatever may be the relation of the rates between the packing house products and the live stock, whatever you would lose on the one transaction you would make on the other. You would have the benefit of the Kansas City market if you thought it was to your interest to ship your cattle and live stock, you would move them as live stock, and if you thought it was to your interest to convert them into packing house products, you would do that wouldn't you?

A. How is it with a man just this side of there, that has to use that rate?

1916 Q. You answer my question Mr. Ames, and then I will try to answer yours. I am trying to get at where you are hurt by that question you supposed.

The COURT: Answer the question.

Mr. BAXTER: You have got the choice now.

A. The shipment of the live animal from there to Chicago would be just the loss of the difference in the rate between the dressed meat and the live stock.

Q. If you make it back by converting it into packing house products, where do you get it?

A. Suppose you ship one end, and I ship the other, you are making one hand wash the other.

Q. Now, I am trying to show if one of your hands don't wash the other in the transaction you have put?

A. No.

Q. As far as you are concerned, it seems to me with all due respect, that your interests are balanced, you have got the choice of the markets.

The COURT: You could do either one, it won't do you any harm under these rates. How does it do you any harm?

A. If I own both ends of the deal, I don't suppose it would, but that is not the point I was trying to cover.

The COURT: If you are there with cattle, you can do either one of the other?

A. I can sell, or ship, certainly.

Mr. BAXTER:

1917 Q. Whichever you think to your advantage. I will put another case.

The COURT: Let us take a recess until two o'clock.

Whereupon a recess was taken until two o'clock p. m. of the same day Tuesday, October 3, 1905.

1918 TUESDAY, *October* 3, 1905—2 o'clock p. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon A. L. AMES, resumed the stand for further cross-examination by Mr. Severance, and testified as follows:

Mr. SEVERANCE: Have you finished?
Mr. COWAN: Yes.

Mr. SEVERANCE:

Q. You said in your direct examination that the only claims that stock men were in the habit of asserting were claims for damages arising through the negligence of the railroad companies. That is a fact, isn't it?

A. Delays.

Q. Did you so state?

A. Yes. Delays, that is the one they are in the habit of making, the bulk of the claims.

Q. The bulk of the claims that are made are for delays in getting the stock into Chicago at the time they undertake to deliver it to it, is that right?

A. Yes, sir.

1919 Q. So that if you are thrown over to the next market have to wait till the next day and the market declines, you put in a claim for the damage that you suffer, I mean the stock men generally.

A. That is quite an item and another item is that of shrink. The difference in the price of the cattle is another.

Q. But they all arise out of the failure to get the stock in here at the schedule time?

A. Yes, sir.

Q. The running time from western Iowa, is about 27 hours, ordinarily?

A. From 24 hours to 30, 24 to 28. There is no reason why they should not be inside of the 28-hour limit.

Q. Now you also spoke of the necessity of accompanying stock. You say that stock growers and shippers will accompany their stock here even if they have to pay return passage in many cases?

A. They do.

Q. That is so that they can see the stock delivered and sold on the yards?

A. That is one of the reasons, yes, sir.

Q. And it is your custom when you bring in the bunch of stock, to go right to the yards with the stock and be present when the [illegible] is made so that you can control that situation?

A. Yes, sir.

Q. You regard that as a good reason why you should come on with the stock, don't you?

A. Yes, sir.

Q. The roads that you ship over furnish a caboose fitted
1920 up for drovers so that they can go to sleep?
A. Some of them.
Q. The North-western do, do they not?
A. The train that I spoke of on the North-Western did not have such a caboose.
Q. You spoke of one particular train but you make a great many journeys to Chicago, don't you?
A. That is true, as a rule from Clinton, this side.
Q. For the night ride?
A. Yes, sir.
Q. And when the train is made up at Clinton—what time is that, 7 or 8 o'clock in the evening?
A. No, usually later than that, from half past nine to eleven.
Q. And it gets in here about 7 in the morning?
A. From 4 to 7.
Q. And as a rule, the train being made up there, from half past nine to eleven, that being night time, yourself and the other stock men accompanying stock go to bed, don't you?
A. Yes, sir.
Q. So that you don't look after the stock during the night you see them in the morning and accompany them to the yards and see that the commission men get the best price possible for the stock?
A. There is no particular necessity at any time for a man to examine his stock while they are in motion. At division ends
1921 where they are lying still is where the trouble is. That is, where the trouble is with shipping stock almost invariably.

Examination by Mr. LYNDE:

Q. Mr. Ames, what is your shipping point?
A. My home feeding yard at the present time is Buckingham, Iowa, on the North-Western road, 29 miles north of Belle Plaine.
Q. That is on a branch line, not on the main line?
A. Yes, sir.
Q. Now, in your estimate of the value of the stock yards which you placed at $1,000.00, if I understand you correctly you base that estimate on a four-pen yard, such as you have described here, 96 feet square and so on, is that right?
A. Yes, sir.
Q. You have made some reference to terminal yards. What did you have in mind?
A. I meant the feeding yards, such as you would have at Clinton, Galesburg, and other points where this stock is hauled in in train loads from the west to rest five to eight hours so as to give him a chance to prepare them for market.
Q. Those are very much larger yards, are they not?
A. Those yards will accommodate about 30 cars.
Q. And much more expensive?
A. Certainly in about the same proportion.
1922 Q. As to sand when used for bedding, who furnishes the sand?

A. Why, the shipper does.

Q. Isn't it a fact that the railroad company furnishes the sand?

A. Not in our country, not in Iowa, with the exception of one or two points, competitive points in the western part of the state. I do know of one or two places there where sand is placed on the platform adjacent to the yards where the shipper can shovel it in if he wants to.

Q. Isn't there in each case in each one of these stock yards that you refer to, a sand bin?

A. No, sir, it is the exception that there is one. It is practically impossible for a man to get the railroad company to bed his cars with sand or anything else.

Q. Well, why should the railroad company bed his cars?

A. I don't know any reason why they should only that we don't want them to say that they do if they don't.

Q. But they do claim that they furnish the sand?

A. But they don't.

Q. State where they don't and where they do?

A. Well, they don't over all the line with the exception of one or two competing points in the western part of the state.

Q. Where are they?

A. I believe they did have a platform of that kind at Ida
1923 Grove, and I think they do at Fort Dodge.

Q. Are those the only two?

A. Those are the only two that I am aware of at the present time.

Q. Referring to this train that you spoke of, September 4th, and September 5th, the train coming into Chicago. When did that train arrive at Chicago?

A. About 7:30.

Q. How many cars of stock did you have in that train?

A. I had one car, I was in charge of one car. They were not my own hogs.

Q. Did you pay your fare home?

A. I did, sir, I certainly did.

Q. Is there any reason why you should not?

A. Not at all.

Q. Now that car of stock was picked up at Buckingham, and carried down to Belle Plaine?

A. Yes, sir.

Q. What sort of a train picked it up at Buckingham?

A. The regular stock train, No. 124.

Q. What do you mean by that, when you say a regular stock train?

A. I mean that is the train that handles the stock on the division between Mason City and Belle Plaine.

Q. When does that leave Mason City?

A. About eight o'clock.

Q. That is a stock train, it is not a freight train?

A. Not a way-freight, it is called a time freight.
1924 Q. It starts out in the morning from Mason City and goes down to Belle Plaine?

A. Yes, sir.

Q. Picking up cars of stock at different stations, and moving them along?

A. Yes, sir, and other freight with it.

Q. What is the chief portion of its freight?

A. There are some days that it will be—There will be one car of stock on some days and it will be all stock on other days.

Q. Depending wholly upon the movement of stock at that time?

A. Yes, but it is always a full train of cars.

Q. Before it gets to Belle Plaine. It is not when it starts out, is it?

A. It generally is pretty well filled when it starts out at Mason City.

Q. I thought you said that it generally had two or four or six cars out of Mason City, that it started out light?

A. Of stock.

Q. You said if I understood you correctly that the train started out light at Mason City.

A. It depends upon the run of stock ahead.

Q. Well, also on the run of other freight?

A. Well, that train is supposed to pick up all of the stock. If we have, for instance, thirteen cars to pick up at Buckingham, and fourteen cars at Traer, and two or three cars somewhere else, it will
1925 start out of Mason City without very much of anything on except stock to provide for the freight that is to be accumulated between Mason City and Belle Plaine.

Q. They run it then with reference to the stock that is to be picked up of which they have knowledge at these different stations ahead?

A. Yes, sir.

Q. Do they ever run extra stock trains up there on that branch?

A. Yes, sir.

Q. When the movement is very heavy they will run up extras?

A. Yes, at this time of the year there is two or three or four extra stock trains comes down twice a week. A large per cent. of it comes from Pierre, coming down through our country, coming from that northwestern country.

Q. When is the movement heaviest during the week?

A. For the Monday market and for the Wednesday market.

Q. On those days, that is on Wednesday or on Tuesday, which ever may be the day, when that movement commences, then the stock is delivered in large quantities, isn't it?

A. There is not so much difference through our part of the country, but then the accumulation of stock that comes over the road is greater on those days.

Q. Why isn't there as much difference in your part of the country?

A. We are closer to the market, being 24 hours away, and our stock is handled more uniformly. It is a steadier shipment.
1926 The markets that—the cattle that are away on the range over the river, the cars have to be unloaded here and distributed back to those points and it takes a week to gather the animals, round them up and get them in shape and get them into the cars

and that is usually done with a force of men that handle the whole country at once.

Q. Why is it that this movement concentrates on Mondays and Wednesdays here at the stock yards particularly, what is the occasion for that?

A. I just explained one reason.

Q. What other reasons are there?

A. I don't know as there is any particular reason for it. It is a habit brought about by the idea that they will get a better price on Monday than they will on some other day.

Q. Well, that is the reason, isn't it, that they expect a better market on Monday and Wednesdays than other days of the week?

A. That was the reason, I presume that brought about the custom.

Q. And that has led to the concentration of business for those particular days for each week during the cattle moving season?

A. That is one reason, yes sir.

Q. Now, when your train got to Belle Plaine, was your car of stock taken from that train?

A. The whole train was run in on a side track.

Q. And then they were made up into another train there?

A. They put that onto No. 132 that came from the west
1927 when she came in.

Q. They did not make up a special train at Belle Plaine at that time?

A. No sir.

Q. They do very frequently, don't they?

A. No, not so frequently. They usually combine the stock that comes off from the Tama City branch and the stock that comes off from the Mason City branch, and the stock that comes off from the Southern branch known as the Pumpkin Vine.

Q. Doesn't it all depend on how much stock comes off of those several branches to be consolidated at Belle Plaine as to what they do in handling it?

A. Not so much because there is always plenty of stock on that line, there is always trains coming there.

Q. Stock is always being handled?

A. Stock is always being handled there. It is more the lack of a proper adjustment after getting the stock in at this point at the proper time.

Q. I appreciate that, but this stock is moved from all directions that is concentrated at this one point?

A. Sure, trying to get here at Chicago between four hours of time in the morning.

Q. It is not—Does not the delivery here in Chicago commence as early as midnight on these heavy movement days?

A. Yes, but not very many cars.
1928 Q. I know it, but it commences.

A. It commences, sure.

Q. And runs from midnight on until morning?

A. There will be——

Q. That is the fact, isn't it?

A. It is a fact that one or two cars will come in possibly at midnight.

Q. I believe that the statement that has been offered in evidence by the complainant here as to deliveries at the stock yards at the chutes, and the hours of delivery and the number of cars, would probably be better proof of that wouldn't it, than your testimony?

A. I did not hear that testimony and of course I don't know.

Q. You don't know really of your own knowledge as to just how many cars are delivered from midnight to four o'clock or from 4 to 7?

A. Not the exact number but I know from absolute knowledge, from being there that there is not very many. I have been in with one or two cars as early as one o'clock.

Q. Generally you come in later?

A. Yes sir.

Q. But there are a large number of trains coming in over the Burlington or the North-Western or some other road on a particular morning, some Monday morning and they are handled within the time from 12 o'clock midnight on till sometime in the morn-

1929 ing, aren't they?

A. Your delivery is too early to make very much of a delivery. There is not many cars at that time.

Q. I am not—It is not material whether it is 12 o'clock or 1 o'clock to me, but they begin at an early hour in the morning and keep coming along at intervals until morning, the morning hours, isn't that a fact?

A. No, the fact is this——

Q. Just answer that, isn't that a fact?

A. That they do commence?

Q. Yes, begin early and the deliveries run along at intervals from that early hour down to the time until they get through?

A. You may say they commence, one car would allow an answer of that kind to that question.

Q. I don't care whether it is one or fifty.

A. Sure, they possibly do.

Q. Have you ever known one car alone to be delivered at the stock yards?

A. Yes sir.

Q. Is it a common occurrence?

A. No sir.

Q. Isn't it a fact that they generally move down to the stock yards as full trains of stock as they can get?

A. Well, I suppose it is.

Q. You have observed it, haven't you?

A. They generally move down a full train as they come in.

1930 Q. Well, don't they from time to time hold one train if they have but a few cars of stock, until they get other cars?

A. They do on the Rock Island.

Q. Hold it until some other train comes in and then make up as heavy a train as they can.

A. If it was on the Rock Island, they do. On the C. B. & Q., they have not for a number of years on the North-Western.

Q. What do they do on the North-Western with cars just as soon as they come in, just as soon as they reach their terminal?

A. Then they throw out the dead freight at the "Y" and take the stock and get it together and push it right down to the yards.

Q. And get it there just as fast as they can?

A. Exactly.

Q. When you ship your stock from Buckingham you have no means of knowing as to whether you will arrive in Chicago at 4 o'clock or 5 o'clock or 6 o'clock, do you?

A. No more than knowing if we were starting on a passenger train.

Q. Well, a passenger train runs on a schedule. A stock train don't, does it?

A. Well, perhaps not just on the same schedule, no.

Q. Isn't it a fact that the Rock Island, the Burlington
1931 the St. Paul and North-Western Road will bring in in times of heavy movement into Chicago Monday morning say 25 trains of stock?

A. They do.

Q. And those starting from various points along the lines of road are consolidated at such places as Clinton and Galesburg, and Savanna, and then started out between the Mississippi river points that I have named to Chicago, as fast as they can be run?

A. Yes sir.

Q. Whether your stock will get on one or the other of those trains coming in, depends wholly on what the pressure of business is ahead of you?

A. Yes sir.

Q. The earlier your stock gets to Clinton or Savanna, the quicker it will be handled and get to Chicago?

A. Of course.

Q. And all that movement involves the receipt of stock from all of the different branches in Iowa of all of those different roads, the consolidation at Division points, the movement then on to the Mississippi river point which is the final stopping place before they start out for their run to Chicago?

A. Yes sir.

Q. That is about the way it is handled?

A. Yes sir.

Q. Now you have said, Mr. Ames, that the same crew on the North-Western takes the stock train down to the yards. Do
1932 you refer in that particular to the train crew or to the engine crew or do you know anything about the engine crew?

A. I refer to both the engine crew and the conductor and brakemen, the train crew.

Q. Now, do you know anything about the engine in that particular as to whether it is the same engine that takes your train down to the stock yards or not, of your own knowledge?

A. Yes, I do, I know it is the same engine. I will tell you one

reason why. I don't say but what there possibly could be something that would change it once in a while, but the train stops to be weighed. The engine pulls the train over the scales. We always get out there almost invariably at the scales and see the stock weighed and commence at the head end of the train. The same numbered engine that weighs the cattle, weighs the train, will pull the train into the chutes.

Q. Where is that weighing done on the North-Western?

A. At Western avenue, I think it is.

Q. Now, do you know whether or not that engine is changed after that or not, after the cars are weighed there at Western avenue?

A. It is not changed.

Q. I say, do you know?

A. Yes, I know.

Q. Do you know whether the same engineer and fireman go down after that weighing, of your own knowledge?

A. I know that they—If they make any change they have
1933 to make it on the run because the train is pulled right out and goes right down many times without any stop.

Q. The reason I ask you these questions is because Mr. Gardner has testified here positively that the engine crews are always relieved that bring the stock trains into Chicago?

A. I have not testified to the crew because I had not seen them.

Q. Well, I am talking about the crew.

A. I am talking about the engine and the conductor and the brakemen. Those men I know.

Q. I am talking about the engineer and fireman on the engine. Now, do you know anything about that?

A. I would not testify to the engineer and fireman. I testified to the engine and the conductor and the brakemen and the caboose.

Q. Well, it may be the same engine. I don't know whether it is or not, but the engineer and the fireman, he says, are changed always, relieved.

A. I would not dispute Mr. Gardner's word. I am not acquainted with the engineers, I would not know whether they changed them or not.

Mr. COWAN:

Q. In that connection I would like to call to your attention that when we tried the Terminal Case it was then shown by some-
1934 body that—Somebody connected with your road that the same crew took the train on but they paid them time and a half from Western avenue down to the yards and back.

Mr. LYNDE: That may be true of the train crew and it is also true of the engineer and firemen that we do pay them time and a half for making that movement but I do not understand that the same engineer and firemen move the train down.

Mr. SEVERANCE: It would not make any difference in the expense.

Mr. COWAN: I thought Mr. Gardner was mistaken when he said that about the engine crew.

The WITNESS: I am going to ascertain, I will promise you that. It will be too late for this case but I will know.

Mr. LYNDE:

Q. Now there is more or less shrinkage on cattle brought in here, isn't there?

A. Certainly.

Q. Do you pay on the weight from the point of shipment or at the yard?

A. I pay on the railroad weights.

Q. Where is that weight taken?

A. At Western avenue.

Q. Taken at this end of the run?

A. Yes.

Q. You buy on the weight after the stock has arrived here in Chicago?

A. Yes.

1935 Q. Is the live stock business, the cattle business increasing in your part of the country?

A. You mean——

Q. The number of cattle that are raised?

A. No, sir, it is not.

Q. Is it decreasing?

A. I think there will be fewer cattle shipped from our country this year than last year and fewer than five years ago.

Q. Such cattle as are shipped all move here to Chicago, don't they?

A. Practically.

Q. You spoke of buying cattle in Omaha and having them shipped onto Buckingham or Belle Plaine on meat trains. Now those cattle that you bought in Omaha were feeders, were they not?

A. Yes.

Q. You brought them on for the purpose of feeding them on your farm and ultimately shipping them to market?

A. Yes.

Q. So in moving them from Omaha down to Belle Plaine, they were not moving for the purpose of reaching any market, were they?

A. No, sir.

Q. No particular market in view at that time? What other train could you—Would they have moved on if they did not move on that meat train?

A. Probably on No. 132 that leaves there about 4 o'clock in the afternoon.

1936 Q. What is that, a way-freight train?

A. No, I think it is a train that they schedule as a time freight.

Mr. LYNDE: I think that is all.

Examination by Mr. DAWES:

Q. You say you have been feeding and shipping cattle from your vicinity for a number of years?
A. Yes.
Q. On various railroads?
A. Yes.
Q. About how many cattle a year do you ship?
A. That depends on the way I feel about the market for cattle, all the way from 200 to a thousand.
Q. How many have you shipped?
A. All the way from 200 to 1,000.
Q. How many have you shipped this year?
A. This year I will ship probably not more than 10 or 12 cars.
Q. From January to——
A. From January to January. I can hardly tell yet as the season is not far enough advanced.
Q. How many did you ship last year?
A. Well, about twice as many.
Q. How many did you feed last year?
A. I only ship my own feeding, as a rule. I buy very few.
1937 Q. Do you carry any over or did you carry any over from last year to this year?
A. Yes.
Q. How many did you ship the year before that?
A. 1903?
Q. Yes?
A. About a thousand cattle.
Q. That would be 50 carloads in round numbers?
A. Yes, something like that.
Q. And 20 last year?
A. Yes.
Q. And 12 this year?
A. Yes.
Q. How many have you got on hand out there now?
A. I have not over 7 or 8 cars.
Q. That is from where, all over the state?
A. Oh, no, I mean in my own yard.
Q. I mean of your shipments during the year?
A. You mean other shippers?
Q. I mean you?
A. I only ship my own cattle and that is all I own at the present time.
Q. I understood that you shipped from other places.
A. Those were cattle that I owned on a ranch in Kansas at that time. I do not have that property at the present time and there is no cattle there.
Q. When did you cease owning that?
A. I think the last shipment I made off of there was in 1903.

Q. From your own home place, how many cars did you
1938 ship in 1903?

A. Well, there was an average of two thirds of the cattle I shipped came from there.

Q. Two thirds of the 20 cars?

A. Two thirds of the 50 cars.

Q. 1903, about 30 cars?

A. I could not tell without looking at the books.

Q. 1904 you had ceased to ship from Kansas entirely?

A. Yes.

Q. And all your cattle were shipped from——

A. Buckingham.

Q. You shipped about 20 cars?

A. That is of the fat cattle.

Q. Of the cattle that moved on these rates, you are talking about?

A. In 1903, I bought my feeders in the northwest part of Nebraska and I had to use the fat cattle rate to the Omaha market and the feeder rate from there to my feed yard and the fat cattle rate from my feed yard to Chicago.

Q. That didn't change the number you shipped any, did it?

A. No, not at all, only I could have shipped more if I could have gotten a better rate.

Q. Do you undertake to say that the reason you did not ship and did not acquire and feed more cattle in the last two years was because of this rate?

A. I mean this——

1939 Q. Well, answer that question, please?

A. If I can explain it I will, yes.

Q. Answer it first, and then explain it afterwards.

A. That is the reason I wanted to wait, yes.

The COURT: You answer the question and then you can explain it.

Mr. DAWES:

Q. Hasn't this same rate been in effect for the last four or five years?

A. Yes.

Q. Ten years. Now, make your explanation.

A. An element that enters into the rate is the fact that the Nebraska feeder receives a feed and transit rate on the cattle that he places on the ranges and puts into his feed yard and ships out to Chicago and also the corn rate that the Iowa feeder has to pay, he has to buy his corn in the last few years in place of raising it ourselves, we have had to go to Nebraska to buy it, and we have to pay the Mississippi rate on our corn, and we have to pay the double fat cattle rate on our cattle in direct competition with the Nebraska man that gets a feed and transit rate and gets his corn at 30 cents a bushel less.

Q. These very rates from Nebraska have been in for ten years, have they not?

A. That is true, but the condition of the country did not then make any difference with us.

1940 Q. So you are complaining now of the corn rate?

A. The corn rate and the feed and transit rate and the whole volume of business.

Q. In other words, it is not the railroad rate on cattle that you are complaining of, but it is the rate on corn.

A. No, it is not, it is the rate on cattle.

Mr. SEVERANCE:

Q. That Nebraska rate through to Chicago and your rate in dollars and cents have been just the same for ten years?

A. I think so.

Q. There have been no changes in them but the last two years you have had a failure of the corn crop in Iowa?

A. Yes.

Q. And it has been expensive to get corn to feed where you had formerly raised your own corn, isn't that true?

A. Yes.

Q. And that has made it unfortunate to you to feed cattle?

A. That is part of the difficulty.

The COURT:

Q. Does the cutting down of the rate on the packing house product and dressed meat affect you in any way?

A. I think it did, yes, sir.

Q. Well, how?

A. Because the man that feeds the animals—it gives the man that feeds the animals in the western market the advantage of the

1941 difference that he pays and the rate we pay.

Q. It fixes him so that he can sell cheaper than you can and still make a profit?

A. Yes, sir, that is the idea exactly.

Redirect examination by Mr. COWAN:

Q. Stock shipped from Pierce is range cattle gathered and driven in?

A. Entirely.

Q. That live stock arriving from the ranges might arrive at Chicago at any old time?

A. Yes, sir.

Q. When you were speaking of the time at which live stock arrived at Chicago, you have reference to the Iowa shipments?

A. Exactly.

Mr. DAWES: Wouldn't it be proper for him to ask him what the shipments he referred to were rather than to tell him in advance what he ought to refer to. It makes it very easy to testify under those circumstances.

The COURT: You are going to have plenty of corn there this year, aren't you?

A. I hope so, it looks like it.

Q. Have you gone into the dairy business out there?

A. Over the state, I don't think the dairy business is as great as it was. In some localities it is increasing and other places they are doing something else.

1942 The COURT:

Q. The dairy business don't care much about the rate?

A. We don't want to do so much dairying as we want to feed. We want to keep the whole value of our land increasing, we want the land to increase in value and fertility rather than decrease.

Q. The milk business would do that better than any, wouldn't it?

A. No, I don't think so. I don't like to milk.

Mr. COWAN:

Q. What becomes of the car when you ship the feeders from Omaha for example to Buckingham and unload them?

A. They are loaded with fat cattle and shipped on to Chicago almost invariably.

Q. How much do you pay per hundred pounds from Omaha to Buckingham on the feeder cattle rate?

Mr. SEVERANCE: That is objected to. That is not redirect, is it, your Honor?

The COURT: Haven't you got about all this man knows?

Mr. COWAN: I did not ask him that question. If he has answered it, I don't want to ask him.

A. The feeder rate is ¾ of the fat cattle rate.

Q. In cents per hundred pounds?

A. In cents per hundred pounds, yes, sir.

Q. What do you pay in cents per hundred pounds to Buckingham?

1943 A. From Missouri River points we pay 15 cents and from Chicago 18 or 18 and ½. ¾ of 22 cents.

Mr. LYNDE:

Q. When you say fat cattle rate, you mean the local published rate?

A. Yes, sir, the local published rate.

Mr. COWAN:

Q. When you buy the feeders to feed, do you expect to ship the fat cattle on to Chicago?

Mr. SEVERANCE: I object to that. That is asking for a condition of mind.

The COURT: Objection sustained. I think you have asked him that question. I am doing that on general principles.

Mr. COWAN: The court does not exclude the fact that he buys them to ship them on.

The COURT: Call the next witness. I believe you have got all you can out of him.

M. P. BUEL, having been duly sworn as a witness on behalf of the complainant in rebuttal, resumed the stand for cross examination by Mr. Baxter, and testified as follows:

Q. I have only one other question to ask. The Interstate Commerce Commission states in its report and opinion in what is known as the "Terminal Charge Case," that while it is theoretically possible for any one to sell cattle at the Union Stock Yards, yet practically it is impossible for anybody to sell cattle there except the mem-
1944 bers of the Chicago Live Stock Exchange. Do you understand that to be true?

A. I do not.

Q. That is one error that the Commission has made then?

A. Any one can sell live stock. Any shipper can find buyers who will buy his stock in the union stock yards?

Cross-examination by Mr. SEVERANCE:

Q. Are there any buyers there other than members of the Live Stock Exchange?

A. Yes, sir.

Q. Are not they represented by members of the Live Stock Exchange who make the purchase?

A. No, sir, not necessarily.

Q. Are they not usually?

A. Largely they would be, but there are men, many men who are buyers of live stock that are not members of the Chicago Live Stock Exchange.

Q. Practically, is there any stock sold there by any one except members of the Live Stock Exchange?

A. A very small amount of the business is done that way.

Q. Well, what per cent.?

A. I could not give you the per cent.

Q. There is not one per cent., is there?

A. Well, I should think probably that much, and probably not more.

Q. The owner of the cattle is usually present when you make the sales?

A. Sometimes, and other times he is not. It just depends——

1945 Q. I am asking whether he is usually there?

A. No sir, I don't think he is.

Q. Is he half the time?

A. I should think so. It is the custom of the shippers to send in consignments that they do not come with or they don't come here at the time that the stock arrives.

Q. It is the usual custom, is it?

A. The large shippers are seldom ever here with their shipment. Take the shipments that come from the far west, to illustrate that idea, they are seldon ever here when their stock arrives here.

Q. We are talking about shipments from Iowa and that region. How is it in that case?

A. They are very apt to come themselves or send a man, who is sent along for the purpose of seeing that the stock is properly cared for while en route, and after it reaches the yards; but the actual owner may not accompany that shipment.

Q. Well, the last witness on the stand, Mr. Ames said that he always came, and that it was usual for stock men to come even if they had to pay their fare back. You think he is mistaken about that, do you?

Mr. COWAN: I don't think he said it was usual.

Mr. SEVERANCE: He said that it was usual and that he himself always did that.

1946 Q. Do you think Mr. Ames is mistaken about that?

A. I would not undertake to express an opinion about what Mr. Ames does or does not do.

Q. You don't understand the fact as he has stated it. It is not your experience in general. I don't mean to dispute that he comes himself, but you think that that is unusual?

A. I think he is not a fair illustration of the average shipper that sends stock to the market.

Q. Now, this 5000 head of cattle that you spoke of, five per cent. of which came to Chicago and the balance went into St. Louis and Kansas City?

A. Yes sir.

Q. Where did that stock come from?

A. Judge Baxter asked me for that information, and I have got it. Elgin, Kansas, between June 20th, and October 1st this year, we have shipped 800 cattle. Those cattle were loaded on the tracks—the tracks there where the cattle were loaded belong to the Santa Fe Road. Many of those cattle went to St. Louis and may have went—I don't know whether they went over the St. Louis & San Francisco or the Missouri Pacific.

From Bliss, Oklahoma, between June the 15th and October the 1st, 1905? we have shipped 2,750 head of cattle. Those cattle were all loaded on the Santa Fe Road. There is but one railroad enters that little place.

1947 From Oklahoma City we shipped between January the 10th and April 1st, 1905, 1,400 cattle. Those cattle were principally shipped over the St. Louis & San Francisco Road, direct to St. Louis. One train of these cattle was shipped on the Rock Island Road from there. There are several railroads at that point. From Euvalve, Texas, between April 15th to May the 10th we shipped 445 head of cattle. Those cattle were all loaded on the Southern Pacific. There is but one railroad at Euvalve, making a total of 5,395 head. That number may not be exactly right.

Q. All those cattle *men* then were shipped from points beyond Kansas City?

A. Certainly.

Q. And you had the opportunity then to ship those cattle through to Chicago instead of dropping them off at Kansas City for a rate of 16 or 17 cents above the Kansas City rate, didn't you?

A. Yes.

Q. And thus reach what you call the best market in the world. That is true, isn't it?

A. That is true.

Q. While, if the man purchased those cattle from you at Kansas City and slaughtered them, he would have to pay a twenty cent rate on the product coming here to Chicago?

A. If that is the rate, yes.

Q. Well, that is the rate, you know that, don't you?

A. No sir, I don't think I know exactly what the rate is.

Q. Well, we will assume that. That is what the Inter-
1948 state Commerce Commission claims, and that is what you allege in the complaint which you filed before the Interstate Commerce Commission. I believe you said you filed it.

Mr. COWAN: 18 and a half cents proportional?

Mr SEVERANCE:

Q. We are talking about shipments to Chicago, and that is the best market in the world. That rate is twenty cents to Kansas City, and you could bring your cattle over for sixteen cents?

A. Yes, on that through billing.

Q. All of this stock that you are talking about here originated beyond Kansas City?

A. Yes sir.

Q. And in spite of the fact that you could have brought that stock through to Chicago for four cents a hundred less than the packer in Kansas City could have shipped the product to Chicago, you found a better market and made more money for yourself by selling it in Kansas City, or sending it to St. Louis, didn't you?

A. Yes, that is so, but I want to explain that. Part of these cattle did come on to Chicago.

Q. Yes, you said five per cent., I think, of it.

Mr. DAWES: Will you tell me what your commission rate is at the Chicago stock yards?

A. Fifty cents a head for selling cattle up to 24 cattle in a car.

1949 Q. That is twelve dollars a car?

A. Yes sir.

Q. No matter how many cattle—it is fifty cents a head for less than 24?

A. Yes sir.

Q. Is ten dollars the minimum?

A. No sir, there is no minimum to it. We get many cars of cattle that have not more than 15 or 16 head to the car. Then we get cars with as many as 30.

Q. In your Association Articles, under them no member is permitted to cut that rate, is he?

A. No sir.

Q So it is safe to assume that all cattle sold by the commission men in the Chicago Live Stock Market at the stock yards, bear a burden of fifty cents a head?

A. As I have testified.

Q. What services do you render for that?

A. As a rule the commission men take these cattle from the chutes and move them into a certain location where each firm congregates its cattle and we order the feed for them.

Q. You charge for it, don't you?

A. No sir, we don't charge for it, the yard company charges for it. We see that they are properly watered. The commission man furnishes the men to see that these cattle are watered.

Q. Who furnishes the water?

A. The yard company. Then we take these *water* after they are sold, to the scales and put them on the scales. They are weighed by the yard company and the yard company then takes them to
1950 the yards for the purchasers.

Q. All you do then is to tell the employés of the yard company when it is time to drive them into your pen?

A. No, I did not testify that way.

Q. How many men do you employ in and about the yard yourself not buyers or salesmen?

A. Who, the commission men?

Q. You, yourself?

A. My firm employs seventeen men.

Q. Are those clerks or outside men?

A. Part of them are clerks.

Q. I mean men who drive the cattle from the stock yards pens, into your pens?

A. I think I have seven at this time.

Q. They all assist in driving the cattle out to the stage, don't they?

A. Certainly.

Q. And then tell the stock yards men what time they should be watered?

A. No sir, we water them.

Q. By turning the faucet in the troughs, in the pens?

A. Yes.

Q. It don't take seven men to do that, does it?

A. Depends on how many cattle you have got.

Q. How many pens have you got there?

A. I think my firm has got 28 pens.

Q. The water is simply turned on at the faucet and that
1951 is water which the stock yards company furnishes?

A. I wish it were so.

Q. What is it, if that is not the way of it?

A. If I had got——

Q. What do you do with reference to watering the cattle?

A. I want to explain that if you will give me my way, I will make it clear.

Q. Please answer my question.

A. What do I do? As a rule, we take them out of that pen and let the cattle move in a few at a time, and let them drink, let those few drink before we put more in. The trough is short and don't permit of more than six or eight cattle going up to it at a time, and in order to have the cattle get the greatest amount of water, get

every pound of water in them that we can, the general custom among commission men is to put them out in an alley, and then let them in a few at a time, and then let them drink before we let the rest in.

Q. How many cattle do you have a day there in your pens, on an average?

A. Well, sir, I don't *that* that I could answer that, because I never figured it that way.

Q. Well, estimate your daily average.

A. Some days I will have a thousand or fifteen hundred and other days I won't have a hundred.

Q. What is your general average, how many do you handle
1952 a year, for instance?

A. We handle 15,000 or 16,000, my own concern.

Q. How much do you pay these men a day, these seven men?

A. I don't employ them by the day.

Q. How do you employ them?

A. By the month or by the year?

Q. How much a day does your outside man get, just divide it up, and see how much your outside men get a day?

A. We pay our men that fill that kind of a position from $50 to $100 a month.

Q. How many of those outside men do you pay $100 a month?

A. Well, I think I pay four of them $100 a month.

Q. Are you quite sure?

A. I am.

Q. Four of them, and the other three you pay $50?

A. No, sir, I pay two $75 and one man I am paying $50.

Q. So that there is about $75 the average a month?

A. No, sir, it is more than that.

Q. Well, call it $80. It is not over that. Is there any other service that you render in connection with these cattle, except keeping the books?

A. With those cattle?

Q. Yes.

A. No, sir. We sell them, of course, I have explained that to you. We employ salesmen at a high price.

Q. Suppose you should cut down your commission rate by
1953 agreement, a trifle, would not that accomplish the purpose, which you are trying to gain here of inducing shipments of cattle to Chicago?

A. No, sir, I don't think it would. I don't think it is possible to cut down these expenses, and give the service that the customers expect.

Q. You don't think it is profitable, these services that you render at fifty cents a head?

A. I don't think it is profitable?

Q. No, you don't think it is profitable the services you render at fifty cents a head?

A. No, sir, it is not profitable.

Q. Why did you go into it at Fort Worth and Kansas City and other places, if it was not profitable?

A. We went into it at times when we were not expected to give as good service as we are now giving to customers.

Q. Why do you continue at it?

A. Because I have spent my life at the business, and I don't think I could earn my living at anything else.

Q. I understood you to say that you did not make a living out of this?

A. I said it was not profitable.

Q. What did you mean by that?

A. I say the net earnings of a commission firm are very small.

Q. What percentage of the net earnings does a commission man make?

A. I have an idea if you should take the commission men——

1954 Q. What do you mean about that? You can tell, what is your net results?

A. We made last year about 22 per cent. on the volume of business we handled.

Mr. RANSOM:

Q. You said, Mr. Buel, that there was about fifty of these live stock exchange men who owned cattle. Can you tell us where those cattle are located?

A. Oh, no, sir. I can tell you where some of them would be.

Q. Well, where?

A. Some of them are in Iowa.

Q. Whereabouts in Iowa?

A. Well, there is a man by the name of Brown that I think of now that has some cattle, but I could not give you the post office address.

Q. How is that?

A. There is a man named Brown who has a farm in Iowa somewhere?

Q. Do you know just where it is?

A. I think I heard him say.

Q. Do you know whether it is in this 23½ cent belt?

A. I took it for granted, yes.

Q. Well, you took it for granted. Do you know whether it is?

A. I have not investigated it.

Q. Who else is there?

A. O. J. Shannon, and the Shannon estate.

Q. How many cattle does Brown own, do you know?

A. I don't remember.

Q. Do you know how many acres of land he has there?

1955 A. I do not.

Q. Do you know whether he owns any land there?

A. I have heard him say he did.

Q. Where does Shannon—where are his cattle?

A. I don't know the post office.

Q. Can you tell us the county?

A. No, sir.

Q. Can't you tell us whether it is in this 23 cent belt or not?
A. I cannot.
Q. Who else, there is Shannon and Brown.
A. I had a list of the men that I talked with. There is a man named Van Norman that I think of now.
Q. Where is he located?
A. He owns a farm right up here near Elgin, Illinois.
Q. That is not in the 23½ belt?
A. I don't know.
Q. Don't you know where the 23½ cent belt is?
A. No, sir.
Q. Do you know whether it is east of the Missouri River or west?
A. I do know that it is west. I know that it is west of the river, yes, sir.
Q. Now, then, will you tell us, Mr. Buel, as near as you can where the rest of these 46 or 47 men doing business as live stock commission men have cattle that they market at the market here?
A. No, sir, I am not prepared to answer that question, as to where they are, but I want to answer by re-iterating what I said, that
1956 these gentlemen have told me that they owned farms and feed cattle, and ship them into the market.
Q. What market?
A. To this market at Chicago.
Q. You don't know anything definite about it?
A. I have seen them have cattle in the yards and they have said "These are my individual cattle."
Q. Did they tell you which they were making the most money out of, raising live stock and shipping them in here or as commission men?
A. They never did.
Q. You did not canvass that with them at all?
A. No, I never heard them say that.

Mr. COWAN:

Q. Commissions are the same on all markets, are they not?
A. Yes, sir.

Mr. RANSOM:

Q. Do you get the same commissions in South Omaha that you get here?
A. Yes.
Q. What is the commission for the sale of hogs here in Chicago?
A. Six dollars a car.
Q. Is it the same in South Omaha?
A. Yes.
Q. And the same in St. Joseph?
A. Yes, sir.
Q. And Kansas City?
A. Yes, sir.
Q. And Sioux City—well you are not located at Sioux City.
A. No, sir.

Q. You say there is no minimum charge. Don't you charge ten dollars a car for all cattle?

A. No, sir.

1957 Q. But you do charge six dollars for all hogs?

A. Yes, sir, for a carload.

Q. That is a flat charge?

A. Yes.

Redirect examination by Mr. COWAN:

Q. When you were being interrogated with reference to the shipment of cattle that you brought on here from Oklahoma to Kansas City, the questions that you were asked about the cattle that you shipped, you were asked if you shipped them on the balance of the rate, sixteen or seventeen cents, and there was a suggestion in the question that notwithstanding you could do that, and the packer could ship the product for twenty cents, if you chose to sell them at Kansas City. In that connection you said that you wanted to explain something. He cut you off with another question. Whatever explanation you want to make in regard to that, I would like to have you make it.

A. I want to explain that in forwarding these cattle from that market after they has been shown and a price put on them, that we find on their arrival in Chicago that many buyers know just what has been offered for those cattle there, resulting in destroying the competition which enables the salesman to get for those cat-

1958 tle as much as he would have on the judgment of the salesman if he did not stop at those other markets?

The COURT: That is not the fault of the railroad, is it?

A. No, I don't think it is.

Q. Who is that the fault of?

A. How is that?

Q. Who do you blame for that?

A. I could not answer that, Judge, other than by saying I don't know. I know it is a condition that seems to exist.

Mr. COWAN: Can a packer ship the product in the form of dressed meat, I mean, or the carcas- cheaper than you can ship the animal, notwithstanding you can get it shipped for sixteen or seventeen cents?

A. He certainly can, because he does not pay on only a little over about a half as much weight as I would have to pay on it.

Q. Do you think that that gives him an undue advantage or not?

Mr. SEVERANCE: I object to that as incompetent, and asking for a conclusion, and as not re-direct.

The COURT: Yes, I think that is objectionable. Do you think that his opinion would have anything back of it?

Mr. COWAN: How is that, your Honor?

The COURT: Do you think he has knowledge enough of the whole situation to make his opinion amount to anything?

Mr. COWAN: I think so. It is as good as any of these

1959 railroad men. He has been doing business on those yards for 25 years. He knows that there is an advantage that the

packer has got, and the question of whether that is an undue or unnatural advantage is just as much a matter of his knowledge as it is of any railroad man as to whether these rates are reasonable or not.

Mr. SEVERANCE: We have not asked any such question as that.

Mr. COWAN: Now, all these gentlemen representing the railroads have gone right ahead and given their judgment.

The COURT: Well, let's see what the question is.

Mr. COWAN: I am asking him whether that gives him an undue advantage.

Q. Under all the circumstances as you have ascertained them from a life time of experience, is that advantage in the rate, reasonable or unreasonable?

The COURT: That is not it, whether the rate is reasonable or unreasonable in comparison with the other rate?

Mr. COWAN:

Q. Is the rate allowed to the packer reasonable or unreasonable compared with the rate allowed to the shipper of the live animal?

Mr. SEVERANCE: I object to that as incompetent, and as no foundation is said for it, and it is not shown that this gentleman knows anything about the cost of operating a railroad at all.

1960 The COURT: Let him answer.

A. It is not reasonable.

Q. Why?

A. Because it gives them an advantage in carrying a little more than half the rate that I would have to pay for if I shipped live cattle. Hence their net rate is much in favor of the packer because he can transport that product to Chicago for less than the man can ship the live stock.

Mr. SEVERANCE:

Q. For the same reason then you would say that it would be unreasonable if the rates were each twenty cents because the packer would still have that advantage of only transporting only a little over half the weight in product?

A. Well, I think the rate on live stock should be less than the rate on the packing house product.

Q. So you disagree entirely with the Interstate Commerce Commission in that regard, you think the rate on packing house products should be 20 cents or 28 cents?

A. It once was?

Q. How is that?

A. It once was 28 cents.

Q. What will a steer dress? You say 55 per cent. What will a steer dress?

A. I reiterate for example the illustration that I made yesterday. Take a thousand pound steer in good condition, and he will

1961 dress 55 per cent., and that would be 550 pounds of beef.

Q. What else do you get from the steer besides that?

A. They get the hide and the offal.
Q. How much does the hide weigh?
A. That hide would weigh 60 or 70 pounds.
Q. That would make 620 pounds?
A. Yes sir.
Q. What else do they get?
A. They get the tallow.
Q. How much will that weigh?
A. I don't know, I suppose it will weigh 30 or 40 pounds.
Q. Well, that will make 660 pounds. What else will they get besides the tallow?
A. Well, they make a fertilizer.
Q. How much does that weigh?
A. I don't know.
Q. Can you give it to us, within a limit? You are an expert here.
A. I didn't testify as an expert.
Q. Not as a manure expert. Can you tell us of any other product of the cattle in addition to this 660 pounds and the fertilizer?
A. Oh, yes, there is the tongue, that is valuable.
Q. That is valuable. How much does that weigh?
A. I don't know.
Q. Then were you not misleading the court a little when you say that he has to pay on only 55 per cent. of the weight. Don't he, as a matter of fact, have to pay on about 75 per cent.?
A. I don't know what he pays on. We were——
1962 Q. Assuming that he ships it on to this best market in the world——
The COURT: He is talking about the average. He is talking about the fresh meat product. Fresh meat is what he is testifying about.
Mr. SEVERANCE: Yes, but they have to sell those other things in market.
A. I did not testify, Mr. Severance, that Chicago was the best market for hides or for any other product of the animal that was slaughtered in other markets. I testified on live stock only.
Q. Chicago is a better market for hides than Kansas City?
A. I don't know, I never looked into it.
Q. Yes, you are an expert on that part of the business?
A. I don't claim to be.
Q. You don't know whether they pickle tongues and ship them east or not?
A. I have been told they did.
Q. Don't practically the entire product of the animal, whatever it may be of every character, move from the Missouri River points being on the same rate as the dressed beef, namely a packing house product rate?
A. I don't know about that.
Q. You don't know to the contrary, do you?
A. I don't, I cannot testify one way or the other.
Q. Isn't it a fact that all the packages in which these various products are put up are either shipped from here out to the
1963 Missouri River points or the material is shipped out, and that these packages come back paying a twenty cent rate?

A. I don't know, I never shipped any.
Q. Do you know anything about the hog business?
A. I know something about hogs.
Q. How much do hogs dress?
A. Well, they will run as a rule about 1/5 that they lose.
Q. Do you think the witness who stated they will dress 82 or 83 per cent., you think those witnesses are mistaken. You would not agree to that?
A. I have not slaughtered any hogs in a good many years, and I am not prepared to state just what that percentage would be.
Q. Don't you know, sir, that hogs, that is that the dressed meat of the hog and the packing house products together with the salt and the packages in which they are contained weigh out more pounds than the live hog?
A. I do not.
Q. Do you know to the contrary?
A. No sir.
Q. You don't know anything about it?
A. I don't claim to.
Q. If they do weigh out more than hogs when they are shipped back to Chicago from Missouri River points, then the packer over there is at a disadvantage to that extent, isn't he?
A. I should think he would be to that extent, if that is true.

1964 Mr. SEVERANCE: That is all, sir.

Mr. LYNDE:

Q. Now, suppose the rate on dressed beef from Kansas City to Chicago had been the same as the rate on live stock at the time you made this shipment of 5,000 head of cattle, which market would you have shipped to? Would it have changed the market you shipped those cattle to?
A. If the rate on the——
Q. Would it have changed the market that you would have shipped to?
A. It would have its effect on causing me to change my opinion as to where I would sell those cattle.
Q. You have already testified that the price in Chicago controls the price in St. Louis and Kansas City and those other western markets. That is true, isn't it?
A. I think it is.
Q. So when you shipped those 5,000 head of cattle you had the choice of going to the western markets or to Chicago?
A. Yes sir.
Q. That was an advantage to you, wasn't it to have the choice of those different markets instead of being dependent upon a single market, wasn't it? Just please answer the question.
A. In a measure.
Q. The more markets a man can ship his product to, the better he is off?

A. If there is competition between those various markets.

1965 Q. Well, that is the case, isn't it, there is, isn't there?

A. A very limited competition.

Q. You say the Chicago market controls the prices of these other markets?

A. In my judgment the large buyers in this market control the price of cattle that they pay in the other markets.

Q. Is that because they are the same buyers in the other markets?

A. Yes, the same principals are the buyers. They have large slaughtering house- in other markets.

Q. Is it from their purchases in the other markets that control their prices here in Chicago or is it the prices paid in Chicago that control the other markets?

A. Chicago is recognized as the largest market as I have testified and necessarily the price here would have an effect in controlling or influencing the values of cattle in other markets.

Q. So it is the price paid for cattle here in Chicago that controls the price in these other markets, as I understand you.

A. To a certain degree, yes.

Mr. SEVERANCE:

Q. Did you state what per cent. the cattle will shrink coming from Kansas City here?

A. It depends on their condition when they were weighed at Kansas City. You take a drove of cattle that is well filled as we term it, have had plenty of hay and water and weigh them up

1966 then, weigh that animal up then and transport him to Chicago and water and feed him as much as you can, the shrinkage will be from 20 to 30 pounds and in some instances not more than 15.

JAMES PEABODY, having been duly sworn, resumed the stand for further cross-examination by Mr. BAXTER, and testified as follows:

Q. You were examined as a witness for the defendants in what is known as the Cattle Raisers case last year, were you not?

A. I was.

Q. You gave certain statistics relating to the Atchinson, Topeka & Santa Fe Railway System for the year 1903, did you not?

A. Yes sir.

Q. I wish you to state from the figures which you made in that case how does the cost of moving the cattle traffic compare with the cost of the movement of the average of other freight traffic and state your reasons for such opinion as you may express. I refer you to page 73 of your testimony in that case.

A. (Reading from transcript.) In answer to the question, "Why does it cost more to move the cattle traffic than other classes of freight traffic?" I said, "It requires a great deal of special

1967 equipment. Trains are run faster, they are run lighter, they involve a large amount of damages, they require a great deal of special equipment and it is altogether more expensive."

Q. Now what proportion of the live stock cars of the Santa Fe

System move to the points of shipment empty? I refer you to page 78.

A. In answering that question I stated that the cattle cars were not usually loaded, the live stock cars, when they were going back for loads. The truth in regard to the movement of cattle is simply this; when they are not used in connection with the movements of cattle, they are used wherever they can be but when they are needed for the movement of cattle there is not a case in a thousand where there is a load for shipment to a point to which they are going, and the result is that 999 out of every thousand is an empty movement.

Q. How does the tonnage of live stock trains on that system, in proportion to the locomotive capacity, compare with the tonnage of mixed or dead freight trains in proportion to the locomotive capacity. I refer you to page 82.

A. On the middle division—the answer refers to the middle division of the Santa Fe Road, which is the division between Emporia and Newton, over that division it was 65.5 on the mixed train, stock and dead freight mixed, 69.7. On dead freight it was 72 per cent. In other words the tonnage of live stock trains in
1968 proportion to the locomotive capacity was very much less than on mixed or on dead freight.

I have also the movement over the same division for the month of March, 1904, in which in the same way the load of the stock train was 59.4 of the locomotive capacity; the load of the mixed train 69.9 per cent. of the locomotive capacity and the load of the dead freight train was 75.2 of the locomotive capacity.

1969 Q. For the year 1903 what was the amount paid by the Atchison, Topeka & Santa Fe system for loss and damage on all freight, and how much of that amount was for loss and damage paid on live stock and what per cent. of the loss and damage on all freight was the loss and damage paid on live stock? I refer you to page 84.

A. The loss and damage on all freight paid by the Atchison, Topeka & Santa Fe System for the year 1903 was $330,599.85. The loss and damage paid on live stock included in that amount, was $97,244.33, equal to 29.40 per cent. of the total loss and damage paid. That did not include any damages for personal injuries.

Q. For the same year what were the gross freight earnings of that system and what were the live stock earnings of said system and what per cent. of the total freight earnings were the live stock earnings?

A. The gross freight earnings were $45,846,659.00. The live stock earnings were $3,548,531.00, which was 7.74 per cent. of the total. In other words the earnings were slightly less than eight per cent. of the total and the payments for loss and damage on live stock compared with the total payments of loss and damage were almost thirty per cent.

Q. During the same year, state the amount paid by that
1970 system for damages to persons in charge of stock? I refer you to page 85.

A. The Santa Fe System paid out during the same year

$26,754.81. The total personal injuries were $519,258.22, but that included all classes of personal injuries.

Q. During the same year what did the total carload freight of said system amount to in tons and what did the cattle carried by said system amount to in tons? I refer you to page 86?

A. The cattle carried by the road that year were 819,961 tons, and the total carload freight amounted to 12,449,422 tons.

Q. Take the item of the time of the men and coal consumed and so forth, in the process of loading the average stock train at a stock yard or stock pen, state for how many miles such cost would pay the same expense of moving the same train on the Santa Fe System. I refer you to page 91.

A. The closest estimate I have been able to make of the cost of loading a stock train is equivalent to a run of fifty miles. That is the time of the men and the coal and so forth consumed in the process of loading represents an expense which will transport that train for about fifty miles.

Q. On the same System how does the average speed of the live stock trains compare with the average speed of the freight trains? I refer you to page 94.

1971 A. As closely as I can estimate it we make at least thirty per cent. better time on the live stock traffic than we do on the other.

Q. On said system what is the average haul of live stock? I refer you to page 96.

A. As near as I am able to estimate it it is perhaps from 300 to 350 miles. That is the average haul represented by our movements for the year in question.

Q. In compiling C 1 which you put in evidence yesterday, as an exhibit to your testimony, you showed the total cost per car figured on the weight of the car, and contents of live stock shipments. I understand that in arriving at the total cost per car you did include for each division of your road all of your operating expenses, and that, of course, included all expenses that are incidental to the stock movement and not incidental to the movement of any other freight; but in compiling that exhibit I wish to know if you segregated the extra expense of handling live stock so as to show how much more it cost to move than other freight?

A. No, sir. Those figures are based on the average movement of all freight. The items in this exhibit do not segregate any of the particular expenses incidental to the live stock traffic.

Q. In making up the statements for Mr. Ripley, which he
1972 used in his testimony, to show the relative cost of handling the cattle and packing house products and dressed meats respectively, did you segregate the extra expense of handling the live stock so as to show how much more it cost, if any, to move the live stock than the packing house product or dressed meat?

A. I did not.

Q. Suppose I was a large shipper of any commodity, either cattle, or wheat or cotton or any other commodity that moved in large volume over your system of road; assume that your road was reason-

ably full of traffic, had about as much as it could handle, but could handle it with comparative ease; suppose I should ask you what rate you would make to me for handling the commodity owned by me to give that a preference over the movements of all of your other freight commodities. What kind of a rate would you put to me for that kind of a movement as compared with what you would charge me if I allowed my traffic to move along like everybody else?

A. Well, I would not make it at all to start with, but if I had to make it I should want 50 to 100 per cent. more. If I had to move it when you wanted it moved and just as you wanted it moved, that would be my answer.

Q. If it was to have precedence over every other kind of
1973 freight. Isn't that exactly the case in the movement of live stock? Has not the custom and usage on that system as well as every other system given precedence to the live stock traffic over every other freight that is moved?

A. Perhaps not all freight, but to a great extent that is true. We try to give citrous fruit on our line, perishable freight of that sort pretty nearly the same service as live stock, but as a rule live stock is certainly moved in preference to all other dead freight.

Examination by Mr. SEVERANCE:

Q. You stated yesterday, by information received from representatives of your road in Kansas City that the cost of switching a stock train of cars or other train at Argentine and Sheffield was $9.50, and switching stock from the stock yard, including loading and disinfecting, $11.40 a car. From which point does the most of your live stock come to Chicago, from the stock yards or from Argentine?

—. ——.

1974 Q. Well, isn't it as a rule made up at the stock yards?

A. I do not know that all the stock that goes into Kansas City goes to the stock yards. If any of it came through, it would not go to the stock yards at all, in that case it would all come from Argentine; what proportion comes to the stock yards, I cannot say.

Q. You also gave the cost of switching meat from Twelfth street, and also switching meat from other points; do you get most of your meat from Twelfth street or from other points?

A. I don't know.

Q. You don't know about that?

A. I don't know where they are located. Mr. Sharpe whose information is there is the superintendent of terminals in Kansas City and directly in charge of that traffic.

Q. So far as you know then, the matter might be averaged between the two?

A. For all I know, yes sir.

Redirect examination by Mr. COWAN:

Q. The cost which you gave did not include the $3 or $4 or $5 of the switching charge on packing house products?

A. Oh, no.

Q. It was in addition to that?

1975 A. It was in addition to that; that was the cost to us in our service, not what we have to pay for switching.

Mr. SEVERANCE: You say there are other roads, Mr. Ripley said, that don't have to pay that $3 or $4, that is a peculiar charge against the Santa Fe.

Mr. COWAN: It may be and may be not.

Mr. SEVERANCE: That is what Mr. Ripley said.

Mr. COWAN: There are other roads that reach them and some that do not, the Great Western does reach some of the packers.

Q. Please state the difference in the cost of receiving, transporting and delivering a train load of dressed meat and packing house products from Missouri River, that is, from Kansas City to Chicago, and a train of live stock of equal gross tonnage received and transported from Carrollton on your line to Chicago?

A. On the basis of the average cost, which, of course, is the only basis that I know——

Q. I am just asking for the difference.

A. Yes, on the basis of the average cost, the difference would be about $400, almost exactly $400.

Q. More for which?

A. More for the packing house products or dressed meat, for the packing house products than for the live stock from Carrollton.

1976 Q. Please state the difference in cost to your road of receiving and transporting and delivering a train load of dressed meat and packing house products from Kansas City to Chicago and a train of live stock picked up at stations on your road beginning at Carrollton and averaging three or more cars per station, so as to make at the end of 150 miles from Kansas City, a train of equal gross tonnage to the dressed meat train.

A. $484.97 on the basis of average cost.

Q. More for which?

A. More for the dressed meat and packing house product train than for the live stock train, of live stock cars picked up through Missouri.

Mr. SEVERANCE: Do you think it would cost more to pick it up than to carry it clear through?

Mr. COWAN: I am not through with the witness.

Q. What does it cost your company per car to start an engine and crew light from a point 50 miles east of Kansas City, and pick up a train of 30 cars of live stock of equal amounts at stations between Carrollton, assume that to be 50 miles, and a point 150 miles northeast of Kansas City?

A. A point 150 miles northeast of Kansas City?

Q. Well, east on your line, in the direction of Chicago?

A. Oh, east of Kansas City. The cost of a train of that sort, total cost is $1,442.85, which divided by 30 cars makes $48.09 a car for the total transportation cost, which, of course, includes in-

1977 terest and taxes.

Q. What is the cost per car for the picking up service at the stations as described in the question?

A. As closely as it can be figured, it amounts to $1.35 per stop, and it depends on the number of cars we pick up at the stop to know how much it is per car. In this illustrative example that I have here, we picked up three cars at each of these ten stops, at a cost of $1.35 per stop.

Q. And that would be a cost of 44 cents per car?

A. A little over 40 cents per car. It would cost the same to pick up one car as three practically.

Q. Now, in your opinion what ought the relative rate to be from the Missouri River to Chicago and points intermediate—first, I will put it Missouri River to Chicago, on packing house products and dressed meat, and on cattle.

Mr. SEVERANCE: I object to that as not redirect your Honor, that was gone into before.

The COURT: Well, let him answer.

A. My conviction on that subject, based on a good many years' experience, is that the raw product in every case should be carried less than the finished product, and in a case like the dressed meat, which is a highly finished and perishable product, the rate should be at least 50 per cent. higher than the rate on cattle. On
1978 packing house products, it should be perhaps 20 or 25 per cent. higher. In other words, if I was to make the rates as made on a basis of to-day, allowing cattle at 23½ cents, I should put the packing house product at 28½ cents, and the dressed meats at 33½ cents.

Q. Has that been a prevailing rule, and judgment among rate makers of the country with the exception of this condition between Chicago and the Missouri River?

A. There has been no rule among the rate makers of the country. There is no science of rate making, it is a matter of judgment but it has been, however, a general rule that commodities should bear different rates in proportion to their ability to pay the varying transportation charge. It was recognized that unless that condition obtained, very many low classed commodities could not be carried at all, and very many high classed commodities would be carried at very much less than the service was worth, and that general rule has obtained; as the product progressed towards the finished state, it was usually rated higher, and as more value attached to it, it took on an additional rate. That was the general principle on which rates were made, if there is any principle.

The COURT: Why should the finished product bear a higher rate than the raw material?

1979 A. If you make a flat rate, make the same rate—of course, roughly speaking as far as the haul is concerned, it does not cost the railroad, if any more, to pull a train of gold than it does a train of iron, and so with all varying commodities. If a flat rate obtained on everything, the same rate per mile obtained on all commodities, there are hundreds of commodities that could not be handled at all, the rate would be prohibitory. That is, the cost of the material where it started, added to that arbitrary rate, would be

more than the stuff could be used for at destination. And so the railroad companies adopted what they conceived to be the most economic scale, and attempted to put upon the various commodities, not all the traffic would bear but what it rightfully ought to bear in view of all the considerations, and it was only on such a plan as that that the commerce of the country could have been built up to its present stage. It would have been simply impossible to developed the railroads or the country on any other principle.

Q. That is the principle that raw material should bear less than the finished product of the same raw material?

A. That is the general principle on which it is based.

Mr. COWAN:

Q. Mr. Peabody in view of what you have said, is it true or not that rates are made with reference to one commodity producing the same profit as another?

1980 A. The same profit?

Q. Yes.

A. To whom?

Q. I mean to the transportation company?

A. Oh, no. No relation to the cost. Cost never was considered at all in making rates. I never knew it to be considered except when it got down below the cost of hauling, then they stopped hauling; for instance, we cut out the cattle rates on our line because it wouldn't pay, we didn't take the business because it wouldn't pay.

Q. What cattle rates?

A. We cut out those of the T. & P. connections, down at Pecos for that very reason.

Q. You had to haul a long distance, and you absorbed the T. & P. rate to Pecos, and that put it below any rate in the country?

A. Yes sir.

Q. In other words, you could not pay the T. & P. rate by absorbing that rate to Pecos and take the stock from Pecos over your line through Kansas without hauling it at a less cattle rate than any other road in the country?

A. That is true, and it was so low we did not want it at all, and that was the reason for the petition for the advance in the rate. It was so low we felt we could not do the business at the rate.

Q. Now, Mr. Peabody, when you said that the rate on the packing house product ought to be 50 per cent. higher—not the product, the dressed meat I mean—and the rate on the product some-

1981 what higher than the live animals, did you have reference to the relative cost in the service which you have mentioned?

A. Not at all.

Q. Or to that and all of the conditions?

A. Not at all. I paid no attention to the cost on that proposition. If the cattle cost a good deal more than the—a good deal more to handle than the dressed meat, I still say the cattle ought to be at less rate than the dressed meat.

Mr. SEVERANCE:

Q. Just a moment; I would like to have the Court hear that answer. Your Honor was engaged, and it is a very important answer.

(The previous question and answer were then read.)

The WITNESS: Or perhaps to express it better, the dressed meat ought to be at a higher rate than the cattle.

The COURT: How do you make that out, if it costs you a good deal more to carry the meat?

A. Because I think that that is the correct basis of making the rate. The question of cost, as I have explained, cannot come into the making of all rates with any degree of justice to the commerce of the country.

Q. Why is it the correct basis? Simply because you can carry some crude products by giving them a low rate and not
1982 otherwise, is that the only reason?

A. So that we can move a large amount of stuff of all sorts.

Q. Have you a right to make one man bear the other man's burdens?

A. Well, I guess so, yes sir.

Q. That is, you think you can get more traffic and get more out of it in the end for your company?

A. No, it is fully as much with a view of promoting the interest of the public as of the railroad, the interest of the public and the railroads are absolutely identical in this regard. An adjustment of rates which will conserve the largest movement of product of all sorts, is the best for the railroads and all of the people, and it is with that idea that these rates are made.

Q. What good does it do the people to be carrying stuff back and forth?

A. There are a good many men that have stuff, that, if they could sell, would be profitable to them to sell, if they could get any price for it. If our rates were made on the basis of a flat rate on everything, they simply could not move it, and could not sell it, it would rot at home. For instance——

Mr. DAWES: Take live stock.

A. Take live stock, if you please. That is a very good illustration. If we make a rate on live stock, that they can move it, why, it is profitable for the man out in Kansas to raise live stock.
1983 If we make a rate that would not move them, it is not profitable.

The COURT: They would have to quit raising it?

A. They would have to quit raising it. The business of the country has been developed on that principle, that as the products went up in the scale of completeness and finish towards the higher grades, and more values, the rates have been advanced. It was the value of the service in consideration of the character of the article that has been largely determinative in the fixing of the rates.

The COURT: The service to the man ow-ing the commodity?

A. To the man ow-ing the stuff.

Mr. Cowan:

Q. Mr. Peabody, I will ask you if it is sometimes considered in the nature of the tax, and in that connection I would like to ask if you have ever read Mr. Stick*ney*'s essays on that subject published in a current book on the subject of transportation.

Mr. Severance: I submit that is immaterial.

Mr. Cowan: In which book he has maintained that same principle.

The Court: It may be more important to know whether the Court has read it.

The Witness: Shall I answer that?

The Court: If you want to? Have you read it?

A. I have read it.

1984 Mr. Cowan:

Q. Now, if you base it upon the relative cost of service between the packing house product and the dressed meat and the live animals, according to the figures that you have given, still would the rate be higher on the packing house products and the dress- meats than on the cattle?

A. Based on the cost of the service, the rate would be higher on the packing house products and dressed meats, or should be higher, rather than would be?

Q. Now, going into the matter of your testimony in the Texas rate case, that case Mr. Peabody, covered the Southwestern and West of the Missouri Rates principally, didn't it?

A. Evidence was introduced covering all the rates in the country, as near as I can remember.

Q. I know, but your shipments?

A. So far as the Santa Fe was concerned, it was all from the west and southwest to Kansas City and Chicago and the northwest feeding points.

Q. Your evidence with respect to the cost of receiving the live stock at the various places where you received it, and the transportation was a different proposition to the traffic between the Missouri River and Chicago, wasn't it?

A. Altoge*ht*er.

Q. The two could not be compared, could they Mr. Peabody, except to show a contract?

A. A good deal of stock came through the Missouri River

1985 to Chicago.

Q. But I am talking about the service beyond the Missouri River in the range country where you gather these cattle, the character of the service?

A. The character of the service is, in some respects the same. We sometimes get whole train loads of cattle out of Kansas City. Sometimes we get whole train loads of cattle out of some of those shipping points.

Q. And when you do that, you are willing to haul them on for

16 cents more, if they bring them on from Kansas City to Chicago, are you not, and do do it?

A. We do it because that is the proportion of the ruling rate, we wish it was not.

Q. But you have always done that?

A. There has always been a proportional rate so far as I remember now.

Q. Isn't it a fact that when you made your estimate of the cost of service that you took the total tonnage on a given Division, that is to say the total gross ton miles of the loaded cars on that Division as a unit upon which to make your estimate?

A. The gross ton miles of the loaded and empty cars, of the tonnage we handled.

Q. And you divided the earnings by the gross ton miles on the particular division?

A. No — divided the earnings? No sir, I divided the ex-
1986 penses by the gross ton miles.

Q. I beg pardon, put my question "expenses." Then isn't it a fact that you would take a car load of cattle, estimate the gross ton miles of that car and the return of the empty, and multiply that by the expense per gross ton mile, which you obtained by the division in the other case?

A. To ascertain the cost?

Q. Yes.

A. Yes, I took the gross tons miles that was represented in a car moving over that Division, and multiplied it by the ascertained expense, the ascertained average expense of all freight over the same Division.

Q. Per gross ton mile?

A. All on the same basis of gross ton mile.

Q. That included in the computation the gross weight of the car and the weight of the contents in all shipments of less than car load and local freight?

A. Everything handled.

Q. From station to station?

A. From station to station.

Q. It included the expense of maintenance of every railroad station, and every service upon the road, didn't it?

A. The entire operating expense of the road, that is of that portion of the road.

Q. It included the maintenance of way and structures.
1987 Bridges and culverts and everything of that sort?

A. Yes sir.

Q. And it included in it——

Mr. SEVERANCE: He said it included everything, you can't ma it any stronger by leading him along and having him say each ite

Mr. COWAN: I am examining the witness.

Mr. SEVERANCE: I object to his leading him.

Mr. COWAN: It is cross examination. Mr. Baxter covered that.

The COURT: He has covered that by his answer, hasn't he?

Mr. COWAN: Do you consider Mr. Peabody, that all freight ought

to bear the same proportion in tonnage of the revenue tonnage, or in the gross tonnage of the car and the revenue freight, of maintenance of bridges, or roadway, of station service——

Mr. SEVERANCE: He has already said that the cost had nothing to do with it.

Mr. COWAN: I am examining the witness.

Mr. SEVERANCE: I object to the question then, as leading and as already answered.

The COURT: Wait a minute, he hasn't got the question asked.

Mr. COWAN: I am asking if he considers each sort of freight ought to pay the same proportion of that sort of expenses which are in the nature of fixed expenses.

1988 The COURT: Have you got the question completed, if so, let it be read.

(Question read.)

Mr. COWAN: Strike it out. I will ask the question again.

Q. Do you consider that all freight ought to pay the same proportion of the expenses of maintenance of way, and structure in proportion to the weight of that freight, or should it pay it in proportion to the value of that freight.

Mr. SEVERANCE: I make the same objection.

The COURT: The objection is overruled. Now answer.

A. I hold that it should not pay the same proportion, otherwise rates would always be exactly the same on all commodities.

Mr. COWAN:

Q. Exactly.

A. But I also hold that no considerable quantity, that is no commodity of considerable volume, of which there is much business, should be based on less than the average cost of freight. I am willing to say that a road ought to carry at times down to the average cost for the sake of the commerce of the country, but it should not be compelled to carry at any time at less than the average cost. In other words, we would put the profit, that is we would put the profit the road made on some commodities and no profit on others, that would be the result of it.

1989 Q. Now, if nothing was hauled at less than the average, then should anything be charged more than the average. If so, what would your average be?

A. If everything was hauled exactly at the average, we would have a flat rate on everything.

Q. That is just what I thought it came to, if no considerable commodity should be hauled at less than the average.

A. But some commodities should be much more than the average.

Q. Then what would the average be?

Mr. SEVERANCE: I think the cross examination is correct, there is no average.

Mr. COWAN:

Q. I do not see how you could haul on less than the average if you brought it up to the average, it would be a flat rate.

A. This is expenses, not the rate. The average is expenses. You are talking expenses on one side and rate on the other. I say no rate should be made less than the average of the expense, but some rates should be more than the average of the expense.

Q. Now, you have your expense from Ft. Worth to Kansas City, including the cost of hauling the loaded car and the empty car, taxes, fixed charges per mile, and per car. The total cost per car you put at $63.77. What was the average operating expense per car mile on your road for that year?

1990 A. The average expense per car mile, I do not know.

Q. Your annual report shows that doesn't it?

A. Well, I guess not.

Q. Well, it shows the method by which you could estimate it, it shows the total car mileage and total operating expenses?

A. Yes, but remember that the operating expense includes passenger expense as well as freight. The car mileage does not, freight car miles.

Q. Even if you divide the total operating expenses, including passengers by only the freight car mileage, you would still get——

A. That would not be the expense per car mile.

Q. Well, it would be a good deal more, wouldn't it?

Mr. DAWES: I object to this, going into this speculative field.

The COURT: The objection is sustained.

Mr. COWAN: There is no other way by which I can test the accuracy of his calculations, except by asking him a few of these questions. I will not be very long.

Mr. SEVERANCE: I will make the objection on the ground that he ought not to be allowed to impeach the testimony of his own witness.

Mr. COWAN: I did not bring out this evidence.

The COURT: Ask him the next question.

Mr. COWAN:

Q. Isn't the average cost to your road per ton mile ascer-

1991 tainable if you divide the total operating expenses by the total ton mileage?

A. No sir, that includes passenger traffic also.

Q. And that would make it too great?

A. Yes. Besides it does not show anything about the gross ton mile. The annual report to which I suppose you referred has not the gross ton mile, that is simply the revenue ton mile.

Q. Yes, I am talking about the revenue ton mile. Is that not included in your total operation expenses, the cost of hauling the empty cars as well as the loaded car?

A. Yes sir.

Q. Is that not also included in your total operating expenses, the cost of all terminals, and all other operating expenses?

A. Every expense of the road, including the operating expense, except taxes and interest.

Q. Have you a copy of your annual report?

A. Not here.

Q. Can you furnish us one for the year 1904, for which this was made out?

A. Yes sir, is that 1904, or 1903?

Q. Well, 1903 is already in evidence.

A. I think that is for 1903 that you have there.

Q. If it is that will be sufficient, otherwise we will want one for 1904. Now, have you your exhibits "E and F" filed in this case, showing the make up of trains at Emporia?

1992 Mr. SEVERANCE: If the Court please, I will object to this as not redirect.

Mr. COWAN: It is cross examination of Mr. Baxter's evidence.

The COURT: Mr. Baxter just cross examined this witness, and is not your rebuttal?

Mr. COWAN: Mr. Baxter put in a lot of exhibits in his testimony in the Texas case, that I never inquired about, he made him his witness, and I am simply cross examining as to that.

Mr. BAXTER: I have not the slightest objection to making Mr. Peabody my witness if desired, but the questions I put to him were strictly cross examination of his original testimony.

The COURT: He will furnish you anything you want him to that he can get; you can ask him that after awhile.

Mr. COWAN: There is one other question I want to ask Mr. Peabody.

Q. When you spoke of the less number of cars in the trains of live stock, I will ask you if it was not afterwards ascertained in that case from the statistics from the Division Superintendents that the actual movements of trains showed a larger number of loaded cars in the trains carrying live stock than in the average of the other trains. Did you examine those statements?

1993 A. I did not; I do not know anything about it. I know that I took the movement that you wanted, that you called for and took the movement of every train on the Division called for in the time mentioned, and gave you the result as I have testified.

Q. Isn't it a fact also, with respect to the amount of loss and damage claims, that your Auditor prepared and filed a sworn statement in that case covering a period of six years, in which the total amount of loss and damage to live stock amounted to $232,000?

Mr. SEVERANCE: I object to that as incompetent.

The COURT: I don't see how it is competent.

Mr. COWAN: He asked how much it was for the year 1903. I am asking how much for the period of six years. That will show the average.

The COURT: If he has a report, let him bring it in.

Mr. COWAN: I asked him yesterday if he could get me the report, if he could find it. I don't know as he has been able to find it.

The WITNESS: I asked the Auditor and he said he made no such statement. I asked him for a statement for six years.

Mr. SEVERANCE: The objection is withdrawn.

Mr. COWAN: It is very peculiar, it is on file over his signature.

The WITNESS: Perhaps it may be well to explain your
1994 Honor, that there may be a confusion of terms as to "Auditor."

The COURT: Proceed with your questions.

Mr. COWAN:

Q. I wish you would ascertain Mr. Peabody, for six years what it cost your company for the total loss and damage claims, and what it amounted to per car, if you have not done so, for live stock, and do the same with respect to dressed meat and packing house products, so that we may have accuracy in regard to it rather than guessing.

Q. Do you know now how much claims you paid last year for packing house products and dressed meats?

A. I do not.

Q. Is it not a fact that in the shipment of live stock cars back from Chicago, you get a great deal more loading for your cars back than you get in the trans-Missouri *Company?*

A. Without having any definite knowledge, I should say as a general proposition, yes.

Q. Do you remember a statement made by your Car Accountant or Superintendent of Transportation, Mr. Carnes (?) in which he showed that of the total car mileage, 16 per cent. of your live stock cars were returned loaded, 16 per cent. of the return movement?

A. That is for the movement throughout the year?

Q. Yes.

A. I think likely that is very near the facts, I presume
1995 exactly the facts. My testimony however, related to the time when the stock was moving in the spring and fall.

Q. Yes, and that had relation to the range movement for instance?

A. To the range movements, when the movements were heavy we got cars back as quick as we could without reference to the empties. But other times of the year, we used the cars whenever we could.

Q. Isn't it a fact that the testimony which you read in regard to the empty movement of return cars, was as to their return movement to the place of loading empty out on the ranges, and not their return movements from places like Chicago?

A. No, not exactly. We call the return movement, the movement of the empty to the point, regardless of whether it had come loaded from that point or not. If a stock car was called for at Amarillo, and we sent it from Kansas City to Amarillo to load, we would call that a return movement of the car although it had not been at Amarillo before, the movement of the empty is called a return movement regardless of whether it goes to the point it originally came from or not.

Q. Will you make a statement, or cause a statement to be made by your Superintendent of Transportation or Car Accountant, show-

ing what percentage of cars moving between Kansas City and
1996 Chicago of live stock business returned loaded for the year 1903?

A. I don't believe he can make it.

Q. Mr. Peabody, isn't it a fact that the volume of the traffic in a particular commodity has a great deal to do with the rate you can afford to make?

Mr. SEVERANCE: I object to that as not redirect your Honor. That is part of his testimony in chief if proper at all.

The COURT: He may answer.

A. Any commodity that moves in large volume so that we can handle it at a minimum expense, will affect the cost to some extent, and to that extent we could afford to make a less rate, although there is some question whether we ought to or not.

Q. Isn't it a fact that when a whole community is engaged in a particular business, when their prosperity depends upon that, that it is a matter for important consideration, in giving the lowest possible rate to the product produced in that business?

A. We always try to conserve the interest of any community so as to promote the prosperity to the highest degree. If there is a manufactory located in a community and it is necessary to make a rate, in order to get that product in to the market, we do the best we can towards helping them out. That is done by all railroads.

1997 Q. And that same thing applies to agricultural communities?

A. That is a general principle. We seek to promote to the utmost the commercial prosperity of the country by making the rates that will move the largest amount of property.

Cross examination by Mr. SEVERANCE:

Q. Kansas City is largely dependent upon the packing industry is it not?

A. It is quite a large industry at Kansas City.

Q. One that under the rule you have just stated you would encourage, would you not?

A. If it needed encouragement.

Q. You don't make any such limitation to your answer.

A. My answer was exactly limited to that: If it was necessary to promote the prosperity of it, we made that rate. Now, if it was necessary to promote the prosperity of Kansas City by making a rate on packing house products we might do it.

Q. Mr. Peabody, you said the rate on dressed meat ought to be 150 per cent. of the live stock rate. Now suppose that the rate on dressed meat from Kansas City was 150 per cent. of the live stock rate, that would in your opinion, would it not, transfer the packing business to Chicago?

1998 A. According to my recollection when the rates were put on that basis, it had the effect of transferring a good deal of it to Kansas City.

Q. When was that?

A. Some years ago.
Q. Tell when it was, fix the dates?
A. I say, according to my recollection.
Q. Do you know anything about it?
A. Yes sir, I know the rates——
Q. What were the rates?
A. I know the rates on packing house products some years ago were considerably higher than they were on live stock.
Q. What was the rate?
A. I don't remember the exact rate.
Q. What was the live stock rate?
A. I don't remember that.
Q. What was the dressed beef rate?
A. I don't remember that.
Q. They were the same for a long time, weren't they?
A. I think they were, yes. Well, amid all the fluctuations that have been in that business in the last 15 or 20 years, I can't pretend to remember what the relative rates were.
Q. You remember when your road put the live stock rate down to 12 cents, don't you, about three years ago?
A. Yes sir.
Q. Immediately prior to that time had the rates been the
1999 same on packing house products and dressed meats?
A. I don't know.
Q. I mean the published rates, not the rates you collected, but the published rates, wouldn't that be the same?
A. I do not know what rates we collected or the published rates.
Q. You don't know anything about it?
A. No, I was not in the rate business at that time.
Q. But you do recollect the fact that they put that rate down to 12 cents?
A. I saw it so stated in the newspapers.
Q. That is all you know about it?
A. That is all I know about it.
Q. You say you think it is the duty of the railroad company to put in rates that will build up the country, that is what you stated, wasn't it?
A. Well, I think so.
Q. Do you think you would be putting in a rate to build up the country if you established such rates as would almost inevitably push all the live stock from West of Kansas City and Omaha, through to Chicago for slaughtering. Would that build up the Missouri River Valley?
A. It is a question of opinion. Some people might think it is better for the Missouri River Valley to raise stock and ship it to Chicago, and some might think they should slaughter it there.
2000 Q. I am asking for your opinion, not for a general opinion.
A. As a general proposition it is better for a country to develop to its highest possible state the finished product where it is grown.
Q. That is it exactly.

ing what percentage of cars moving between Kansas City and
1996 Chicago of live stock business returned loaded for the year 1903?

A. I don't believe he can make it.

Q. Mr. Peabody, isn't it a fact that the volume of the traffic in a particular commodity has a great deal to do with the rate you can afford to make?

Mr. SEVERANCE: I object to that as not redirect your Honor. That is part of his testimony in chief is proper at all.

The COURT: He may answer.

A. Any commodity that moves in large volume so that we can handle it at a minimum expense, will affect the cost to some extent, and to that extent we could afford to make a less rate, although there is some question whether we ought to or not.

Q. Isn't it a fact that when a whole community is engaged in a particular business, when their prosperity depends upon that, that it is a matter for important consideration, in giving the lowest possible rate to the product produced in that business?

A. We always try to conserve the interest of any community so as to promote the prosperity to the highest degree. If there is a manufactory located in a community and it is necessary to make a rate, in order to get that product in to the market, we do the best we can towards helping them out. That is done by all railroads.

1997 Q. And that same thing applies to agricultural communities?

A. That is a general principle. We seek to promote to the utmost the commercial prosperity of the country by making the rates that will move the largest amount of property.

Cross examination by Mr. SEVERANCE:

Q. Kansas City is largely dependent upon the packing industry is it not?

A. It is quite a large industry at Kansas City.

Q. One that under the rule you have just stated you would encourage, would you not?

A. If it needed encouragement.

Q. You don't make any such limitation to your answer.

A. My answer was exactly limited to that: If it was necessary to promote the prosperity of it, we made that rate. Now, if it was necessary to promote the prosperity of Kansas City by making a rate on packing house products we might do it.

Q. Mr. Peabody, you said the rate on dressed meat ought to be 150 per cent. of the live stock rate. Now suppose that the rate on dressed meat from Kansas City was 150 per cent. of the live stock rate, that would in your opinion, would it not, transfer the packing business to Chicago?

1998 A. According to my recollection when the rates were put on that basis, it had the effect of transferring a good deal of it to Kansas City.

Q. When was that?

A. Some years ago.
Q. Tell when it was, fix the dates?
A. I say, according to my recollection.
Q. Do you know anything about it?
A. Yes sir, I know the rates——
Q. What were the rates?
A. I know the rates on packing house products some years ago were considerably higher than they were on live stock.
Q. What was the rate?
A. I don't remember the exact rate.
Q. What was the live stock rate?
A. I don't remember that.
Q. What was the dressed beef rate?
A. I don't remember that.
Q. They were the same for a long time, weren't they?
A. I think they were, yes. Well, amid all the fluctuations that have been in that business in the last 15 or 20 years, I can't pretend to remember what the relative rates were.
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A. Yes sir.
Q. Immediately prior to that time had the rates been the
1999 same on packing house products and dressed meats?
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Q. I mean the published rates, not the rates you collected, but the published rates, wouldn't that be the same?
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Q. You don't know anything about it?
A. No, I was not in the rate business at that time.
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Q. That is all you know about it?
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Q. You say you think it is the duty of the railroad company to put in rates that will build up the country, that is what you stated, wasn't it?
A. Well, I think so.
Q. Do you think you would be putting in a rate to build up the country if you established such rates as would almost inevitably push all the live stock from West of Kansas City and Omaha, through to Chicago for slaughtering. Would that build up the Missouri River Valley?
A. It is a question of opinion. Some people might think it is better for the Missouri River Valley to raise stock and ship it to Chicago, and some might think they should slaughter it there.
2000 Q. I am asking for your opinion, not for a general opinion.
A. As a general proposition it is better for a country to develop to its highest possible state the finished product where it is grown.
Q. That is it exactly.

A. That is a general proposition.
Q. That is a general proposition?
A. Better for the country.
Q. Do you think an exception should be made of that in the case of Chicago?
A. Oh, no.
Q. Do you think that it is a matter of sound public policy on the part of railroads to divert the live stock which is raised in Kansas and Nebraska and western Iowa and western Missouri from the nearby market, packing establishments along the Missouri River and bring them over to Chicago for slaughtering, would that be sound public policy?
A. That is not the same question at all.
Q. I am asking this question now, take one question at a time.
A. As I stated before, that is a matter of opinion.
Q. I am not asking for anybody's opinion, Mr. Peabody but yours, I want your opinion on that.
A. I don't think that I have formed an opinion on that subject.
Q. You are unable to give an opinion?

2001 A. I rarely give an opinion without an extended investigation, and I have made none on the question of whether it is better to locate the packing houses at the Missouri River or Chicago. I have not investigated that proposition at all.

Q. You don't know anything about it?
A. I don't.
Q. But you are certain that in fixing the rates on packing house products, and on dressed meats and on live stock, all three of them, you would eliminate from consideration entirely the question of cost, with the possible provision that you do not want to reduce the cost below the cost of movement?
A. The cost of doing the business?
Q. Yes.
A. As a general proposition, I should claim that was the case.
Q. I am not asking as a general proposition, I am asking as to this particular proposition that, in the movement of packing house products and dressed meat and live stock, and fixing the rates, you will eliminate entirely from consideration the cost of moving the respective products or commodities?
A. Not perhaps entirely from consideration, but very largely.
Q. Well, wouldn't you entirely, so far as you can keep the rates up high enough to pay the actual expense of moving, your average expense that you spoke of?

2002 A. Yes, I think if I was making the rate, and all three of the commodities would pay the average cost of moving, that I would pay very little regard to the cost in determining which rate should be the highest.

Q. Now, would you, in view of that rule that a commodity must pay the average cost of moving, you would say would you not that the present cattle rate is too low?
A. The cattle rate and dressed meat and packing house products rates are all too low.

Q. Well, as a matter of fact the 23½ cent rate is below the actual cost including your interest, is it not acording to your figures?

A. I have not figured the 23½ cent rate, the 20 cent rate is what I figured.

Q. You figure that 20 cents is less than cost?

A. Yes sir.

Q. Just take your figures and see if 23½ cents rate would not still be below cost on that basis, figured out in the same way you figured on the 20 cent basis?

A. On live stock?

Q. Yes, it won't take but a minute.

A. (After making computation:) That is 22,000 pounds, that would be $51.70. It would be slightly more than the operating cost, but not as much as the total cost, still below the total cost.

Q. That is what I mean. Of course, you have to earn your
2003 inter-st on your bonds, don't you?

A. Certainly.

Q. And earn interest on your investment?

A. Yes sir.

Q. And you have to earn your taxes?

A. That has to go in.

Q. And you have to earn your operating expenses. Now, taking those items into consideration, figure everything as you figured for the purposes of this statement that you prepared for Mr. Ripley, on a rate of 23½ cents per hundred pounds, on live stock from the Missouri River zone to Chicago, wouldn't pay you out would it?

A. No.

Q. You would be losing money, you would be doing business at a loss?

A. On the basis of the average cost, yes.

Q. Yes, you would be losing money.

The COURT: Losing money on what basis?

A. On the basis of the average cost, that is the average cost of handling all freight, that is the only way we can get at the cost.

The COURT: But you make money on the moving expense?

A. Oh, there would be more money than would absolutely—than absolutely the moving expense.

Mr. SEVERANCE:

Q. How much more, you have got it right there?

A. Well, on the basis of 55 per cent. for movement cost, of
2004 course, that is an estimate.

Q. That is an arbitrary estimate, isn't it?

A. That is an arbitrary estimate.

Q. I will ask the question this way: Leave out of consideration the interest on your investment and your taxes, and take only the operating expense, how would you come out?

A. Well, that is, on the operating expense, total operating cost is $48.56 against a revenue on the basis of 23½ cents of $51.70. Slightly more than the operating cost.

Q. It would be two or three dollars a car more than the cost but

it would be about seven dollars a car less than the cost if you include your inter-st on your bonds and interest on your investment and taxes?

A. It would be considerably more, it would be nearer $13.

Q. Yes, $13. May I see that Carrollton table that you got up that you read from?

A. There is the Carrollton table and there is the pick up.

Q. Well, you would have no hesitancy then in saying, as a traffic man that the 23½ cent rate is altogether too low, would you from this territory in question?

A. Not a particle.

The COURT: Are there any other instances where the finished product carries a less rate than the raw material?

A. I don't recall it, there may be but I do not now recall any.

2005 Q. Will you look that up?

A. I think it would be perfectly safe to say there is not, but I would not like to say.

Q. Will you make a statement on that?

A. I will.

Q. And bring it in to-morrow.

A. It will involve the examination of thousands of articles to find out absolutely, but I can be reasonably certain by to-morrow, but I don't think there is a case of that sort.

Mr. BAXTER: In that connection Mr. Peabody, in making up that statement for the Court, will you examine the tariffs of railroads south of the Ohio River, and see whether their rate on raw cotton, cotton in bales, is higher or lower than their rate on cotton product, if you please?

A. I can, if we have those tariffs. I do not know that we have the tariff south of the Ohio River in our files, we have no occasion to use them. I can examine the Texas tariffs with that in view.

Q. You can ascertain by telegraphing any of the railroads?

A. I can telegraph, yes.

Q. Just ask them for their rates on cotton to the Ohio River, and their rates on cotton products, any road that carries that through.

Mr. SEVERANCE:

Q. Now, then, Mr. Peabody, in getting up this statement
2006 in which you show a greater expense of moving 30 cars of live stock from Carrollton to Chicago, I mean less expense than moving — house products train of 30 cars——

A. The packing house products train was not 30 cars, it was the number of cars that would make the same tonnage, it was only 23 cars.

Q. The same tonnage?

A. The same tonnage, that was the question.

Q. In the one case moving the live stock from Carrollton to Chicago, and in the other case, moving the packing house product from Kansas City to Chicago, you made your computation of the cost of

moving from Carrollton to Chicago on the basis of your average expense of moving all commodities per ton mile, didn't you?

A. Per gross ton mile.

Q. Per gross ton mile. That is 2.23 mills on the Missouri Division and 2 mills on the Illinois Division, and you did not take into account any extra expenses incident to the movement of the live stock?

A. Not at all. That is the average of our entire business.

Q. And you did not take into account the fact that you were hauling more dead load, that is in the weight of the car, I mean, in hauling the 30 cars of live stock in proportion to the pay load, than you would in hauling the 23 cars of packing house products?

2007 A. That appears in the result. I have taken account of the weight of the car in both cases, the car and the load.

Q. Well, I am speaking about this movement from Carrollton.

A. The weight of the car is included. You see in the heading of the statement it says, "Including the weight of the returned empty cars." Of course, the weight of the loaded car is there to-.

Q. I must have the wrong statement then.

A. Anyway, they all do include the weight of the car both ways. I took the figures, as the basis of the figures as shown in the Interstate Commerce opinion in this same case and used their figures as the basis per car, so there would not be any dispute on the weight.

Q. But you did not separate out in any way any special burdens of the character you have testified to in answer to Judge Baxter.

A. And add them to that?

Q. Yes.

A. No sir.

Q. Applicable to live stock?

A. They are all in the general average.

Q. All in the general average?

A. But they are not put in special.

Q. And all of those special burdens upon the movement of live stock, are charged against the packing house product here the same as against the live stock, aren't they?

A. Just as the burdens on the packing house products are

2008 charged against the other.

Q. What burdens are there on packing house products that are charged against the other, name a few.

A. The switching in Kansas City, the cost of switching in Kansas City is charged.

Q. Do you charge that as a special item?

A. No, that is not charged in a special item. The switching at Kansas City, is incident to all. There is no Kansas City terminals in there at all, the Kansas City terminal is on the packing house product. There is nothing there in the packing house product, because none of those touch Kansas City, in those two statements they start from Carrollton.

Q. I thought the dressed beef train and packing house products started from Kansas City?

A. That starts from Kansas City and the terminals are included in here.

Q. That is what I say. So you did include them. Of course you did not charge any Kansas City Terminals against live stock?

A. No, there is no Kansas City terminals charged against that live stock.

Q. What I want to know is this: You have testified that there are certain incidental expenses to which the shipment of live
2009 stock is subject, such as the maintenance of country stock yards and transportation of drovers and all of that. Now, what similar items of extra expense are there that are applicable to packing house products, there aren't any, are there?

A. Well, the transportation of the ice in the packing house products is one of the incidents, the heavier weight of the car, heavier car than the other car.

Q. Just a moment, let me ask you about that. In the case of packing house products, not dressed meat, but in the case of packing house products, don't you haul less pay freight in proportion to the weight, don't you haul more pay load, in proportion to the weight of the car than you do in the case of live stock. Mr. Ripley says you do?

A. Well, I could not tell that without figuring. The live stock car is not as heavy as the refrigerator car, and the live stock load is not as heavy as the packing house product load. The live stock load is 22,000 pounds, the livestock product load is 28,000 pounds, the live stock car is about 28,000 pounds, I guess, and the refrigerator car is about 36,000 pounds. I could not tell which is the most without making a computation.

Q. You figure it and you will find Mr. Ripley made a correct statement. Assuming that is the case, assuming that Mr. Ripley is not mistaken about that, then this item of the heavier weight of the car would come out, wouldn't it, you would not have that
2010 extra burden on packing house products, would you, you would figure on the other side?

The COURT: So far as packing house products are concerned.

A. Yes.

Mr. SEVERANCE:

Q. That is what I am talking about, so far as packing house products are concerned.

A. So far as dressed meat is concerned, you wouldn't.

Q. Give us some more special items. Don't volunteer so much.

The COURT: You ask questions.

Mr. SEVERANCE:

Q. Give us some more burdens that are peculiar to packing house products, that are not peculiar to live stock.

A. I don't remember any in particular.

Q. You don't know of any more, there are not any more?

A. No, I don't recall any. There may be for all I know.

Q. But there are all of these various things which you have mentioned, which are peculiar to the transportation of live stock?

A. To us there is the switching out to the track on packing house products, which is an extra burden.

Q. I understand that, but that is peculiar to your company, not peculiar to all companies?

A. Not peculiar to our company, other companies pay the same thing.

2011 Q. Some of them do not.

A. Some of them do not, your company I believe, does not.

Q. No.

A. Some of them do not and some of them do, I think.

Q. In fixing rates, Mr. Peabody, you will agree I suppose with Mr. Ripley, that where there are one or more roads that reach these industries without a switching charge, the other roads have to absorb the charge in order to be on a parity?

A. Certainly.

Q. So that that would not be considered in fixing the rates?

A. None of these things are considered in fixing the rates.

Q. Let me ask this: Do these figures showing the gross ton per mile, include passenger service?

A. No sir.

Q. That is purely freight?

A. That is pure freight.

Q. I will ask you one general question: These figures on these statements that you have produced here to-day are made up on the same basis as the figures that you handed Mr. Ripley concerning which he was interrogated?

A. Exactly. And I would like to explain here one thing that was brought up, that I did not make clear yesterday evidently, because I was asked questions about it. That is the inclusion of the mileage. It was assumed here that the mileage of the

2012 refrigerator cars had been included twice; and that I had taken repairs out in one case and had not taken out the mileage in the other. I want to explain that, as I said yesterday, although I took out the total average cost of our repairs in making up the cost of handling the packing house product and dressed meat, there are still some repairs which we do make on those cars. We do not maintain those cars because they are not our cars, but we do make some repairs, such as column bolts, arch bars and pulling out draw bars, which amounts, as near as I can get an estimate, of $1.50 to $2.00 per car per round trip between here and Kansas City. I also did not take out of my computation the mileage which we paid on the refrigerator cars as a part of the expenses, for the reason that the mileage is what we call in railroading, a balance account. We pay mileage and receive mileage, and sometimes we receive more than we pay. Last year we paid more than we received by some $300,000, and that pro-rated over the amount of the business made the cost of the refrigerator car 90 cents. For that reason I ignored both of them. I did not take into account the running repairs that we made

on the one hand or that little proportion of the switching on the other, so that the mileage is not in twice, as was supposed.

An adjournment was here taken to the following day, Wednesday, October 4, at 10 A. M.

2012*a* Train Live Stock, 30 Cars, Made Up in Missouri, Making 10 Pick-ups; Total Gross Weight, 1,155 Tons, Including Weight of Returned Empty Cars.

	Cars picked up, Mo. Div.	Miles.	Gr. ton-miles at 2.23 mills.
Hardin to Ft. Madison.	3	172	19866
Norborne	3	163	18826
Carrollton	3	153	17670
Bosworth	3	141	16286
Mendon	3	128	14784
Rothville	3	122	14091
Marceline	3	114	13169
Hart	3	103	11896
Biddle	3	90	10395
Gibbs	3	73	8432
Total	30	1259	145415 Gr. Ton-Miles at 2.23 mills.	$324.28

Add cost of stops for pick ups at A $1.35 per stop	13.50
30 cars Ft. Madison to Chicago, Ill Div. 237 miles 273735 Gr. Ton-Miles at 2.00 mills	547.47
Chicago Terminals in & out $5.74 per car, 30 cars	172.20
Total operating expenses	$1057.45
Add interest & taxes at 1.77 cents per car mils 21774 car miles	385.40
Total transportation cost	$1442.85

Ex.—Peabody, trans. p. 2012.

2012*b* Train 30 Cars Live Stock, Carrollton to Chicago; Gross Weight, 1,155 Tons, Including Weight of Returned Empty Cars.

Carrollton, Mo. to Ft. Madison, Mo. Div. 153 Miles 176715 Gr. ton-miles at 2.23 mills	$394.07
Ft. Madison to Chicago, Ill. Div. 257 Miles 273735 Gr. ton-miles at 2.00 mills	547.47
Chicago Terminals in and out 5.74 per car 30 cars	172.20
Total operating expenses	$1113.74
Add for interest & taxes at 1.77 cents per car mile, 23400 car-miles	414.18
Total transportation cost	$1527.92

Ex.—Peabody, trans. p. 2012.

2012*c* Train 13 Cars P. H. P., 10 Cars Dr. Meat, Kansas City to Chicago, 458 miles; Gross Weight, 1,155 Tons, Including Weight of Returned Empty Cars.

Kansas City terminals in & out 6.80 per car, 23 cars	$156.40
Sheffield, Mo. to Ft. Madison, Mo. div., 214 miles 247170 Gr. ton-miles at 2.23 mills	551.19
Ft. Madison to Chicago, Ill. Div. 237 miles 273735 Gr. ton-miles at 2.00 mills	547.47
Chicago terminals in & out 5.74 per car, 23 cars	132.02
Total operating expenses	$1387.08
Less proportion for car repairs 6.4 mills per car-mile, 21068 car-miles	134.84
	$1252.24
Add amount paid for car mileage	210.68
Total net operating expenses	$1462.92
Add for Belt switching to packing houses in Kansas City, $4.00 per car	92.00
Add interest & taxes at 1.77 cents per car-mile, 21068 car-miles	372.90
Total transportation cost	$1927.82

2012*d* Total Amount Paid by A., T. & S. F., Account Loss & Damage to Dressed Meats and Packing House Products During Year Ending June 30, 1905.

G. H. Hammond Co	$8.67	
Swift & Co	524.70	account wreck.
N. Morris & Co	3203.33	" "
Cudahy Packing Co	26.30	" "
National Packing Co	49.02	" "
Total	$3892.02	

JAS. PEABODY.

2012*e* Movement of Live Stock from the Missouri River to Chicago During the Period when the 12 Cent Rate was in Force via the Santa Fe, viz., August 1 to December 31, in 1902, and the Corresponding Periods of 1903 and 1904, when the Present Basis was in Force.

	Via all lines.	Via A., T. & S. F.
	Cars.	Cars.
Aug. 1 to Dec. 31, 1902	10,801	2258—20.9%
Aug. 1 to Dec. 31, 1903	10,801	2209—20.5%
Aug. 1 to Dec. 31, 1904	12,890	1184—14.6%

JAS. PEABODY.

2013 WEDNESDAY, *October* 4, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon JAMES PEABODY, resumed the stand for further cross-examination by Mr. Baxter, and testified as follows:

Q. Mr. Peabody, you spoke in your redirect examination by Mr. Cowan, you mentioned a place called Carrollton. How far is that from Kansas City, east of Kansas City?

A. Are those statements here that I had yesterday, showing the movements of that train?

Mr. SEVERANCE: They were left with the reporter.

The WITNESS: Well, I can make a very close estimate.

Mr. BAXER:

Q. Well, about, that is all I want.

A. Oh, not far from 100 miles, I guess.

The COURT:

Q. How much?

A. Not far from 100 miles, between 75 and 100 miles, I should judge. I could tell immediately by looking at the statement.

The COURT: Well, that is near enough.

Mr. BAXTER:

2014 Q. In your redirect examination by Mr. Cowan, you stated that the raw product in every case should be carried at less than the finished product. Suppose you have severe competition in the carriage of the finished product and no competition in the carriage of the raw product, would that fact make any difference in your opinion as to a rate that might be reasonably charged on them respectively?

A. It would not make any difference in my opinion as to the rate that should be charged, but it would make a good deal of difference in my action as to the rates that I did charge.

If some road which was in competition with me would foolishly make a rate below what I thought it ought to be, and below a reasonable rate, it would make a great deal of difference as to my action. I should probably have to meet that rate. They ought not to make a rate below a reasonable rate, but if they did, I should have to meet it.

Q. Would you not feel justified in meeting it provided the revenue derived from the manufactured product left you something over and above the cost of the movement of that product?

A. Yes, so long as it paid anything towards the expenses which would not be affected by the movement of it, it would be profitable in that sense, although, it would necessarily unduly burden something else that ought not to be so burdened.

2015 For instance, if we haul it for less than the average cost, something else would have to pay so much more to pay the

general transportation bill of the country and while we would get, perhaps, something out of the movement of that low rate stuff which would help us pay the charges which were not affected by the movement, it would not pay its proper proportion; still, we would take it, and we would be justified in doing it in a railroad sense.

Q. You spoke about competition. Take the competition that has arisen between the Missouri river and Chicago on these packing-house products, and so forth. Who is to blame for that competition?

A. Well, usually those things are brought about, not only in the Missouri river situation, but in a great many other highly competitive districts, chiefly through the misrepresentations of the shippers.

They come to us and offer us a lot of business and want to know what we can do. We name a tariff. They say they cannot ship it at any such rate as that; they have got to get a lower rate, and they say that they can get a lower rate.

That may be true or may not be, but in order to test it we offer a reduced rate. They say, no, that won't do, and we say it is the best we can do and they leave.

We become convinced by that (whether correctly or not) but we are convinced that somebody has offered a less rate, so we
2016 test the case until we find out what rate will take that business and we sometimes make that rate although it is very possible that our competitor has not named a rate and that the information given by the shipper is altogether gratuitous and is not true, but he has induced us to believe that such is the case, that the competition does exist, and it is just as real to us as if it was actually the case.

Possibly the very line that we think is cutting the rate has not been doing it, and this very party will go to that line and say that the rate is cut, not naming the roads. Shippers don't very often give the road, they don't ever do it, the road that will cut the rate.

By that means, we are induced to believe that the other line has cut the rate when they absolutely have not cut it.

That is usually the condition in connection with the reduction of rates. Railroads never voluntarily reduce a rate. That is self evident, but they are induced to do it by various considerations largely by considerations of that sort. That creates a competition which is very real and very strong.

Q. If you should find that a rate was too high to move a particular traffic that ought to be moved in your opinion, would you not reduce the rate?

A. We frequently reduce rates on that account, if it can
2017 be shown that the rate is too high to move the traffic; in that event we reduce the rate until it can move.

That is very often the case with manufactured articles and even that is carried to an undue extent.

Railroads, in their anxiety to get business, and the shippers (particularly manufacturers) in their anxiety to increase their field of market, to get a larger market, to go to greater distances, they and the railroads get together and very often agree upon a rate to take commodities into far distant fields in competition with something

else that is manufactured in that field and do it at a rate that ought not to be permitted, that is an unreasonably low rate.

As I say, when such a case exists, it entails a burden on some other commodity. For instance, we had a case before the Illinois Commission. The railroads were making four cents on brick, from Springfield, I think clear up into Northern Illinois to compete against the local brick manufacturers in Rockford, Illinois. That was an unreasonably low rate, but they did it in order to give a wider market to the Springfield manufacturers. I think it is a very foolish proposition.

Q. Have you had an opportunity to examine the southern tariffs to see whether the rate on raw cotton in bales from points
2018 in the south to the Ohio river, or to the northeast, are lower than the rates on cotton factory products manufactured in the south?

A. I have not had an opportunity to examine the tariffs, but I understand such is the case and I can very readily see why it is the case.

Q. Why would it be the case?

A. The southern states have had established within their borders, quite a number of cotton mills in the last few years. Once in a while—Well, ever since the war, they have sought to develop the manufacturing of cotton goods which previously were supplied from the mills of New England almost entirely.

Naturally, they manufactured more than the immediate demand of the southern states could take care of. That surplus they wanted to get rid of and they gradually invaded the territory of the northern men to do it and in order to do that they had to get down pretty low, and I presume that in some cases the rate has gotten down to below the rate on the raw product.

There is no competition from the south, or not very much competition from the south on the raw material, raw cotton. Of course, they meet the India competition and some other, but generally speaking, the rates on cotton can be fairly well maintained; but where you have a cotton mill in New England and another cotton mill
2019 in Georgia, they are going to compete pretty sharply in the intermediate territory, and they will, each of them, try to overlap the others and in doing so will make lower rates than ought to be made.

Q. If you controlled a line of railroad running from some point 450 miles west of the Missouri river to Kansas City, and which ran through a country where live stock is produced but where there are no packing-houses situated, and you had established a rate on live stock which did not pay and does not pay the average cost of the transportation; now if you find that between Kansas City and Chicago, the rates on the packing-house products are lower than the rates which were charged west of the river on the live stock, would you (in order to make such an adjustment as you testified yesterday was a reasonable adjustment if it could be made) would you lower your rates still further on the live stock in order to accomplish such a relation?

A. Most certainly not.

Q. Why wouldn't you do it if the relation ought to be sustained?

A. The rate was unreasonably low already, as I understood your question.

Q. Yes.

A. There is no justification in my mind for lowering it still further, merely to accomplish an adjustment with some other commodity that is unreasonably low. That would merely increase the burden which must be laid some where else. To consider the
2020 case that is here, for an illustration. 23 cents on cattle against 20 cents on packing-house product.

If the rate is reduced to 20 cents, there is 3½ cents which might be earned on the cattle, that must be paid for by some other commodities, for the total transportation bill must be paid by the commodities that are hauled.

If there is 3½ cents taken off the cattle, that must be paid by some other commodity somewhere.

Q. In the question which I put to you a while ago, I assumed that your road stopped at Kansas City, and that you did not participate in the transportation of packing-house products except in a westerly direction. Now suppose you extended your line from Kansas City to Chicago. Would you, because your line east of the river competed in the transportation of the product, reduce your rates west of the river on your live stock?

A. Most certainly not. I should not consider that one had any bearing on the other at all on the question of rates.

Q. In your answer to Mr. Cowan you said, "If I was to make the rates as made on the basis of to-day, allowing cattle at 23½ cents, I would put packing-house products at 28½ and dressed meat at 33½." By using the expression, "If I wa- to make the rates," do you
2021 mean that if you were to make the rates yourself, instead of the rates being made by your competitors.

A. Why, certainly. That would be a question of my own voluntary action on the rate question. The other would be what would be forced upon me by the action of my competitors. I would make the rate on the packing-house products and dressed meats higher than the other.

Q. That is the theoretical way in which it ought to be done, where a Traffic Manager is at liberty to carry out his own opinion of what is just and right?

A. That is not only the theoretical way, but the usual way in which it is done if there are no competitive conditions compelling some other action.

Q. In stating in your redirect examination that it is the general rule that commodities should bear different rates in proportion to their ability to pay the varying transportation charge, did you mean that the high priced fat cattle raised in Iowa should be charged a higher rate than the low priced half starved scrawny cattle brought here from Texas?

Mr. COWAN: I object to assuming a condition of affairs that don't exist.

Mr. BAXTER: It is sufficient, I hope for the purposes of illustration.

2022 A. If the two cars were side by side and there was a tremendous marked difference between the two, I should say that theoretically the fat cattle ought to pay more than the other, but it would be impossible to draw the line between the fat cattle and the feeder cattle, because you would never know where that line would come, because as the fat cattle grew leaner and the thin cattle grew fatter, it would be hard to tell where the line would come. However, we have that condition of affairs existing in relation to ores. We make one rate on ores that are valued at $100.00 and a higher rate on ores that are valued higher.

Q. Whether or not the rates are adjusted according to the values of the different products would be dependent upon the fact not alone that they had different values, but upon many other circumstances and conditions that surround their transportation.

A. Oh, yes, most certainly.

Q. Are you aware that it is shown in Appendix G to the Sixteenth Annual Report of the Interstate Commerce Commission, entitled "A Forty Year Review of Changes in Freight Rates," that for sixteen years and seven months out of a total period of twenty three years extending from 1879 to 1902, the rates upon live cattle to Chicago were higher than the rates upon the product of cattle by from five cents to seven and a half cents, and that during about one and one half months of that period the rates on live cattle were from 17 to 20 cents higher than the rates upon the product?

2023 A. I have looked at that exhibit and I find such to be the case.

Q. Are you aware that it is shown by the same appendix that for fifteen years and six months of the same period, the rates on live hogs from Kansas City to Chicago were higher than the rates on their product by from 5 to 11.6 cents per hundred pounds?

A. I have not made the computation as to the difference but I have seen that they are higher.

Q. Are you aware that it is shown by the same appendix that the rates on live cattle from Kansas City, Missouri to St. Louis, were higher than the rates on their product for sixteen years and ten months out of said period of twenty three years, by from 5 cents to 15¼ cents?

A. As I have said in regard to the others, I did not make any computation as to the time or the difference, but I see that the columns in the table show that the rates were higher on the one than the other.

Q. You stated that if you were free to make the relative rates, you would make the rates on packing-house products, say 23½ cents—I mean the rates on cattle 23½ cents and the rates on packing-house products, 28½ and the rates on dressed meat at 33½. Do you recollect that any such relative adjustment of those three sets of rates ever prevailed anywhere in the United States?

2024 A. No. I have an impression, although it is simply a recollection which we get in the natural course of business, that

some years ago the rates on dressed meats particularly were considerably higher than they were on cattle, but the relation, the exact relation I don't know, but I am quite willing to believe that no such adjustment as that was ever made.

There is one thing in connection with this matter that I would like to say. I looked it up to see, this morning, as to the effect of the rates on the movement, and I find that during the period when the Santa Fe Road had a 12 cent rate on cattle from Kansas City in effect, we carried no more than our ordinary proportion of cattle, no more than we did in other years when the rates were higher or were the same by all roads.

We had it in effect for four months and twenty days in the latter part of 1902, but our movement of cattle was not increased thereby nor was the movement from Kansas City to Chicago increased thereby, even by the 12 cent rate.

Q. What are the rates charged by your system now on live stock or cattle and hogs, rather?

A. 20 cents, as I understand it.

Q. And on packing-house products and dressed meats?

A. The same.

2025 Q. So you charge the same on your road on the packing-house products and dressed meat as you charge on the live cattle and hogs?

A. We do.

Q. But you do not put in force this relative adjustment of as 23½ is to 28½ or 33½?

A. Oh, no.

Q. If you are of the opinion and Mr. Ripley is of the opinion, as he expressed it here, that relation of the rates ought to be as you and he have testified, why is it that instead of charging the same rate on packing-house product and cattle and hogs, why don't you establish that relation between the live stock rates and the packing-house rates and dressed meat rates which you believe, both of you, ought to be established?

A. The rates are already too low on the packing-house product and the cattle. To do that would make the cattle rates lower than the dressed meat or the packing-house product rate.

If we could advance the packing-house products and dressed meat rate to that proportion, we would be very glad to do it, and I think, Mr. Ripley would order it so done, but that is impossible because of this contract which exists at the Missouri river, and as long as that contract exists, if we carry any of the product we will have to carry it at that rate.

2026 Just why the Santa Fe puts in 20 cents as against 23½ by the other lines, I don't know. I don't imagine they were any more anxious to obey the order of the Commission than the other lines, and as to why they put it in, I have not been advised. That does not come within my perview.

Q. Something has been said in the case about the relation between the rates on cattle and hogs and their respective products which obtained between Chicago and New York. Was that relation estab-

lished by the voluntary action of the carriers or wa- it established by arbitration?

A. I could not say, I don't know anything about it.

Q. Will you look at the tariffs here handed you, "I. F. C. D., 1081" and state the rates from Chicago to New York on cattle and hogs and packing-house products and dressed meats?

A. I see these rates are named by a rate basis number.

Q. The rate basis number you will find at the head of the tariff.

A. There are some notations opposite. That would show that 18 is the rate on cattle. I assume that to be correct. If so, the rate on cattle from Chicago to New York would be 28 cents. On hogs, it would be 30 cents, on fresh meat 45 cents, and on cured meat, 35 cents per hundred pounds.

The COURT:

2027 Q. What is the latter class?

A. Packing-house product, cured meat; fresh meat 45 cents, packing-house product or cured meat 35 cents, hogs, 30 and cattle, 28.

Mr. BAXTER:

Q. Now, instead of charging the same rate on cattle as on hogs, those eastern lines make a difference in those rates, don't they?

A. 2 cents per hundred pounds.

Q. And instead of charging the same on packing-house products as on dressed meat, they make different rates on those products?

A. They have 7 cents on the packing-house product and 17 cents on the dressed meat. I should say that was not too great a difference.

Q. Nevertheless, it is not the relation between the rates which you and Mr. Ripley have testified would be the relation that you would make, if you could control the situation?

A. Well, I would not like to say that I would make it 23½, 28 and 33½, but I would adjust it somewhat in that general way; that is, have the packing-house rate considerably more than the live stock rate and the dressed meat rate considerably more than the packing-house rate. The exact adjustment I would have to consider very carefully.

Q. After all, isn't the question as to the adjustment of these rates one for the men engaged in the transportation of traffic, in consultation with their customers, to settle as to what those relations

2028 shall be in different parts of the country?

A. Altogether, and possibly no two men would have the same idea.

Examination by Mr. LYNDE:

Q. Did you make that examination that you were asked to make by the court as to other commodities?

A. Not as yet, no, I have not had any time.

Q. When you make that examination I wish you would look to see whether on the Santa Fe Road between Chicago and Kansas

City, your tariffs do not show the following rates on the following commodities. Pig-iron, $3.08 per ton?

A. From where?

Q. Chicago to Kansas City. Rails, $2.00 per ton, rails being the product of pig-iron. Malt, 10 cents per hundred pounds, barley, 15 cents per hundred pounds, malt being the product of barley. Paint, 17 cents per hundred pounds, Linseed-oil, 27 cents per hundred pounds, turpentine, 27 cents per hundred pounds; the oil and the turpentine being the products from which the paint is manufactured. Will you kindly see as to that?

A. I should think that might be so, competitive conditions control in that case.

Q. Undoubtedly, competitive conditions control in the fixing of almost all rates?

2029 A. Yes, but that does not vitiate the principle that the commodity should proceed to a higher rate as it progresses towards the finished product.

Q. It does not affect the principle but it simply goes to show that where competitive conditions exist, some other principle govern or rather, the competitive conditions govern?

A. It is not the principle that governs then, it is the condition.

Q. Then there is another item, too. Shot, 15 cents per hundred pounds and pig-lead, 27 cents per hundred pounds, between the same points.

A. Let me explain that. The rate there in a good many of those cases, the comparison is not fair; for instance, in that last one. Shot is a manufactured product that moves west; pig-lead don't, pig-lead moves the other way, and there is none going west. If there was, probably the rate would be different.

Q. I want to know what the fact is as to your tariff.

A. The same way as to a great many other commodities. If they don't move in a certain direction, they don't pay any attention to the tariff.

Q. The question is as to what the fact is, if you will kindly look at those particular points I will be obliged. You stated that based on the cost of service, the rate on dressed beef and packing-house product was greater than the rate on live stock. Now let me ask you——

2030 A. I don't think I stated that. I don't think I stated that any rate should be based on the cost of the service. I stated positively that it should not be based on the cost of the service.

Q. I think you gave that as your opinion. Nevertheless, I understood you to say as a matter of fact that between Kansas City and Chicago, based on the cost of service, whether it should be so or not, based on that alone, the rate on dressed beef and packing-house products should be greater than the rate on live stock?

A. I should say so.

Q. I want to ask you whether, in arriving at the cost for the purpose of making that basis, you did not charge as against the live stock and against the dressed beef and against the packing-house

products your general average of all rates, in determining the operating expenses and the terminal expenses?

A. I don't think you said what you meant to. You meant the general average of all expenses.

Q. Yes, you are right, that is what I meant. That is, your estimate there was made in the same way that the statement was which you prepared for Mr. Ripley?

A. That was not made that way at all. It is not based on the general average of all expense. It is based upon the average of the expenses on a particular portion of the road over which that traffic travels.

2031 Q. Precisely. I am confining this to Kansas City and Chicago, on that portion of your road, and, without going into the matter any further, I think we all understand the way in which you handle it. You put in one item, all the expense and that you divide by the total number of cars?

A. No, the total number of gross ton miles. The weight that we haul; that is our unit, the gross ton miles.

Q. And your result is the final amount that you arrive at?

A. The weight in the car multiplied by that unit determines the cost.

Q. That is the general average on that particular division?

A. The general average on that particular division.

Q. And your estimate, as I say, as to the cost of service between the live stock on the one hand and the dressed meat on the other, is arrived at in the same way?

A. Yes, based on the general average.

Q. By that method, a car of live stock would stand on the same basis as a car of coal?

A. Exactly.

Q. Now, as to your pick-up business east of Kansas City, does your road have very much of that?

A. Yes, we have considerable live stock through Missouri. It is quite a live stock country. Most of it, I think, however, moves to St. Louis, I think so. I am not in the traffic part of the

2032 business just now.

Q. Mr. Ripley stated, as I understood him, that that was a very small business?

A. I don't know about that.

Examination by Mr. DAWES:

Q. I understand your theory to be that generally the rate upon the product should be higher, generally speaking, than upon the raw material, as a principle. Suppose both the product and the raw material were carried at a rate which failed to produce on either the average amount of expenses, as you testified, and suppose competitive conditions compel you to reduce the rate on the manufactured product. Would you think that it was necessary or desirable to reduce then the rate upon the raw material in order to preserve that uniformity?

A. I should think it would be wholly undesirable for the amount

that we are obliged to take off would necessarily compel some other commodity to pay that extra expense.

Q. So that, as the conclusion of your testimony, I infer that in cases where competitive conditions compel you to make a rate upon the manufactured article which does not bear a proper proportion to its cost, that it is not then desirable or it would be improper and it would not be good business or desirable for any reason, to reduce the other?

2033 A. I would like to put that in the strongest possible terms that it should not under any condition- *to* be reduced for that reason.

Q. So under the conditions that prevail here, is it your opinion that the live stock rate, on the principles which you have enunciated, should be reduced to the rate which we are compelled to put in on packing-house products and dressed meats?

A. I should say that, on the contrary the other ought to be forced up. That is, the rate, as determined by my figures is absolutely unreasonably low.

Q. Assume that you could not force the other up because of controlling competitive conditions?

A. Then I certainly would not reduce the other.

Q. Is there any such relation between the manufactured product in this case and the raw material as should make the rate equal?

A. By no means. It won't make practically any difference if you reduce the rate to 20 cents, there won't be an additional car come to Chicago, not one. The railroads will simply be out 3½ cents per hundred pounds and somebody else will be ahead that amount.

2034 Redirect examination by Mr. COWAN:

Q. If what rate is reduced 3½ cents it won't make any difference?

A. The live stock rate.

Q. Suppose it was reduced 10 cents, would it make any difference?

A. I did not hear that.

Q. Suppose it was reduced 10 cents, would it make any difference?

A. We reduced it 12 cents and it did not. We reduced it 11½ cents and it did not make any difference.

Q. Don't you know that the other roads likewise met your rate for the competitive traffic?

A. I understand that they did not. I do know, or at least I am advised by an official of our road that he went to a large shipper and tried to get him to go into the market and buy the cattle and he said it would be of no use, he would simply lose all the money that he put into it. It would not make a particle of difference in the number of cars that were shipped. We did not get any more then than we did before.

Q. Why wouldn't it make any difference in the price of the cattle? Why couldn't a man afford to buy them, if they are sold cheaper down there, and ship them up here?

A. It is understood that the men in Kansas City go in
2035 and buy what cattle they have to have and they are the same people as a rule in Chicago as in Kansas City, and the

chances are that they would control the market so as to handle it. At least, that was the effect of our reduction and we had it in effect for four months and twenty days and we took it out because it did not have the effect that we thought it would have.

Q. When you say that other roads did not meet your rate, do you know that to be so?

A. I don't know that any other road did. So far as I know no other road did. If they did, they have a published tariff and it can be readily ascertained.

Q. Do you know whether it increased your relative shipment in here during those months?

A. I have examined the re d, and it don't appear to have done so.

Q. It don't appear to have increased then, compared with what period?

A. Corresponding periods of the year before and the year after, particularly the year after. We had more the year after than we did that year.

Q. Is it not a fact that at that time, when you had that rate in there were such conditions existing at Kansas City, that for a month at least prevented you from handling the traffic?

A. 1902?

Q. Yes, when did you have that great flood there?

2036 A. That was in June. This rate went into effect August 11th, 1902. That did not affect the road east of Kansas City very much.

Q. Did it affect the roads west, bringing them in?

A. Yes, but these shipments were out of the Kansas City stock yards.

Q. Isn't it a fact that your rates to Chicago from points west of Kansas City were not in fact changed when you made a 12½ cent rate, local rate, from Kansas City?

A. I don't know.

Q. If you wanted to ship from some point in Kansas or Texas to Chicago, you would pay just exactly the same as if that 12½ cent rate was not in there?

A. I presume so, that is what ought to have been done.

Q. Is not it a fact that practically nothing originates at Kansas City that does not come in there from elsewhere, for shipment on the local rate?

A. Perhaps that is the reason that none came out at 12 cents.

Q. Isn't it a fact that stations located on your line would simply ship stock or cattle to the amount they had to market anyhow—the amount they would ship for example, from Carrollton or many other stations on your line would simply depend on the number

2037 of cattle there were to be shipped and not on the rate you made for it.

A. I guess that is so.

Q. So it would not change the amount of your shipments, it would not induce the shipper to drive them from other roads to yours because the distance would be too great. Isn't it a fact that you do

make a difference in the rate on the fat cattle and on the poor cattle wherever the circumstances are such that you can determine that it is one or the other class?

A. Where they are going for feeders or range cattle, where the destination is such, that is a fact.

Q. You ship cattle out from Kansas City which are bought as feeders, to feed lots for three quarters of the fat cattle rate?

A. That goes west, sometimes east, I think.

Q. How many cars of live stock did your company handle, approximately, in the year for which you made the figures? You gave the tonnage but about how many cars would that amount to, the tonnage of the live stock shipments.

Mr. SEVERANCE: Is this redirect examination?

The COURT: It don't seem to me it is. This ought to be redirect.

Mr. COWAN: They asked for tonnage and I am asking for the number of cars. [illegible] asked him to make a statement
2038 of the total amount h[illegible]ved.

The COURT: I sus[illegible]he objection.

Mr. COWAN:

Q. Isn't it a fact that the cost of delivering the live stock at Chicago, contained in the statement which you made for the Interstate Commerce Commission was $1.78 per carload?

Mr. SEVERANCE: I object to that as not redirect. It is cross-examination of his own witness.

The COURT: The same ruling on the ground stated.

Mr. COWAN:

Q. Isn't it a fact that in your statements which you made to the Interstate Commerce Commission in regard to the expense at Kansas City of live stock, that you placed it at $2.40 a car for the year stated?

Mr. SEVERANCE: The same objection.

The COURT: The same ruling.

Mr. COWAN:

Q. In order to know the value of the figures you have given with respect to the cost of the gross ton mile, is it not necessary to have a statement of the amount of expenditures on that part of the road, into which you divide the gross ton mileage, to determine?

Mr. SEVERANCE: The same objection.

A. Yes, sir.

2039 The COURT: Well, he has answered that, he said, yes.

A. I stated that.

Mr. COWAN:

Q. You have a copy of your statement, haven't you, to that effect?

A. Yes.

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Q. You have a copy of your figures?

A. I have at the office. I have the figures on which they are made up. It would make a pile as big as this desk.

Q. You remember of making for the Interstate Commerce Commission, a statement showing the expenditures upon the road, into which you divided the gross ton miles?

A. That is made all during the year as every voucher comes in. It is distributed on every voucher.

Q. You made it up for the Commission. Have you copies of those statements?

A. You mean this printed sheet?

Q. No, it was type-written, just two or three type-written sheets.

Mr. SEVERANCE: I object to that as immaterial.

The COURT: Objection sustained.

Mr. COWAN: I can explain [illegible] it is very material, but, if it is excluded on the ground th[illegible]id not ask it before or ask in regard to it, that is a different [illegible]ition.

The COURT: If you wa[illegible] put in any statements, ask
2040 him to bring them so that [illegible]nsel can examine and cross-examine.

Mr. COWAN: Well, I will ask him off the stand.

Q. Is it not a fact that the volume of traffic moved over any line would affect the average cost per gross ton mile.

Mr. SEVERANCE: That is not redirect.

The COURT: I think you have been over that, Mr. Cowan, the objection is sustained.

Mr. COWAN:

Q. Have you examined the records to ascertain the number of live stock which were in fact brought in by the Santa Fe during that period of 1901, as compared with 1902, the total shipments per year?

A. I have the reports of 1901, 1902, and 1903 of the Chicago Live stock, right here. I glanced at them this morning. They speak for themselves of course, they are a printed document.

Q. There is filed before the Interstate Commerce Commission in a case, by Mr. Bird, the following statement which I want you to ascertain whether it is correct or not. From August 15th to 31st, 1901, shipments via the Santa Fe from Kansas City, Leavenworth, Atchison, St. Joseph, to Chicago of live stock 13,267, for cattle for 1901.

A. What dates?

Q. August 15th to 31st. For 1902, 20,417. For September you shipped in 27,656 head; in 1901. In 1902, the same month, 34,259 head.

2041 A. Is that cattle or live stock?

Q. Probably that is the number of live stock. I do not know whether it is live stock or cattle, but I want you to verify these figures.

October, 21,281 head, for 1901 as against 35,785 head for 1902;

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November 8,966 head for 1901 against 14,724 head for 1902; December 1st to 21st, 7,147 head for 1901 against 8,129 head for 1902. The total for that period, for 1901, 78,317, for 1902 113,314. I would like for you to verify that and see if you dispute that fact.

Mr. LYNDE: Let me see that. (Referring to transcript from which counsel has been reading.)

The WITNESS: That is the movement from the Missouri river points?

Mr. COWAN: Kansas City, Leavenworth, Atchison and St. Joseph.

Mr. DAWES: I object to the information in that form. If it is competent for Mr. Cowan to prove that fact, then it would be proper, I think to ask the witness about it. As I understand it now he wants to know if Mr. Bird did not say certain things in some other case before the Interstate Commerce Commission, and will the witness be kind enough to state whether he agrees with Mr. Bird. That cannot be of any value here.

The COURT: I understand that he wants the witness to
2042 hunt up the facts as he stated them. If he can do that it is all right.

Mr. DAWES: If he asks him what the figures are for those particular periods. I don't think Mr. Bird's testimony has anything to do with it.

The COURT: What you want him to do is to state the fact.

Mr. COWAN: Whether he disputes the proposition stated in those figures.

The COURT: That objection is sustained. The witness will simply bring a statement here for counsel to examine and cross examine about.

Mr. COWAN: (Addressing the witness) Well, then, you ascertain the facts.

The WITNESS: Is that for the period while this 12 cent rate was in operation, from August 11th to December 31st?

Mr. COWAN: August 15th to December 31st.

Mr. DAWES: Have you got the figures there?

A. No, not from the Missouri River points alone. I do not know that we have them segregated. It may take quite a good deal of work to make them up.

The COURT: Anything else with this witness, gentlemen?

Mr. LYNDE: When you make up that statement——

Mr. COWAN: There are a number of other questions I would like to ask the witness, but as I understand the ruling of the
2043 court, this is to be considered re-direct examination, and I don't want to trespass upon the ruling of the court.

Mr. LYNDE: When you make that statement, include the movement of all live stock between those periods as well.

The COURT: Can you remember all of that? If you cannot remember it the reporter will write it out for you.

The WITNESS: Yes, if he will do that.

Mr. COWAN:

Q. Did you bring the statement in regard to the loss and damage claims that I requested yesterday?

A. Our auditor says that he did not make any such statement. To compile that statement would take, I should say it would take four or five men a month.

Q. Well, I have telegraphed to Washington for it, and will get it that way.

A. I think possibly you are referring to some statement that was made by the auditor of the G. C. & S. F., who was present in that case. I don't think that Mr. Bailey was there at all. Mr. Bailey says that he did not make any such statement.

Q. Well, the statement, "I have telegraphed for it." Did you get the statement with respect to the loss and damage claims in respect to the packing house product and dressed beef?

A. I am having it made. It will take some time to make it up. We have not any separate statement of that, but it is being

2044 made up now.

Q. Mr. Peabody, is it not a fact that the year 1903 for which you made your statement, on the Santa Fe, was one of abnormal expenditure in the matter of maintenance of way and structures and maintenance of equipment, as operating expenses, into which you divided your gross ton mileage?

Mr. SEVERANCE: Is that the statement that Mr. Baxter interrogated him about?

Mr. COWAN: Yes.

The WITNESS: I think not. We had more expense on some divisions, expenses that were heavier than normal. We had expenses on other divisions less than normal. I think the expenses shown in 1903 for the various roads over which the cattle travelled would not average more than what we consider the normal expenses for maintenance. The figures in this case, however, are based on those for 1905 and not for 1903.

Q. You mean the figures testified to by Mr. Ripley?

A. Yes sir.

Q. Isn't it a fact that upon grain moved from Kansas City to Galveston, for export and moved from Kansas City to Chicago on the basis of the proportional rate for export; on lumber moved from the Louisiana and Texas lumber fields to the Missouri River points and to Chicago; on all Pacific Coast traffic, estimated on the

2045 basis of your figures, that they would show a greater loss and a greater deficit than the live stock or packing house products or dressed meat?

A. I cannot answer as to the lumber. I have not figured it. I think there are some of those lumber rates that are even more foolish than the live stock rates.

Q. What about the grain?

A. For instance, we carry lumber from that Beaumont Territory, clear around into Indiana. I think the man ought to be discharged that made a rate of that sort.

Q. 26 cents per hundred pounds to Chicago territory from Beaumont, isn't it?

A. So far as the Pacific Coast is concerned, I have made figures on that lately. They are very much higher.

Q. What Pacific Coast traffic do you refer to?

A. All of it; particularly on citrus fruit.

Q. What is your rate on citrus fruit?

A. $1.25.

Q. $1.25 per hundred pounds from Los Angeles to Chicago?

A. Yes sir.

Q. And that rate extends to Buffalo.

A. It extends from the Missouri River to the sea board.

Q. $1.25 for all territory between the Missouri River and the sea board?

A. Yes sir.

Q. $1.00 to the Missouri River?

A. No, I think it is $1.25 to the Missouri River. $1.00 on
2046 lemons from the same territory during certain periods of the year. That is a competitive proposition again.

Q. Have you made a computation on grain between Kansas City and this place on the basis of 11¼?

A. No sir.

Q. Have you made the computation on the basis of 15 from Galveston to New Orleans?

A. No sir, so far as Kansas City is concerned it is very easy for you to figure it. You have got the rate per ton mile between Kansas City and Chicago, and you can tell in a minute whether it is more or less profitable.

Q. The basis of your average cost here does not give any allowance for the fact that you are moving a given traffic a long distance, does it?

A. It is based on the ton mile. The more miles, the more it costs.

Q. You are basing it upon the same elements of cost whether it is moved 100 miles or 1000 miles?

A. The same elements of cost on the various divisions where it is moved. It won't be the same cost on any two divisions.

Q. Well, the same factors?

A. The same factors enter into it.

Q. You made a statement yesterday in answer to Judge Baxter that in carrying live stock traffic there was a lighter train loaded. Would you be able to determine that unless you took your
2047 actual train consists and ascertain therefrom what the relative train load is as between those trains which carry live stock and those trains which do not?

A. Not definitely, no sir. My general impression—I am getting those in my office all the time, the actual loading of every train on the road comes to my office on a separate sheet, and of course, I see them as they go in, more or less; not all of them, to be sure.

Q. Is it not a fact that there was filed a statement of the kind I asked you about yesterday, of the consists of trains out of Gainesville, that that was filed in that case?

Mr. SEVERANCE: I object to that as immaterial.

A. I made up such a statement.

The COURT: Objection sustained.

Mr. COWAN:

Q. Didn't that statement show the number of loaded cars per train in which the live stock was carried for the period given, and then the trains which did not carry live stock?

Mr. DAWES: I object to that.

The COURT: Objection sustained. I don't know whether it makes much difference what he showed then.

Mr. COWAN: I will ask you to please let us have the annual report for 1904 and 1905. There is one of 1903 already here.

2048 Mr. LYNDE: You have got one for 1905.

Mr. SEVERANCE: The reporter identified it.

Mr. COWAN: I know he did, the one I gave him.

The COURT: Anything else with this witness?

Mr. SEVERANCE: There was a young gentleman on the stand here two days ago, whose modesty, I believe, was complimented by the court, who seems to have gone to the extent of effacing himself. He represented Schwarzschild & Sulzberger, and was told to come back here yesterday morning with a table of figures, concerning which he could be examined, concerning some very extraordinary statements which he made in reference to claims. I have not seen him in court since then, and I would like to inquire when it is proposed to bring this witness back?

Mr. COWAN: He has reported that he could not get the statements finished until to-morrow morning, and will be in with them at that time.

EXHIBITS

NOT

SUITABLE

FOR

MICRO-

FILMING

JAMES V. MAHONEY, called as a witness on behalf of the complainant in rebuttal, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. State your place of residence?

A. I reside in Chicago.

2049 Q. Are you chairman of the Western Trunk Line Committee?

A. Yes sir.

Q. An organization of various lines of railroads leading from here westward?

A. Yes sir.

Q. Do you keep the statistics showing the traffic and the movement of the traffic and the revenue of the traffic from Missouri River points, which passes through the Mississippi River gateways, on all the lines of railroad which operate between those two rivers?

A. I think we do, yes sir.

Q. That is a part of the work of the Western Trunk Line Committee?

A. Yes sir.

Q. Have you prepared, at request, in this case, certain statements showing the tonnage and revenue on live stock and on packing house products and dressed meat, on classified freight, which moves from the Missouri River eastward through the Mississippi River gateways for certain years, 1902, 1903, and 1904?

A. Yes sir.

Q. Will you please produce those statements and simply explain what they are, and file them as exhibits to your testimony?

A. The first statement on the memorandum sent me in connection with this summons reads, "Statement of total revenue of live

2050 stock, fresh meat and packing house product. From Kansas City, Atchison, Leavenworth and St. Joseph, east-bound, for the years ending December 31st, 1902, 1903 and 1904." I have prepared that statement, which is herewith submitted, and I have marked it "Exhibit No. 1."

Mr. BAXTER: Will you read the caption of it?

A. The caption of the statement is, "Movement of fresh meat, packing house products and live stock from Kansas City, Atchison, Leavenworth and St. Joseph, east-bound for years ending December 31st, 1902, 1903, and 1904. Weight in tons." This shows the amount for each road named, the Santa Fe, the Rock Island, the C. B. & Q., the Chicago Great Western, the Chicago, Milwaukee & St. Paul, the Chicago & Alton, the Kansas City Southern, the

M. K. & T., the Missouri Pacific, the Frisco and the Wabash. I have called some of the roads by their short names. That is Exhibit No. 1.

(The said Exhibit so produced by the witness, and above identified is hereto attached).

(Here follows Exhibit No. 1 marked p. 2053*a*.)

EXHIBIT No 1

2053a

MOVEMENT OF FRESH MEAT, PACKING HOUSE PRODUCTS AND LIVE STOCK

FROM KANSAS CITY, ATCHISON, LEAVENWORTH AND ST JOSEPH, - EASTBOUND

FOR YEARS ENDING DECEMBER 31ST, 1902, - 1903 AND 1904

WEIGHT IN TONS

YEAR	A.T.&S.F.Ry.		C.&A.Ry		C.B.&Q.Ry		C.G.W.Ry		C.M.&S.P.Ry		C.R.I.&P.Ry		K.C.Sou.Ry		M.K.&T.Ry		Mo.Pac.Ry		Q.O.&K.C.RR		St.L.&S.F.R.R		Wabash RR		TOTAL ALL ROADS	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
FRESH MEAT																										
1902	32766	121246.20	63251	233934.32	129793	480184.92	46321	171008.52	52566	194497.38	40681	150533.68	87	327.58			177	655.59			29009	107343.04	3247	12009.05	397798	1471740.28
1903	38327	141812.80	71486	264492.66	142673	527893.65	80379	297411.45	52233	193265.62	11306	41826.73	400	1479.47			2712	10045.05			21119	78145.02	4963	17625.67	425398	1573998.05
1904	25709	95120.56	88281	326628.38	159048	588477.40	80879	299260.43	57631	213[illegible].51	8534	31568.55	226	835.50	23	86.69	2730	10516.76			22075	81692.13	4104	15165.21	449240	1662596.08
PACKING HOUSE PRODUCTS																										
1902	9305	34421.03	19644	72680.27	61250	226620.99	45979	170131.66	14821	54848.81	24976	92425.31	637	2363.39	1846	6833.52	15112	55910.00	754	2784.59	57136	211402.09	19471	72035.78	270931	1002457.47
1903	14746	54567.97	17380	64312.03	53897	199431.26	84307	311939.57	13194	48820.37	22997	85080.81	2100	7765.46	341	1262.56	19561	72372.22	109	405.39	44532	164755.47	12916	47787.00	286080	1058502.11
1904	19012	70350.11	33200	122840.72	78684	291129.44	73638	272445.54	17698	65478.20	11698	43299.52	3073	11380.33	304	1122.93	18584	68761.04	99	368.70	45822	169544.39	15096	55850.18	316908	1172571.11
LIVE STOCK																										
1902	32762	98904.50	33971	103239.68	44019	167535.79	1763	6661.72	1582	4964.82	15741	48600.25	7	45.37	10	60.50	15482	47566.71	33	97.35	20067	106716.60	43549	145252.12	208986	729745.43
1903	36811	112892.10	43930	132401.80	55874	205802.04	836	3282.73	7382	22554.09	13256	41119.83			241	741.95	15108	51616.95	117	343.97	8137	37816.03	24165	85844.35	208357	694415.84
1904	33604	103284.83	61355	184862.94	76518	262626.22	948	3112.55	8694	26280.39	8739	27475.40	11	60.50	106	312.31	19553	64282.76			18229	68042.00	53537	172282.88	281294	912623.28

EXHIBIT No 2

2053 B

MOVEMENT OF FRESH MEAT. PACKING HOUSE PRODUCTS AND LIVE STOCK.

FROM OMAHA, SO. OMAHA COUNCIL BLUFFS, NEBRASKA CITY & OTHER NEBRASKA POINTS, - EASTBOUND

FOR YEARS ENDING DECEMBER 31ST, 1902, 1903 AND 1904

WEIGHT IN TONS

FRESH MEAT

YEAR	Burlington		C. G. W. Ry		C. M. & St. P. Ry		C. R. I. & P. Ry		C. & N. W. Ry		Ill. Cent. R.R.		Mo. Pac. Ry		Wabash R.R.		Total, All Lines	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
1902	41833	154785 64			45711	169134 84	29376	108680 25	64682	239315 84	6852	25480 28	12	46 06	448	1658 04	188944	699100 90
1903	36952	136716 55	2018	7464 76	53015	196177 80	10808	39990 02	111618	412993 16	21141	78210 22	227	844 34	2266	8388 07	238040	880984 92
1904	33715	124726 30	40491	149821 52	33430	123691 26	42204	156150 11	48488	179416 49	13875	51332 77	406	1504 16	1729	6400 73	214338	793043 34

PACKING HOUSE PRODUCTS

1902	44581	166072 05			27335	101131 37	12672	36885 88	17182	63574 45	13067	48359 61	16127	59658 98	14870	55022 30	146134	540704 14
1903	45279	167536 85	1113	4119 82	47774	176770 90	11168	41367 43	28153	104165 35	31063	114934 99	10325	38191 88	10696	39564 52	185571	686652 04
1904	43186	159825 86	27044	100069 52	29251	108235 74	7338	27148 58	12326	45605 45	18129	67083 30	12767	47243 19	10372	38387 14	160413	593598 78

LIVE STOCK

1902	23620	92848 51			3655	14137 24	6766	25006 89	8758	33328 31	2985	12335 35	707	2771 90	2708	10012 75	49199	190440 95
1903	20284	82509 29	15	6050	5074	19243 39	5071	18894 84	12610	48838 87	3091	14496 93	664	3502 40	2675	12088 70	49484	199624 92
1904	24560	94800 06	1203	5038 64	9055	33554 89	14121	52134 52	17428	65104 20	3863	16614 91	647	3418 80	4800	22831 91	75677	292527 93

NOTE:- Movement from Omaha, So. Omaha, Council Bluffs & Nebraska City not shown separately during 1902 and 1903

Movement from Omaha So. Omaha, Council Bluffs & Nebraska City not shown separately for period from Jan'y 1st to March 31st, 1904

From Jan. 1st 1902 to July 31st 1903 the C. & N. W. Ry includes traffic only from Omaha, So. Omaha, Council Bluffs and U. P. Transfer.

C. G. W. Ry includes traffic only from Sept. 1st. 1903.

The next exhibit mentioned was a statement of the tonnage and revenue of live stock and packing house products from Nebraska City, Omaha, the Omaha Groups, east-bound, for the years ending December 31, 1902, 1903 and 1904. I have prepared such a statement, which is marked Exhibit No. 2.

Mr. BAXTER: Read the heading of that.

2051 A. "Movement of fresh meat, packing house products and live stock from Omaha, South Omaha, Council Bluffs, Nebraska City and other Nebraska point-, east-bound for years ending December 31st, 1902, 1903 and 1904."

(The said statement so produced by the witness is marked Exhibit No. 2, and attached hereto).

(Here follows Exhibit No. 2 marked p. 2053*b*.)

Exhibit No. 3, the memorandum reads, "Statement of tonnage and revenue of live stock, fresh meat and packing house products from St. Paul Group points, east-bound, for the years ending December 31st, 1902, 1903, 1904."

I have prepared a statement which I have marked Exhibit No. 3, the caption of which reads as follows; "Movement of fresh meat, packing house products, and live stock from St. Paul Group points, east-bound, for years ending December 31st, 1902, 1903 and 1904, weight in tons."

(The statement so produced by the witness is marked "Exhibit No. 3," and is attached hereto).

(Here follows Exhibit No. 3 marked p. 2053*c*.)

EXHIBIT No 3

2053 C

MOVEMENT OF FRESH MEAT, PACKING HOUSE PRODUCTS AND LIVE STOCK FROM ST. PAUL GROUP POINTS,- EASTBOUND

FOR YEARS ENDING DECEMBER 31ST,- 1902, 1903 AND 1904

WEIGHT IN TONS

FRESH MEAT

YEAR	C. B. & Q. Ry		C. G. W. Ry		C. M. & St. P. Ry		C. R. I. & P. Ry		C. St. P. M. & O. Ry		M. St. P. & S. S. M. Ry		M. & St. L. R. R.		Wis. Cent. Ry		TOTAL, ALL ROADS	
	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue	Tons	Revenue
1902	679	2715 88			2647	10586 04			3359	13444 26	315	1262 10	222	888 08	1651	6598 21	8873	35494 57
1903	1054	3689 32	2024	6884 14	5417	19050 41			3187	11519 19	214	783 31	78	264 30	49	166 38	12025	42357 05
1904	886	3013 16	1355	4609 98	12869	43729 31			3514	11939 61	309	1049 37	32	111 55	289	984 03	19254	65437 01

PACKING HOUSE PRODUCTS

1902	497	1835 73	346	1278 69	5624	20826 55			2442	9043 83	9109	33690 84	5936	21981 13	10154	37566 33	34108	126223 10
1903	426	1348 72	681	2169 81	8261	27089 62	243	767 61	5915	18873 95	13280	43498 54	4821	15598 13	3903	13088 02	37530	122434 40
1904	956	3007 48	2196	6890 29	10570	34468 16	601	1886 96	6939	21779 56	13959	43823 99	8423	26456 01	8842	28218 63	52496	166531 08

LIVE STOCK

1902	2207	11656 15	230	1241 65	6927	36737 62			3635	19442 20	33	210 10	53	305 00	43	242 50	13130	69835 12
1903	1075	5622 27	657	3590 98	8231	43977 25	142	751 50	1093	5488 13	38	199 10	238	1222 90	203	1175 80	11677	62027 93
1904	48992	246669 05	22030	110107 87	39192	200142 73	3364	17014 10	16459	83594 86	155	865 06	560	2875 20	3102	16771 95	133854	678040 81

EXHIBIT No 4

SIOUX CITY

EAST AND WESTBOUND

CLASSIFIED STATEMENT OF TONNAGE AND REVENUE ON TRAFFIC TO AND FROM SIOUX CITY, IOWA, DURING THE YE

WEIGHT IN TONS

WESTBOUND LINES	First Class	Second Class	Third Class	Fourth Class	Fifth Class	Class A	Class B	Class C	Class D	Class E	Agricultural Implements	[illegible]	Apples	[illegible]	Beer	Brick and Fire Clay	[illegible]	Canned Goods	Cement	Coal Hard	Coal Soft	Coke	Furniture	Glucose, Molasses and Syrup	Grapes	Iron and Steel Articles	Lemons, Oranges and Bananas	Lime, Plaster and Stucco	Oil	[illegible]	[illegible]	[illegible]	[illegible]	Rails and R. R. Iron	[illegible]	Salt	[illegible]	[illegible]
1. C. M. & St. P. R'y	2860	1630	3326	3558	4401	405	153	972	716	1311	1913		27		2133	65		1326	1550	4070	4733	1494	620	522	170	105	65	31	1297					31		751		
2. C. & N.-W. R'y	1780	1204	2269	2532	4344	395	223	749	253	804	3039		112		594	802		1113	519	1306	2342	1430	587	531	139	77	69	53	2657							1701		
3. Illinois Central R. R.	1032	413	851	1040	1318	145	65	379	257		580		42		153			654	320	633	11401	394	112	38	143	12	1744		2106							3418		
TOTALS.	5672	3317	6396	7080	10063	945	441	2100	1226	2115	5532		181		2880	837		2493	2389	5909	18483	3318	1553	2101	442	194	1878	81	6160					31		4870		

EASTBOUND

LINES	First Class	Second Class	Third Class	Fourth Class	Bones, Hoofs, Horns, Parchment, Tankage	[illegible]	Grain	Grain Products	[illegible]	Live Stock	Meats Fresh	Packing Home Products	Rags and Junk	Scrap, all kinds	[illegible]	Potatoes	Apples	Flax	Miscellaneous	TOTALS Tons	TOTALS Per Cent	TOTALS Revenue	[illegible]
C. M. & St. P. R'y	103	390	133	193	995		176	4667		3021	9306	17403	131	1589		15			1909	39911	40.4	175395	[illegible]
C. & N.-W. R'y	127	470	4063	333	630			83		2501	14380	21992	68	1278					643	46566	47.1	224866	[illegible]
Illinois Central R. R.	66	72	362	57	1388		208	1658		187	80	7786		55			12	22	405	12358	12.5	53681	[illegible]
TOTALS.	296	932	4557	582	3013		384	6408		5709	23666	47181	199	2902		15	12	22	2957	98835	[illegible]	453943	[illegible]

OF TONNAGE AND REVENUE ON TRAFFIC TO AND FROM SIOUX CITY, IOWA, DURING THE YEAR 1902

Mahoney to Lacy 2053.01

WEIGHT IN TONS

Apples	[illegible]	Beer	Brick and Fire Clay	[illegible]	Canned Goods	Cement	Coal Hard	Coal Soft	Coke	Furniture	Glucose, Molasses and Syrup	Grapes	Iron and Steel Articles	Lemons, Oranges and Bananas	Lime, Plaster and Stucco	Oil	[illegible]	[illegible]	[illegible]	[illegible]	Balls and R. R. Iron	[illegible]	Salt	[illegible]	[illegible]	Sugar	Tin Plate	Vehicles	Wire and Nails	Flax Seed	RR Eqpt
27		2133	85		1206	1550	4070	4733	1494	652	1582	170	105	65	31	1397					31		751			666	30	1018	1596	4846	
112		594	842		1113	579	1206	2342	1430	587	531	129	77	69	50	2657							1701			154		312	2497		30
42		153			154	330	633	11408	394	112	38	143	12	1744		2106							2418			6101		194	319		
181		2880	837		2493	2389	5909	18483	3318	1553	2101	442	194	1878	81	6160					31		4870			6921	30	1524	4912	4846	30

WESTBOUND

Miscellaneous	TOTALS Tons	Per Cent	Revenue	Per Cent	
4848	54403	43.7	303836	62.44	1
1669	36623	29.5	210681	58.31	2
941	33382	26.8	163838	31.24	3
7458	124408	100%	677356	51	100%

EASTBOUND

Second Class	Third Class	Fourth Class	Boots, Shoes, Horses, Furniture, Tonnage	[illegible]	Grain	Grain Products	[illegible]	Live Stock	Meats, Fresh	Packing House Products	Rags and Junk	Scrap, all kinds	[illegible]	Potatoes	Apples	Flax	Miscellaneous	TOTALS Tons	Per Cent	Revenue	Per Cent	LINES
390	133	193	995		176	4667		3021	9206	17403	131	1569		15			1909	39411	40.4	175395	94.38	C. M. & St. P. R'y
470	4863	333	630			83		2501	14380	21992	68	1278					643	46566	47.1	224866	19.49	C. & N.-W. R'y
72	362	57	1388		208	1658		187	80	7786		55			12	22	405	12358	12.5	53681	70.11	Illinois Central R. R.
932	4557	582	3013		384	6408		5709	23686	47181	199	2902		15	12	22	2957	98835	100%	453943	83	100% TOTALS

CLASSIFIED STATEMENT OF TONNAGE AND REVENUE ON TRAFFIC TO AND FROM SIOUX CITY, IOWA, DURING THE

WESTBOUND

WEIGHT IN TONS

LINES	First Class	Second Class	Third Class	Fourth Class	Fifth Class	Class A	Class B	Class C	Class D	Class E	Agricultural Implements, Vehicles and Machinery	Alcoholic Liquors and Tobacco	Anthracite Coal	Bituminous Coal	Brick and Fire Clay	Cement, Lime and Plaster	Coal	Coke	Petroleum and Its Products	Glucose and Grape Sugar	Iron and Steel Articles	Lumber and Other Forest Products	Hides and Leather	Ores	Paper, Printed Matter and Books	Pig Iron	Pipe		Salt	Sand, Stone and Other Quarry Products	Sugar
																	Coal	Coke									Cast	Weight			
C. B. & N. W. Ry	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
C. & S. W. Ry	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Illinois Central R. R.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
TOTALS.	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3

EASTBOUND

LINES	First Class	Second Class	Third Class	Fourth Class	Agricultural Implements, Vehicles and Machinery	Alcoholic Liquors and Tobacco	Cereals	Coal, Anthracite	Hay	Live Stock	Manufactured Iron and Steel	Packing House Products	Sugar and Syrup	Sugar, Salt and Glucose	Wool	TOTALS			
																Miscellaneous	Tons	Per Cent.	Revenue
C. B. & N. W. Ry	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
C. & S. W. Ry	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Illinois Central R. R.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
TOTALS.	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3

2053 a

...T OF TONNAGE AND REVENUE ON TRAFFIC TO AND FROM SIOUX CITY, IOWA, DURING THE ... YEAR 1903

WEIGHT IN TONS

[illegible]	Apples	[illegible]	Beer	[illegible]	[illegible]	Cement	Coal Hard	Coal Soft	Coke	Furniture	[illegible]	Grapes	[illegible]	[illegible]	Lime, Plaster and Stone	Oil	[illegible]	Pig Iron	Pipe Cast	Pipe Weight	Rails and S.S. Iron	[illegible]	Salt	[illegible]	[illegible]	Sugar	Tin Plate	Tobacco	Wire and Nails
	875		1482	79	493	801	3161	7600	7565	1356	737	2341	20	237	97	14	1636	1351		130	477	180		1051	664		817	41	507	1041
15	1006		413	1164	1087	907	587	5073	4060	1695	908	758	47	105	58	190	2418	952		85	223	15		1002	71		67	102	305	1429
	664		142	175	1087	415	1070	1439	7870	583	90	29	171		1648	105	2907	130		329	16	28		1562	40		1497	18	99	321
15	2545		2037	1368	3537	2123	4768	14112	16995	3554	1735	3126	438	342	1777	309	6956	2433		444	916	233		5015	775		2661	161	911	3091

EASTBOUND

[illegible]	Second Class	Third Class	Fourth Class	[illegible]	[illegible]	Grain	[illegible]	Hay	Live Stock	[illegible]	[illegible]	Rags and Junk	[illegible]	Starch
[illegible]	460	105	261	857	452	377	6373		5892	1343	15034	166	1894	106
[illegible]	637	137	271	817	382	205	539		6699	10271	12091	15	504	
[illegible]	117	25	41	515	238	706	2316		153	308	6483			42
[illegible]	1214	267	573	2191	4511	1288	9238		12744	11922	33608	181	2398	148

WESTBOUND

Miscellaneous	TOTALS Tons	Per Cent	Revenue	Per Cent
1640	53645	43.4	275 19558	43.6
954	40021	32.4	207 229	32.6
1019	29857	24.2	149 353	23.6
3613	123524	100	631 77863	100

Miscellaneous	TOTALS Tons	Per Cent	Revenue	Per Cent	LINES
928	34416	41.8	142 807	33.39	C. M. & St. P. R'y
552	36700	44.5	169 775	25.47	C. & N.-W. R'y
271	11299	13.7	45 717	28.16	Illinois Central R. R.
1751	82415	100	357 299	86	TOTALS

CLASSIFIED STATEMENT OF TONNAGE AND REVENUE ON TRAFFIC TO AND FROM SIOUX CITY, IOWA, DURING THE

WEIGHT IN TONS

WESTBOUND LINES	First Class	Second Class	Third Class	Fourth Class	Fifth Class	Class A	Class B	Class C	Class D	Class E	Agricultural Implements	Alcohol, Spirits and Whiskey	Apples	Bags and Bagging	Beer	Brick and Fire Clay	Box Lumber, Hoops, Staves, Etc.	Canned Goods	Cement	Coal Hard	Coal Soft	Coke	Furniture	Glucose, Molasses and Syrup	Grapes	Iron and Steel Articles	Lemons, Oranges and Bananas	Lime, Plaster and Stucco	Oil	Paper, Buildg., Print., Wrapp'g	Pig Iron	Pipe Cast	Pipe Wrought	Rails and R. R. Iron
1. C. M. & St. P. R'y	2488	1640	2816	3240	4140	899	339	464	952	1007	1387	70	1038		1604	969	787	955	2362	5627	7926	1419	763	690	186	586	25	12	1446	2165		46	784	121
2. C. & N.-W. R'y	165	1166	2212	2793	2412	904	145	420	326	519	1230	18	1084	33	548	238	1791	678	982	5301	3442	2200	377	1231	146	430	39	27	2126	698		601	273	
3. Illinois Central R. R.	106	619	777	1037	1296	386	124	215	159	.	475	15	371		71	18	286	146	371	1220	5583	146	156	21	37		1621	55	2214	144	40	126		
TOTALS.	4945	3425	5805	6870	8028	2189	608	1099	1437	1526	3092	103	2493	33	2223	1225	2864	1779	3715	14090	17501	3765	1296	1942	369	936	1685	94	5786	3007	40	773	1057	12[illegible]

EASTBOUND

LINES	First Class	Second Class	Third Class	Fourth Class	Bones, Meats, Horns, Fertilizer, Tankage	Butter, Eggs and Dressed Poultry	Grain	Grain Products	Hay	Live Stock	Meats, Fresh	Packing House Products	Rags and Junk	Scrap, all kinds	[illegible]	Mishel-laneous	[illegible]
C. M. & St. P. R'y	118	577	80	373	1047	3039	1827	11110	20	13113	1888	14558	108	247		1022	[illegible]
C. & N.-W. R'y	143	559	231	277	491	1207	48	1535		4072	11036	8562	30	144		338	[illegible]
Illinois Central R. R.	127	118	22	54	722	126	88	97	38	628	389	8246	60	20		205	[illegible]
TOTALS.	388	1254	333	704	2260	4372	1963	12742	58	17813	13313	31416	198	411		1565	[illegible]

2053f

...NT OF TONNAGE AND REVENUE ON TRAFFIC TO AND FROM SIOUX CITY, IOWA, DURING THE YEAR 1904

WEIGHT IN TONS

Alcohol, Spirits and Whiskey	Apples	Bags and Bagging	Beer	Brick and Fire Clay	Box Lumber, Hoops, Staves, Etc.	Canned Goods	Cement	Coal Hard	Coal Soft	Coke	Furniture	Glucose, Molasses and Syrup	Grapes	Iron and Steel Articles	Lemons, Oranges and Bananas	Lime, Plaster and Stucco	Oil	Paper, Bulldg'g, Print, Wrapp'g	Pig Iron	Pipe Cast	Pipe Weight	Rails and R. R. Iron	R. R. Material and Supplies	Salt	Sash, Doors and Blinds	Soda, Ash, Caustic, Nitrate, Nitrate and Sulphate	Sugar	Tin Plate	Vehicles	Wire and Nails
70	1038		1604	969	787	955	2362	569	7926	1419	763	690	186	506	25	172	1446	2165		46	784	121		2640	768	358	2025	130	413	1025
18	1084	33	548	238	1791	678	982	5301	3412	2200	377	1231	146	430	39	27	2126	698		601	273		29	2322		19	1788		183	2990
15	371		71	18	286	146	371	1220	5883	146	156	21	37		1621	55	2214	144	40	126				1111	15	40	6179		107	412
103	2493	33	2223	1225	2864	1779	3715	14090	17501	3765	1296	1942	369	936	1685	94	5786	3007	40	773	1057	121	29	6073	783	417	9992	130	703	4427

EASTBOUND

First Class	Second Class	Third Class	Fourth Class	Boxes, Hoofs, Horns, Fertilizer, Tonnage	Butter, Eggs and Dressed Poultry	Grain	Grain Products	Hay	Live Stock	Meats, Fresh	Packing House Products	Rags and Junk	Scrap, all kinds	[illegible]
118	577	80	373	1047	3039	1827	11110	20	13113	1888	14558	108	247	
143	559	231	277	491	1207	48	1535		4072	11036	8562	30	144	
127	118	22	54	722	146	88	97	38	628	389	8246	60	20	
388	1254	533	704	2260	4392	1963	12742	58	17813	13313	31416	198	411	

WESTBOUND

Miscellaneous	Totals Tons	Totals Per Cent	Totals Revenue	Totals Per Cent
2580	60754	46	303963	2644 9
653	44575	33 7	229731	2733 9
436	26815	20 3	143679	9821 2
3669	132144	100%	677374	51 100%

EASTBOUND

Miscellaneous	Totals Tons	Totals Per Cent	Totals Revenue	Totals Per Cent	LINES
1022	49127	55 3	217922	43 56 5	C. M. & St. P. R'y
338	28673	32 3	123894	46 32 1	C. & N.-W. R'y
205	10990	12 4	44219	48 11	Illinois Central R. R.
1565	88790	100%	386036	37 100%	TOTALS

The next statement on the memorandum reads, "Statement of tonnage and revenue of fresh meat, and packing house products from Chicago north-bound to St. Paul for the years ending December 31st, 1901, 1902, 1903, and 1904. I have not prepared that, for we do not keep the statistics covering the movement of tonnage on this account north-bound.

Mr. COWAN: Why?

2052 A. It is so very light that we don't keep that separately from other traffic, and where we have any of these items mentioned, we throw them into what we call "Miscellaneous," because of their being a very small amount, so I have not any statement of that.

The next is a statement of tonnage and revenue of classified freight and commodities between the Missouri River markets, namely Kansas City, St. Joe, Atchison, Leavenworth, and Sioux City on the one hand, and the Mississippi River crossings on the other. Also a similar statement including the same traffic between the Mississippi River points on the one hand and Chicago; these two latter statements to show separately the tonnage and revenue on the east-bound shipments on one sheet or set of sheets, and the tonnage and revenue on the west bound to be shown on another sheet of set of sheets.

I have prepared a separate statement of Sioux City, and it is not included in the statements from other Missouri River points. It covers the same information asked for; it shows the movement east and west bound for the period stated of the other freight carried. We keep two separate accounts, well, we keep a separate account with Sioux City from the other Missouri River points. That I have marked Exhibit No. 4.

Mr. BAXTER: Will you read the heading of that?

2053 A. "Classified statement of tonnage and revenue on traffic to and from Sioux City, Iowa, during the year 1902, 1903 and 1904, both east and west bound."

(The statement so produced by the witness is marked "Exhibit No. 4," and is attached hereto).

(Here follows Exhibit No. 4 marked pp. 2053*d*, 2053*e*, and 2053*f*.)

I submit Exhibit No. 5, covering the information asked for from southwest Missouri River points, both east and west bound. We make them separate from Omaha. The heading is similar to the one for Sioux City. The southwest Missouri River points as I presume you understand, includes Kansas City, St. Joe, Atchison and Leavenworth. That is the group.

Mr. BAXTER: Read the heading, so we can identify it in the record.

A. "East-bound traffic from and through southwest Missouri River points for the years 1902, 1903 and 1904."

Q. What exhibit is that you are speaking of?

A. That is Exhibit No. 5.

Q. The copy that I have reads, "East-bound traffic from and through southwest Missouri River points." Does yours read the same way?

A. Yes, your copy is identical, I presume, with this, but we make the east-bound and west-bound separately.

Q. You include both in your exhibit No. 5?

A. Yes sir.

2054 (The statement so produced by the witness is marked "Exhibit No. 5" and is attached hereto.)

(Here follows Exhibit No. 5 marked pp. 2053*g* to 2053*l*, inclusive.)

EXHIBITS

NOT

SUITABLE

FOR

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FILMING

The WITNESS: That last statement is Exhibit No. 6, which covers the Omaha Group points. The caption of that statement is "East-bound traffic from Omaha, South Omaha, Council Bluffs and Nebraska points for the years 1902, 1903, and 1904," and also separate statements for the west-bound.

(Here follows Exhibit No. 6 marked pp. 2053*m* to 2053*p*, inclusive.)

Q. Have you read the captions of those?

A. I think I did, Judge, but I will read it again. The caption is "East-bound traffic from Omaha, South Omaha, Council Bluffs, and Nebraska points for the years 1902, 1903, and 1904," and separate statements for the west-bound. That covers the items enumerated in the memorandum.

2055 Mr. COWAN:

Q. Do they show the tonnage which originates at Missouri River points and which moves eastward through Missouri River points, which did not originate there?

A. That did not originate at the Missouri River?

Q. My question is, do they show the tonnage originating there and the tonnage which originates west of there and passes through there?

Mr. DAWES: Separately?

Mr. COWAN:

Q. I do not mean, does it show it separately, but does it show both in the gross?

A. It shows it separately, I think, sir. That includes certain territory west of the Missouri River in the statement of both east and west bound business; they are known as the interior Kansas points, if they are west of Kansas City, and west of Omaha, they would be the interior Nebraska points.

Q. Well, explain then, what territory is covered in the tonnage mentioned as moving out of Missouri River, does it simply cover the points on the Missouri River, or other points, and if other points, state what they are?

A. So far as southwestern Missouri River points are concerned, our statements show all car load shipments regardless of the origin,
2056 either unloaded, or which ends at, or is rebilled or forwarded from Kansas City, Leavenworth, Atchison and St. Joe, and from the junction points—that is, this is live stock now, all car load shipments from any junction point in Kansas or Nebraska on or south of the Beatrice line, which are forwarded through to any point on or east of the Mississippi River, including gulf ports for export.

Q. What is the Beatrice line?

A. Well, that is a line dividing the north territory from the southern.

Q. Running easterly and westerly through Beatrice, Nebraska?

A. Yes sir.

Q. It appears in the statement from St. Paul that for the year 1902, the total live stock tonnage from St. Paul is 13,130 tons, whereas for the year 1904, it is put at 133,854 tons. Now, how is that great difference in the year 1902 and the year 1904 accounted for, do you know?

A. Well, I do not, that matter has not been brought to my attention so I could not answer as to that.

Q. Do you now include different character of shipments, that is,

in the statements for the year 1904, than what were included in the year 1902?

A. We include the same character of shipments.

Q. The same character?

A. Yes sir, for each year. There has been no change in the character of the shipments at all.

Q. Now, in the St. Paul territory, what shipments are in-
2057 cluded?

A. On the live stock?

Q. Yes, sir.

A. We include all the business that is rehandled at St. Paul if it have the privileges of the St. Paul stock yards, or the St. Paul market; if the live stock is way-billed through from the point of origin, which is west of St. Paul, and does not receive the privileges of the St. Paul market, we do not include it for we have no account of it.

Q. That would account, then, for the difference in these two items. It would not mean that there is that much difference in shipments passing through there, but means that difference in the character of the billing?

A. That might be the case.

Q. That might also be the case as applied to the Missouri River?

A. Yes sir.

Q. To some extent. Now, in regard to the packing house products and dressed meats, from what territory did you include shipments of that class of commodity?

A. From southwest we include the business from Kansas City, St. Joe, Atchison and Leavenworth, and there are a few points in the interior of Kansas that we also include where there are some small packing houses; I do not recall them.

Q. They are comparatively small?

A. They are comparatively small, yes sir.

2058 Q. And the same applies to the northwestern group, Omaha and Nebraska City, Sioux City?

A. Yes, the same would apply there, but I do not recall now except that Lincoln, Nebraska, any other point that is west of the River for the packing houses.

Q. You furnished these statements to Judge Baxter, did you, for the railroads?

A. Yes sir.

Q. What is the basis upon which you estimated the revenue, was it the actual revenue received by the roads on the particular shipments, or some other basis?

A. The basis on which we compute the revenue so far as the Missouri River business is concerned, is the proportion from the Missouri River to the Mississippi River, and not the entire earnings through to Chicago, if the business came to Chicago; all the business crossing the River, crossing the Mississippi River, coming from the Missouri, whether is crosses at St. Louis or other points on the River north of there up to and including Dubuque, we compute at the River earnings the proportion as set forth in the tariffs.

Q. There is a proportional tariff on these commodities between the Missouri River and the Mississippi River?

A. Yes sir.

Q. That is applied on all shipments that go east of the Mississippi River?

A. Yes sir.

Q. And that is the basis on which you keep your book of
2059 earnings?

A. That is the basis on which we make up this statement of earnings.

Q. Now, you keep your books also on that basis, do you Mr. Mahony, or do you keep your books on the basis of the actual revenue on a particular freight?

A. No sir, we keep our books on the basis of the proportion up to the River, between the two rivers.

Q. Is that upon the theory that that is fairly representative of the revenue?

A. Well, of course, that is the custom since I came to the office and before I came. What the original reason was for making it that way of course, I am not advised: but the presumption that I have had in my mind is that it equalizes it. For instance the Missouri Pacific is included in that; they would not bring business to Chicago naturally, they would take it to St. Louis. The same is true of the Frisco Road and other lines that do not run directly east but run either south or southeast, and so the business is computed in order to show comparatively the earnings of each line up to the Mississippi River.

Q. Out of this particular business?

A. Yes sir.

Q. It does not include business originating in the intermediate territory between the two Rivers?

A. No sir.

Q. It does not include business which is destined to points
2060 intermediate between the two Rivers?

A. No sir.

Q. The basis on which you used your rates, are those which are shown in the published tariff of proportional rates?

A. Yes sir.

Q. And you have that tariff?

A. Yes sir.

Q. Please file that also, Mr. Mahony, and point out in some way what the pages are on which these proportional tariffs are shown.

Mr. LYNDE: Can't he state that, and save filing them?

Mr. COWAN: If he can state it, I thought it would save time.

A. I have three tariffs as called for in this memorandum; one between the Missouri River and Chicago, that is the Southwestern Missouri River, which includes Omaha; and a second tariff which covers the business from Sioux City; and a third tariff which covers the business from St. Paul, and for your convenient reference and examination, we have shown the proportional rate; as it is rather a voluminous document, we have shown on an extra sheet here, the

proportional rates on the cattle, hogs and sheep through to Chicago, and also what they are to the Mississippi River, and the rates at which we compute the earnings.

Q. And have you shown the same with respect to the packing house products and dressed meat?

2061

A. Yes sir.

Q. And the same with respect to classified traffic?

A. Yes sir.

Q. Can't you just file that sheet instead of filing the tariff?

A. Well, the sheet refers to the tariff, and perhaps it would not be complete without the tariff.

Q. You may just file the tariffs together with the explanatory sheet.

A. Yes sir.

Q. And such parts can be used as necessary.

(The documents produced by the witness, were marked "Mahony Tariffs Nos. 1, 2 and 3," respectively, and filed as a part of his evidence.)

A. The first tariff is Western Trunk Line tariff, No. 201,

Q. State what those proportional rates are.

Mr. LYNDE: What is the first tariff, between the Missouri River points?

A. Between the Missouri River points, yes sir. I will state for the information of Judge Baxter, that this additional sheet that I had prepared last night, you haven't got on the copy that we made for you several days ago, as you know I expected to be examined last week, and it occurred to me on hearing some of the testimony here yesterday that I might be asked more in detail than I had in the printed tariff, I made up a summary of the rates on the cattle, hogs, sheep and packing house products, and added it to the tariff,

2062

but it in nowise differs from the rates set forth in the tariff itself.

Mr. BAXTER: Will you furnish me a copy of that?

A. I will be glad to do so. In order that it might be of easy reference, I had this done.

Q. Now, before you leave the question of the tariff there, in order to have them described so they can be found and be placed in the transcript, will you give the rest of the trunk lines, I. C. C. Numbers of each one?

A. The Western Trunk Line Tariff is No. 201. The I. C. C. number is 636.

Q. Well, I only want the I. C. C. number. We can identify them that way. Western Trunk Line, I. C. C. No. 636 is all I want.

A. Yes sir.

Q. Just call those numbers, please.

A. I don't know that I quite understand you, Judge.

Mr. COWAN: He wants the numbers of the tariffs for the purpose of identification.

Mr. SEVERANCE: The Interstate Commerce numbers.

Mr. BAXTER: Then any one can call on the Interstate Commerce Commission for them.

A. This is Western Trunk Line Tariff, No. 201, and it bears the I. C. C. Tariff Number 636.

Mr. SEVERANCE: What are the other two?

A. The Sioux City and Sioux Fall[illegible]e have them in one sheet, No. 202, Western Trunk Lin[illegible] tariff, bears the I. C. C. num-
2063 ber 643. The St. Paul Tarift, which we number 181, bears the I. C. C. number 431.

Mr. COWAN:

Q. You have an explanation there of the tariff, have you, in a sheet?

A. That is what I transferred to this special sheet, instead of having it separate, I had it pasted in so that it would not be lost or mislaid.

Mr. BAXTER: In which of those tariffs did you paste that sheet?

A. In the I. C. C. tariff No. 431, that is the St. Paul tariff, and in the I. C. C. tariff No. 643, the Sioux City tariff.

Mr. COWAN:

Q. Mr. Mahony, in making up the statement Exhibit No. 6, you have stated the tonnage over each road of each one of the items mentioned, of the class goods, and a large number of commodities; but you have not figured out the revenue as applied to each different commodity, the revenue that is figured out for the total of the commodities is made upon what basis?

A. That is made upon the basis of the tonnage for each class or commodity, the tariffs show the rate.

Q. Does the tariffs show the proportional rate on each that was used?

A. Yes sir, I stated that in computing the revenue, we, in
2064 all cases used the proportional rate, or the rate to the Mississippi River except on St. Paul and Minneapolis.

Q. Yes; and on St. Paul, did you use a proportional on Chicago business destined east of the Indiana and Illinois State line, or just the rate to Chicago?

A. No, sir, we used the full Chicago rate.

Q. Just the Chicago rate?

A. The Chicago rate, yes, sir.

Q. If we want to ascertain for example, the earnings upon the Third Class of traffic over any one of these roads, we would simply multiply the tonnage by the proportional rate?

A. By the proportional rate if it is from the Missouri River.

Q. That is what I mean, from the Missouri River to Chicago?

A. Yes, sir.

Q. And by the Local Rate, if it is St. Paul to Chicago?

A. Yes, sir.

Q. Now, as a matter of fact, do these statements include shipments that were made for example, from Denver or Salt Lake City?

A. No, sir, they would not include Denver. They do not include Colorado.

Q. They include only the originating points you have named?

A. They include, as I say, so far as the Southwestern Missouri River points are concerned, the points in Kansas that would be east of the Colorado line.

2065 Q. That will be all points in Kansas?

A. Yes, sir.

Q. It includes all points in Kansas?

A. Yes, sir, south of the Beatrice line.

Q. South of the Beatrice line?

A. Yes, sir.

Q. And all points in Nebraska south of that line, is that right? It would include all points in Nebraska south of that line?

A. Yes, sir. That is all junction points, not the local points, the junction points—we only get reports from the junction points.

Q. Now, would this freight be freight which had originated at points further west and had come east—it would not include that?

A. No, sir.

Q. Well, how would you know whether it did or not?

A. Because we do not make reports of that freight at all.

Q. I am just trying to get at what the fact is, Mr. Mahony, that is all, and to get to understand it.

A. Yes.

Q. The tonnage here represented then, includes tonnage originating or shipped by reshipment from junction points, that is to say, where two railroads meet or cross in Kansas and Nebraska south of the Beatrice line?

A. Yes, sir.

Q. And on the Missouri River?

A. Well, if it is coming east of the River.

Q. East of the Mississippi River?

2066 A. East of the Mississippi River?

Q. And includes only that freight, is that right?

A. Yes, sir.

Q. St Paul includes what?

A. St Paul includes the business of what is known as the St. Paul groups, that is St. Paul, Minneapolis, Minnesota Transfer and Stillwater. There are some small places in the immediate neighborhood of those cities that are covered.

Mr. SEVERANCE:

Q. St. Paul includes South St. Paul, doesn't it?

A. Yes, sir, it includes South St. Paul.

Mr. COWAN:

Q. Now, what basis of rate did you charge from St. Paul on the live stock, the local St. Paul-Chicago rate?

A. Twenty five cents on cattle.

Q. Now, then, what would the statement mean which says 133,854 tons of live stock from St. Paul to Chicago, would that

mean live stock originating at St. Paul or that came from Montana and other parts of the country?

A. If it came from Montana, we would not have anything to do with it. It would only mean the live stock from Minnesota and Dakota points that would have the privilege of the market or yards at St. Paul.

Q. And so it may have originated anywhere?

2067 A. If it originated in Montana we would not have it at all.

Q. But it may have originated anywhere in North Dakota or Minnesota?

A. Yes, sir.

Mr. SEVERANCE: Or Northern Wisconsin?

A. Northern Wisconsin, would hardly go into St. Paul, it would come direct to Chicago.

Mr. COWAN:

Q. Why do you use the 25-cent rate on the St. Paul business, when that is not the revenue received where they stop off to try the market?

A. Why we use it, I could not say, but that is the way we compute it.

Q. It would be worthless though, as showing the actual revenue on that business, which originated in South Dakota and other points west?

A. Yes, sir, so far as the lines east of St. Paul are concerned, yes that is true.

Q. Well, what would it mean as to points west of St. Paul; it wouldn't mean anything as to their revenue, would it?

A. That is true, sir.

Q. In other words, the revenue computation does not mean anything in point of actuality?

A. No, sir, not so far as St. Paul is concerned.

Q. Well, why did you get it up in this way when it doesn't mean anything?

2068 A. Well, that is the local rate and it was computed on the basis of the local rate, although the lines east of course, get a division of the through rate—sometimes it is one thing, and sometimes it is another. It depends on where it originates.

Mr. SEVERANCE: Mr. Cowan, let me make a suggestion. I don't want to interrupt, but I think I can explain it probably. There is no rate less than the 25-cent rate to Chicago from any point beyond St. Paul, although the division with the line this side would be less a great deal, isn't that what Mr. Mahony means by figuring on the basis of 25 cents, because it must pay a revenue of at least 25 cents if it comes from St. Paul or beyond.

Mr. COWAN: If it came from beyond, it would pay more, if it came from a station where the rate is more.

Mr. SEVERANCE: Certainly, but he is figuring the revenue from St. Paul here as I understand it.

The WITNESS: That is the basis on which we make it.

Mr. SEVERANCE: There is actually paid that amount of freight.

The WITNESS: Why they fix 25 cents, I could not say.
Mr. SEVERANCE: Although the local lines get less on it.
The WITNESS: This is the computation that has been made ever since I have been in the office.

Mr. COWAN:

Q. Were all of your other figures made in the same way?
2069 A. No, sir, the merchandise is at the actual rates charged between St. Paul and Chicago.
Q. Well, leaving out the St. Paul situation for the moment—it seems those figures mean nothing as applied to St. Paul——

Mr. DAWES: I object.
Mr. COWAN: He admitted they didn't mean anything so far as the actual revenue is concerned.

Q. Now, in regard to the Missouri River, do the figures showing what the revenue is, mean anything with respect to the actual revenue received?
A. Not necessarily. They mean just as I stated, Judge, that we compute the revenue on the proportional rate to the River, regardless of the actual revenue.
Q. It means this, that if you computed the revenue upon these actual proportions, it would produce certain figures, but that does not mean that that is what the railroads receive for carrying the traffic, is that right?
A. Well, we do not make our computations upon what they receive. We make them upon these arbitrary figures to the River regardless of what they receive.
Q. What they would receive if they had charged those figures?
A. The earnings in most cases would be more than our computation.
2070 Mr. LYNDE: Would not that be true in every case?
A. Yes, sir.

Mr. COWAN:

Q. Do you mean the earnings would be more in every case?
A. In every case. Of course, it would not be more if the freight stopped at the Mississippi River.
Q. It is reconsigned at the Mississippi River point?
A. That is the case at St. Louis. That is one of the reasons, I think, why the computation is made on the River, because a number of these lines as I pointed out to you, terminate at St. Louis, and they deliver their freight to their eastern connection.
Q. Well, now, just notice my question a moment and you will see exactly what I am trying to obtain. First, the revenue in the column where you have marked "revenue," does not represent what the roads did actually receive for carrying that tonnage?
A. No, sir.
Q. The revenue in the column marked "revenue" does represent what the road would have received had it charged and collected the

proportional rate between the Missouri River and the Mississippi River?

A. Yes, sir.

Q. Now, if you will notice, that applies to all of these statements of tonnage and revenue. Now, let us go to St. Paul. The column of revenue received, represents what would have been received had the roads charged and collected local rates from St. Paul to
2071 Chicago on that tonnage.

A. The revenue outside of live stocks, shows just what they do charge; it is made up on the tariffs that are in force at the time the statements are made.

Q. As to live stock, the revenue is what would have been earned had the local rate been collected from St. Paul to Chicago on that live stock?

A. The revenue, as I said, is charged from St. Paul on the basis of 25 cents for cattle, even though the revenue earned by the roads east of St. Paul is less, which it would be perhaps, in many cases because of the division of the through rate.

Q. Yes. Well, that reaches the very point that I asked.

The COURT: Now, I guess you understand that, don't you Mr. Cowan. If you think of anything else, ask him outside to fix up some other figures.

Mr. COWAN:

Q. Is it true or not that the dressed meat and packing house products are shipped very largely in the same cars, and in order to ascertain the tonnage of each you have to dissect the way bills, or some sort of shipping bills to ascertain how much there was of each rather than to take them by the number of car loads of each?

A. So that you may understand how we get at those
2072 things, the railroad agents at the different points in the territory, that make reports of this traffic, send us daily statements and from those statements we make up these statistical reports. Now, whether they put in—if they give us a car load of dressed beef and there should be anything else in it, if they omit to state, omit to note in their statement to us—when they say dressed beef, that is all we know about it, it is just their statement, we do not have anything to do with the actual handling of the property.

Q. I understand that, but do the bills or reports which are received by you, show the number of car loads or simply the tonnage of each?

A. The tonnage.

Q. The tonnage only?

A. Yes sir.

Q. And do not show how it is loaded in the cars?

A. No sir.

Q. You made a similar statement for the year 1901 as to dressed meat and packing house products and live stock, which was filed in this case before the Commission, was it not?

A. When was that, sir?

Q. For the year 1901. I just showed you awhile ago a statement

that was filed in the record of the Commission.

A. Those statements of course, appear to me to have emanated from our office, they bear all the marks.

Q. You remember making the statement?

A. I do not personally remember filing those statements,
2073 but the documents that you showed me appear to be statements made at our office; but I do not personally remember about filing them with the Commission.

Q. You do not remember testifying to the Commission in the case?

The COURT: Well, how is that material. Do not discuss that here in the presence of the Court.

Mr. COWAN: That took the year 1901, and this takes 1902, 1903 and 1904.

Mr. DAWES: Show it to him and ask him if he filed it.

Mr. COWAN: I did show it to him awhile ago.

The WITNESS: As I say, they appear to me to be statements made at our office.

Mr. DAWES: Of course, I haven't the slightest doubt that Mr. Cowan will put in correct statements as to this testimony, not the slightest. It is impossible to identify what he is talking about unless he produces them.

The COURT: You have not put in that part which was filed before the Commission as yet. If you produce them, we will see about it. We will mark these exhibits here that he has produced. Now, does any one want to cross examine this witness?

(Witness excused.)

2074 WILLIAM S. TASKER, called as a witness in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. State your full name.

A. William S. Tasker.

Q. Where do you reside?

A. Chicago.

Q. What is your business?

A. My principal business here, is the live stock commission.

Q. Are you engaged in any other business?

A. I am.

Q. What is it?

A. I handle cotton seed meal, flax-seed meal and other feeds.

Q. Are you in any other business beside the live stock commission business?

A. Yes, sir. I am interested in cattle feeding and grazing.

Q. Where?

A. Largely in the State of Wisconsin, and at present in Dakota.

Q. At what point in Wisconsin?

A. Well, we have feed yards at Hammond, Turtle Lake, Barron, Mikana, and Birchwood.

Q. Where are these points with reference to distance from Chicago, and what railroads are they on?

A. Well, they are from 370 to 420 miles probably, from Chicago, and they are all located on the Northwestern, or what is
2075 called The Omaha in that territory, except Barron, Wisconsin, which is located on the Soo. That also runs through all these other points except Hammond.

Q. How far from St. Paul are these points?

A. They run from 25 to 80 miles, probably.

Q. Have you had experience in the shipment of live stock by rail to Chicago from those points?

A. I have.

Q. And have you had experience in shipping live stock from other points in other States?

A. Yes sir.

Q. What has been the extent of that experience in a general —, briefly stated.

A. Well, I have been largely engaged in feeding and shipping cattle all of my life.

Q. In the case of that business, have you had occasion to examine into the matter of rates of freights, relative rates, and the circumstances and conditions pertaining to live stock transportation traffic?

A. Yes sir, I know something about it, I am not an expert.

Q. What is the average car loading for a 36 foot car of cattle, which you ship to Chicago from the points mentioned?

A. Well, the cattle that I ship are usually heavier cattle than the average shipment from that territory. We load from 23,000 to 26,000 pounds.

Q. What are the rates which you pay. Name them from the particular points.

A. Well, all the points that I mentioned in Wisconsin
2076 take a 25-cent rate to Chicago.

Q. Do you know whether there is a lower rate on packing house products and dressed meat from St. Paul?

A. Well, I understand there is, but I do not know exactly the rates. I never made any shipments.

Q. In your opinion from the experience that you have had and such investigation as you have made with respect to the matter, would this rate of 25 cents that you speak of be reasonable or unreasonable?

Mr. SEVERANCE: I object to that as incompetent, no foundation having been laid, the witness has not shown himself qualified to give an opinion that would be of any value.

The COURT: He said he had made an investigation.

Q. What kind of an investigation did you make?

A. Well, I have not been especially interested, have not been interested at all in the shipment of dressed meat products from St. Paul. I have understood in a general way that they were very much lower than the live cattle rates, from the territory from which I have shipped; but I have made no investigation so that I could testify as to the actual rates.

Q. Have you any judgment on the subject as to the comparative rates and the justness of them?

A. I think so.

Q. Where do you get that judgment, what do you base it on?

2077 A. I base it on the value of the product shipped to some extent and similarity of the products, probable expense of carrying and so forth.

The COURT: Let him answer?

Mr. SEVERANCE: I don't think that makes him qualified as an expert. I want to renew my objection and have it go in the record.

Mr. COWAN:

Q. What is your opinion as to whether the 25 cent rate charged to you is reasonable or unreasonable?

Mr. SEVERANCE: That is wholly independent of the other matter. As I understand this question does not go to the relative rates at all now. It certainly has not shown any knowledge of the cost of transportation.

A. I think the rate charged in this territory is higher than it should be.

Mr. COWAN:

Q. Now, what territory do you mean?

A. The points given in Wisconsin from which I ship.

Q. As you have named them.

A. Yes.

The COURT:

Q. Why do you think so?

Mr. SEVERANCE: I object to the Court's question on the ground that the witness is not shown to be qualified to give an opinion.

The WITNESS: Shall I answer that?

The COURT: Yes sir.

2078 A. Because cattle can be shipped from St. Paul from the points from which I feed, and reshipped out of St. Paul at a very much lower rate—shipped westward and back through the same points at a greatly reduced rate. I understand, however, that recently there has been an advance on cattle rates from St. Paul, but I have had no experience in shipping since that advance was made.

Mr. COWAN:

Q. Formerly how were those shipments made?

A. Well, there have been very few shipments, as I understand made out of St. Paul, of cattle, that have paid over 15½ cents per hundred pounds, which I understand is the division accepted by roads from St. Paul to Chicago of through shipments from Dakota and elsewhere in the West; but local shipments have paid no more than that.

Q. In what way do they manage it?

A. I suppose a pretended through billing, or something of that sort.

Mr. DAWES: If your Honor please, I move that be stricken out. That is a pretty serious charge.

Mr. SEVERANCE: If this witness has been engaged in it, I don't think we had better have it out. I would like to have it stay in.

Mr. DAWES: I would like to have him state definitely where this billing was engaged in.

2079 Mr. SEVERANCE: If he is engaged in a fraudulent business, like that, let it stay in.

The COURT: Let it go in.

Mr. COWAN: Tell what you know about it.

A. So far as the shipments are concerned, I have made but one shipment in charge of my brother, who is our Manager. These cattle originated in Northwest Wisconsin, and came to Chicago on the 15½ cent rate from St. Paul. I asked him to see one of the commission firms there and arrange for a billing of the stock as they usually do and that is all we paid, 15½ cents.

Q. Now, according to the information you have with respect to the St. Paul shipments previous to the time of this recent advance that you mentioned, what has been the prevailing rate at which live stock was shipped from St. Paul to Chicago, no matter where they came from?

A. The 15½ cent rate is the prevailing rate that I understand we pay, through our house.

Q. That is, you pay the freight?

A. We pay the freight.

Q. Do you receive a good many shipments from that locality?

A. We do.

Q. Do you ever pay any more?

A. There have been times when we have paid more but not recently.

Q. What do you mean by "recently"?

A. Well, the last thirty days——

2080 Q. How is that?

A. Oh, probably two years ago; I can't give dates exactly because I do not keep the accounts, the books.

Q. But in the payment of the freight for your patrons shipping from St. Paul who have cattle locally in that part of the country, the prevailing freight you have paid has been 15½ cents?

A. Yes, sir.

Q. If they can ship, and do ship on that basis, you think 25 cents is too high from that territory?

A. Yes sir.

Q. What are the distances where this 25 cent rate is charged.

A. The distance is less than from St. Paul.

Q. If the dressed meat man has a less rate—has a rate we will say, of 15½ cents or 16 cents on the dressed carcass from St. Paul, and you have to pay 25 cents on your live cattle from your station nearer to Chicago on the same line of road between St. Paul and

Chicago, does that or not give any advantage to the dressed meat man in his shipment over you?

Mr. SEVERANCE: I object to that as asking for a conclusion, that is a question that is for the Court to determine. The witness is not an expert, no foundation has been laid for requesting his opinion on this or any other question.

2081 The COURT: The objection is overruled.

Mr. COWAN:

Q. Answer the question.

A. It would seem to me an unfair discrimination.

Q. Why?

Mr. SEVERANCE: I move to strike out the answer as a decision upon a question of law.

The COURT: The Court wants all the help he can get on questions of law.

Mr. SEVERANCE: I think the question asked of him was to give his view on a point of law.

The COURT: Well, let him answer.

Q. (Question read.)

Mr. SEVERANCE: I make the same objection.

A. Because dressed meats are worth more per pound than live cattle, and that alone would be sufficient it would seem to me.

Mr. COWAN:

Q. Are you acquainted with the matter of train service on dressed meats and packing house products as compared with the live stock from that locality to Chicago?

A. Well, I have sometimes accompanied shipments of live stock part of the way to Chicago, sometimes all the way.

Q. And have you also been on trains in which the dressed meat was carried?

A. Yes sir.

2082 Q. What is the comparative rate of speed and character of service between the two?

Mr. SEVERANCE: I would like to have him specify on what road, because there is a difference in different roads.

The COURT: All right, tell what road.

Mr. COWAN: Yes, name the roads in connection with your answer.

A. Well, I can recall more distinctly a train that ran from Kansas City to St. Paul over the Chicago, Milwaukee & St. Paul through Iowa, called the meat train.

Mr. SEVERANCE: Well, that train had nothing to do with this proposition. He is asking about shipments from St. Paul to Chicago. He is now talking about Kansas City to St. Paul, that is another matter and not responsive.

A. I was talking about meat trains. He didn't say that, he said meat trains; I am talking about the same thing.

Mr. COWAN: I intended to apply it in this question to shipments

from St. Paul of dressed meats and packing house products as compared with the live stock trains, or trains which bring live stock from those stations that you have mentioned in the vicinity of St. Paul.

A. Well, all I could say in answer to that question is that frequently trains that carried largely refrigerator cars, which I
2083 suppose contained dressed packing house products would pass the live stock trains on the way.

Mr. SEVERANCE: What road was this on?

A. That is on the Omaha and the Northwestern.

Mr. COWAN:

Q. Now, you may give your experience with respect to live stock and packing house products, and dressed meat trains from Missouri River points to Chicago.

A. Well, frequently in accompanying the stock, I have seen those trains pass the live stock trains. They seem to make better time. The understanding has always been that if a man was fortunate enough to get on to a meat train, he could make better time than on an ordinary live stock train. That is as definite as I can answer that.

Q. During the winter months are the cars cleaned in the shipment of live stock in the country where you ship?

A. Not very often.

Q. What time does it require you to ship from your station to Chicago—what time does it take to get your live stock to Chicago?

A. It runs from 24 to 30 hours, sometimes more, 36 hours.

Q. Those are the stations you have already mentioned?

A. Yes.

Q. Do they carry the live stock on a regular train, or do they run special stock trains?

A. Except during what is called the range—the shipping
2084 of range cattle, the trains from that territory are mixed trains, there is not sufficient live stock to have special live stock trains.

Q. What number of cars do they carry in the live stock trains?

A. I think from 30 to 40 cars, I don't know that I ever counted them, that is what the number seemed to be.

Q. Are you a member of the Chicago Live Stock Exchange?

A. I am.

Q. You are interested in these rates both from the standpoint of the shipper and your business here?

A. Yes sir.

Q. Are you able to state whether or not the fact that the lower rate upon the product of the animal than on the animal constitutes any preference which has any effect upon the shipments to the Chicago market as against shipments to the other markets?

Mr. SEVERANCE: He will answer that yes or no, I suppose, as to whether he has any knowledge, if it is a proper question.

The COURT: Yes.

The WITNESS: I don't understand that question.

The COURT: Can you give any judgment on that question.
(Question read.)

The COURT: Do the rates make any difference about the shipments?

2085 A. I think they do.

The COURT: You answer that, that you have an opinion?

A. Yes sir, I do.

Mr. SEVERANCE: I move to strike out his opinion that they do.
The COURT: Yes.

Mr. COWAN: The Court rules that you may answer. What is that opinion and the ground of it?

Mr. SEVERANCE: That is objected to as incompetent, irrelevant and immaterial, and that no foundation has been laid.
The COURT: The objection is overruled.

A. At certain points in Western Iowa where the cattle rate is 23½ cents per hundred pounds, and the dressed beef rate from Omaha, I understand, is 16 cents per hundred, there has been a discrimination in my opinion, against Chicago, as I have lost a large amount of business that has gone to Omaha that would have come here.

Mr. SEVERANCE: That is on account of the 16 cent beef rate?

A. The low rate on beef.

Mr. SEVERANCE: That is the first time I ever heard of that rate. That is quite interesting.

A. I understood it was. I have no expert knowledge on that, that is an opinion.

Mr. SEVERANCE: Oh yes you are—a 16 cent rate.

2086 The COURT: Counsel should not make too many comments. You can cross examine in your turn.

Mr. SEVERANCE: I beg the Court's pardon; I will comment upon it later.

Mr. COWAN:

Q. Do you know as a matter of fact, whether the lower dressed beef rate from the Missouri River to Chicago, and the higher live stock rate from points intermediate have affected shipments to the Chicago market.

Mr. SEVERANCE: I object to that on the ground that no foundation has been laid, and the witness has disqualified himself by the last absurd answer, which is that there is a 16 cent beef rate from Missouri River points, when the testimony shows there is no such rate. He does not know anything about the business.

The COURT: Well, let him answer. Give your foundation first.

Mr. SEVERANCE: Here is a man asked to testify as an expert and he don't know the first fundamental facts.

The COURT: I will hear you (addressing the witness).

A. Judge, I stated I was no expert in the first place.

Mr. SEVERANCE: He admits it himself.

The COURT: Go ahead, answer the question.
A. It is my opinion——
The COURT: Well, give the facts first.

2087 Mr. COWAN:

Q. I asked you whether you knew as a matter of fact that traffic had been diverted because of the higher rate on live stock, and lower rate on dressed meat and products from the Missouri River?

Mr. SEVERANCE: I make the same objection.
The COURT: The same ruling. You may answer.

A. I do know that quite a large per cent. of the cattle that formerly came to Chicago have gone to Omaha from the territory from which we drew trade.

The COURT:

Q. Well, do you think you know the cause of it?
A. I do.
Q. Well, what facts have you now upon which you can base an opinion as to the cause of it?
A. Well, I never have looked the rate matter up, so I could not give that. That is only an opinion, I don't know the facts.
Q. You don't think your opinion would amount to much, do you, if you don't know the facts?
A. I haven't said I knew.
Q. I asked if you do know?
A. I do know the live stock cattle rate, but I don't know what the dressed meat rate is. I have stated repeatedly that I did not know.
Mr. SEVERANCE: You said 16 cents.
A. I understood that, I didn't state that I knew.
2088 The COURT: Ask another question.

Mr. COWAN:

Q. Do you know what it cost for the maintenance, or what it is worth for the maintenance of stock yards in Iowa, and Minnesota and Wisconsin, at which live stock is shipped to the Chicago market?
A. I don't know.
Q. How are the cars bedded, who furnishes the bedding and what is the weight of it?
A. We have always bedded our own cars. We usually bed with straw, and put from three hundred to five hundred pounds of straw in a car. Sometimes if we can get cheap hay, we use that, that is better.
Q. What would the bedding and the manure and stuff, left in the car weigh, where you unloaded at Chicago, where you have a fresh car and bed and ship in?
A. Of course, that has the accumulation in shipment of the droppings from the cattle, probably 700 to 800 pounds, maybe a thousand in some cases.

Cross-examination by Mr. SEVERANCE:

Q. What are the points in Wisconsin where you feed from which you ship?

A. Hammond, Turtle Lake, Barron—I never have shipped from Barron, but we are building yards at Barron now,—Mikana, and Birch Wood.

2089 Q. What roads?

A. What is called the Omaha in that territory, the Northwestern System, running north from Hudson towards the Lake. One line runs through Turtle Lake from Hudson and the other line runs to Chicago through Eau Claire and Rice Lake.

Q. How far did you say these places are from St. Paul?

A. Well, Hammond is probably 25 miles.

Q. What is the rate on live stock into St. Paul from Hammond?

A. I think it is about 9 cents.

Q. About 9 cents?

A. Yes.

Q. And the rate from there to Chicago is 25 cents?

A. From Hammond, yes sir.

Q. Are you sure it is just 9 cents into St. Paul?

A. No, I said about.

Q. Do you know anything about it?

A. I do know a good deal about it.

Q. Tell what you know then. What is the rate from Hammond to St. Paul.

A. You are getting very decided.

Q. I am, yes.

A. Well, I don't know exactly.

Q. Well, all right. What is the rate from Turtle Lake into St. Paul?

A. The per car rate, is $20.

Q. How much is it per hundred?

A. I don't know because I have not shipped by those rates.

Q. Well, how many tons do you get in a car when you ship it for $20?

2090 A. It depends on the kind of stock you load, light stock, probably 22,000 pounds, and heavy, fat cattle, you might load 30,000 pounds.

Q. Thirty. Well, 22,000 pounds, then the rate would be about 9 cents a hundred weight, on the $20 basis, wouldn't it?

A. Well, you can count it yourself.

Q. Well, isn't that about so?

A. I don't know.

Q. Well, now, you say that you shipped some stock through the instrumentality of your brother and a commission firm from South St. Paul to Chicago, which stock had originated over there in Wisconsin, on a rate of 15½ cents, did you say?

A. Yes sir.

Q. Where did that stock come from?

A. It came from Turtle Lake.

Q. And you shipped it from Turtle Lake to South St. Paul?

A. Yes sir.

Q. Then you said that you told your brother to go and fix up a deal with the commission man, didn't you?

A. I told him to see a commission man and he would attend to the shipment.

Q. What was the name of the commission man that arranged this?

A. I don't recall. I think it was the Trouty Commission Company.

Q. The Trouty Commission Company?

A. Yes sir.

2091 Q. Now, isn't this the fact: That whatever commission man he may have been, he had received cattle from Western points, in Montana or Dakota somewhere, or possibly Northern Minnesota, billed through to Chicago; that those cattle were sold on the St. Paul market and that you and your brother and this commission man together went in and turned in cattle from Wisconsin on the pretense that they were the cattle that had come in from Western points and in that fraudulent way secured that rate?

A. Well, I don't——

Q. Well, isn't that the way it was done?

A. I don't know about the fraudulent feature of it.

Q. I know, but isn't that the way it was done, wasn't it that character of a bill on which you sent the stuff through?

A. I could not answer that question, either, but that would be my understanding of it.

Q. That is it exactly. So that you brought cattle over from Wisconsin and got the railroad to haul them to Chicago from South St. Paul upon the pretense that they had come from Western points and were entitled to go through on the proportional rate. Is that the way you usually do business?

The COURT: Wait a minute, let him answer.

A. That is the way we are often forced to do business, yes, sir.

Mr. SEVERANCE: Forced by competition.

2092 The COURT: Hold on, he has not answered the first question.

Mr. SEVERANCE: Yes, he has.

The COURT: That was the last question. Now, repeat the question leaving out the last part and let him answer the first part.

Q. (Question read as follows: "So that you brought cattle over from Wisconsin and got the railroads to haul them to Chicago from South St. Paul upon the pretense that they had come from Western points, and were entitled to go through on the proportional rate.")

A. There was no pretense about it.

The COURT:

Q. Well, were they entitled to go from the location upon that lower rate, from the locality from which they were sent?

A. My understanding was that all the cattle that came from St. Paul by all the shippers were shipped on the basis of the 15½ cent rate.

The COURT:

Q. Whether they came from Minnesota, Dakota or Wisconsin?

A. Yes, sir, I understand that whether they came from there or not, that is the rate that was secured by all shippers.

Mr. SEVERANCE: Why did you go to a commission man then, to get billing from him, why didn't you bill them yourself?

2093 A. If I had been there myself, probably I would. The commission man understood the business better than I or my brother.

Q. You are a commission man yourself, aren't you, and belong to the Live Stock Exchange?

The COURT: Well, wait, let us get this other. Is there any pretense that there is a difference between the locality of Northern Minnesota and Dakota and Wisconsin, do you claim there is a difference?

Mr. SEVERANCE: This is not Northern Minnesota, your Honor, this is on the line of the Northwestern road towards Chicago, east of Hudson.

The COURT: Well, any part of Minnesota, is there any pretense that there is any difference between any of these places and the West?

The WITNESS: I would like to state——

The COURT: Wait, I am asking counsel for information.

Mr. SEVERANCE: How is that?

The COURT: Do you claim there is a difference?

Mr. SEVERANCE: I asked Mr. Mahony that question, and he said there was no through billing from those places to Chicago by way of St. Paul. He said they didn't go around that way. I asked him that question when he was on the stand.

The COURT (to the witness): What do you want to say, 2094 do you want to answer?

The WITNESS: As I understood, the rates in Northwest Wisconsin were not covered by this arrangement of the division of rates that covered the territory in Dakota and further west.

The COURT: How did you happen then, to get the lesser rate, the proportionate rate?

A. Well, as I have stated before, so far as I know, all the shipments wherever they originate that came out of St. Paul have only paid 15½ cents.

Q. Have they done that in some surreptitious way, or is that understood by the railroads?

A. It may not be openly understood, but it is like a great many other things.

Mr. SEVERANCE: It is done quietly probably. Well, it is understood by the commission men, is it?

A. The commission men all understood that 15½ cents was the rate.

Q. I know, but this practice of billing is understood by commission men, is it?

A. I could not answer that because I do not belong to St. Paul, and do not know anything about the details of the business in St. Paul.

Q. You say you have paid freight charges and all that sort of thing?

A. I do in Chicago, yes, sir.

2095 Q. And you are on the live stock Exchange?

A. Yes, sir.

Q. You are an expert in the matter of stock shipments, aren't you?

A. I say I am not.

A recess was here taken until two o'clock p. m. of the same day, Wednesday, October 4, 1905.

2096 OCTOBER 4, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon WILLIAM S. TASKER, having been duly sworn, resumed the stand for cross examination by Mr. Severance, and testified as follows:

Q. I would like to have you produce here the bills of lading upon which those cattle of yours that originated in Wisconsin came through on the proportional, on which they were shipped. I suppose you have them on file in your office.

A. We never ship any cattle on bills of lading that I know of.

Q. How are they shipped?

A. They are re-consigned probably from the Prouty Commission Company. They are consigned to the Prouty Commission Company in St. Paul, and, not being sold there, they are re-consigned to Chicago.

Q. Don't you have some kind of a paper, a way-bill or something?

A. I never get anything. There is a contract made at the time and the shipments are made on that. We never have any contract unless a man accompanies that stock. No one accompanied that stock.

2097 Q. Wouldn't the Prouty Commission Company have it?

A. No, they would not have the contract.

Q. When stock are shipped from there, from Wisconsin points there is a bill of lading, isn't there?

A. There is no bill of lading issued on live stock except at times when a man be hard up for money.

Q. And wants to borrow on it?

A. Borrow on it or something of that sort. As a rule there is no bill of lading on live stock.

Q. There must be some kind of a paper, whether you call it a

bill of lading or whatever you call it, showing that the stock is consigned through to Chicago with the privilege of stopping off at St. Paul?

A. The bills that the railroad company have we never see. We have a contract, a contract is issued to the shippers but they seldom take that contract unless they want to use it for transportation purposes.

Q. Then you don' know what particular bill of lading or documents or whatever it was that the Prouty Commission Company produced in order to entitle these cattle to a through shipment?

A. I do not.

Q. Are they called live stock contracts? Do they get them?

A. We get live stock contracts when the shipment is made, yes, sir.

2098 Q. Don't you understand that this Prouty Commission Company must have had a live stock contract to entitle them to ship the stock from Montana or some point in the west through to Chicago on the rate on which those cattle were transported?

A. I don't think the Prouty Commission Company or any other concern in St. Paul have those bills at all. They remain in the hands of the railroad company. The Prouty Commission Company never see them. They get a bill for the money due on that stock, and they pay it.

Q. When cattle comes through from the west on this through billing or whatever they call that, whether they call it bills of lading or whatever it is, they have the privilege of stopping off and doing what you call "testing the market," there at St. Paul?

A. Yes, sir.

Q. They are always consigned, are they not, to somebody as consignee?

A. Yes, sir.

Q. Well, now, the consignee, who ever he may be, puts them in the charge of this Commission Company, don't he?

A. The consignee is the commission house.

Q. Do they operate here in Chicago, too, this Prouty Commission Company?

A. No, they ship to different concerns here. We sometimes have business from them but they have no office here.

Q. They are named as consignees in the original papers?

A. Yes, sir, at St. Paul.

2099 Q. Whose name is put in as consignee in Chicago?

A. Thomas Stares & Company, the house that I represent.

Q. That is to say a bill of lading will be issued or a live stock contract or something will be issued on those cattle at the western point, showing that they are to go through to Chicago on the through rate with the privilege of stopping off at St. Paul, and if they are sold at St. Paul then the local rate into St. Paul is paid and that ends the transaction?

A. Yes, that is supposed to.

Q. If they come onto Chicago, they come to the man who is named as consignee?

A. They are re-consigned at St. Paul. They may be consigned through in the name of the man in St. Paul, in his care. It is not necessary to reconsign them. They may be consigned in the care of the man at St. Paul.

Q. You don't know about that, do you?

A. In either case there is no rule governing it.

Q. You yourself have in your possession no documents of any kind which show the character of this shipment?

A. None whatever.

Q. None whatever?

A. No, but you can find out from the Prouty Commission Company a record of the shipment, however.

Q. You have nothing to show how it was done?

A. We have it on our books at the office.

2100 Q. That is simply the fact that you received these cattle?

A. Yes sir.

Q. And that you paid this proportional rate?

A. Yes sir.

Q. And that is all?

A. That is all.

Q. You testified this morning that in a general way, without giving any instances, that you had suffered a loss on cattle from certain districts in Iowa that went to Omaha you suffered the loss of them because they went to Omaha instead because of the 16 cent packing house rate from Omaha. Will you name certain cattle that were diverted by reason of this 16 cent packing-house rate?

A. I can give the names of the shippers who have shipped a great deal of stock there that originally came here.

Q. You don't mean the stock orginally came here. You mean these people have sometimes shipped here?

A. I mean this was their market until conditions changed so that they went to Omaha.

Q. Don't they come here, too?

A. They do with certain grades of cattle. Prime cattle, they bring those here and ship the cheaper cattle to the west.

Q. The fact is that the growth and development of the cattle business in Iowa and Nebraska have been quite marked?

A. Yes sir.

2101 Q. It is a continuous growth, isn't it?

A. Yes sir.

Q. Chicago gets a very large majority of the cattle raised in Iowa now, doesn't it?

A. I think so.

Q. And a very large majority of all the hogs raised there?

A. I believe I have no——

Q. Wouldn't it be your judgment as a cattle expert and a hog expert, that four fifths of the hogs raised in Iowa, are shipped to Chicago?

A. I would not give that figure because Iowa is full of packing-houses.

Q. How many are there there?

A. I don't know that.

Q. And yet it is full of them.

A. I know there is a packing-house at Clinton and Cedar Rapids and Davenport and Des Moines and Ottumwa and other places throughout Iowa.

Q. You know also, don't you, that the proportion of the aggregate hogs raised there, only a very small proportion are killed at those packing-houses?

A. Well, I have not the exact figures so I could not say. I suppose the Chicago market gets a large per cent. of it.

Q. You know very well, don't you, that Chicago gets much more of this live stock than all those packing-houses put together, don't you?

A. I cannot say that I do know that.

2102 Q. Do you know to the contrary?

A. I do not. I have not accurate knowledge.

Q. You don't know much about the live stock shipments.

A. Well, evidently I don't.

Q. Except as to carloads that are consigned to you?

A. I suppose——

Q. That is about right, isn't it?

A. I have not exact knowledge.

Q. Then these investigations that you have made into the business and into the rates and all that, have not been very extensive?

A. I have stated repeatedly that I have not made extensive investigation.

Q. They have not gone to the extent of finding out the amount of the product of the farms of Iowa, and what the rates were?

A. Well, I know what the rates are pretty well because we get consignments from different parts of Iowa and I ship myself frequently.

Q. You feel pretty confident of your knowledge on the subject of rates?

A. I can name a number of points and the exact rate, a number of different points.

Q. That knowledge, of course, applies the same as it does to cattle?

A. There are no——

Q. Wait till I finish my question. That knowledge of yours applies the same to packing-house products as it does to cattle?

A. There are no packing-house products from the points

2103 that I would mention.

Q. You spoke this morning about packing-house products and dressed beef rates from Missouri Valley.

A. I meant, Omaha, that is a Missouri river point.

Q. Your knowledge as to other points is about equal to your knowledge of the dressed beef rate from Omaha?

A. I have no accurate knowledge.

Q. You have no accurate knowledge?
A. No.
Q. That is all, sir.

Redirect examination by Mr. COWAN:

Q. Of what?
A. Of the dressed beef rate.
Mr. SEVERANCE: There is one other question I would like to ask. You have no knowledge of the cost of transporting cattle, that is, the cost to the railroad, have you?
A. No sir. I wish to say in explanation because a wrong impression has—There has been an effort to make a wrong impression in regard to my conniving in St. Paul to secure a low rate, a rate which was lower. The rate which I named is a commonly known rate, 15½ cents and the stock was consigned to St. Paul and there were commission men in St. Paul that said that that was the rate that they were paying. The rate which I paid to St. Paul and
2104 the rate from St. Paul here is about the same as the rate practically from that station to St. Paul. There was no conniving and no scheming about it. It was a well known fact that the 15½ cent rate was accepted willingly by the railroads in order to secure the business.
Q. Now, you have made a very broad statement just now. Have you made——

The COURT: I have already suggested to you a number of times that it is the duty of the counsel to ask questions and not to make comments to the witness. You state that you have made a broad statement. I say that is not proper practice and I again suggest to you that you confine your remarks to questions and not lectures or statements to the witness.
The WITNESS: I wish to state further——
The COURT: Let him ask his questions.
The WITNESS: Two or three weeks ago I was in St. Paul in the office of Slimmer & Thomas who have bought all the cattle I have had brought there, and the rate question came up.
Mr. SEVERANCE: Your Honor, just a moment. I shall object to the witness detailing any conversation with Slimmer & Thomas.
The COURT: I sustain the objection. Now you wait till he asks you a question.
2105 Mr. SEVERANCE: How is that, your Honor?
The COURT: I say ask any question you want. I tell him to wait until you ask him a question.

Mr. SEVERANCE:

Q. What I meant by my statement that you had made a broad statement was that this was a common rate. Now, I want to know this. Do you mean by that that you have been informed by commission men in St. Paul that they shipped on that rate?
A. I have been informed that they shipped on that rate.
Q. Just wait a moment no-, and answer my question.
A. Yes.

Q. That is, the source of your information?
A. No sir, we paid that rate at this end of the line.
Q. You have paid that rate at this end of the line, and you have been informed by commission men at St. Paul that this is the rate on which the traffic is mostly moved, is that right?
A. Yes, I know it.
Q. Have you been informed by them that the traffic moves on different rates, that it moves on rates ranging from a little less than 13 cents, up to considerably above the figure that you have named? Do you know that or have you been so informed by commission men?
A. I have not been so informed, no.
Q. You don't know that?
A. I don't know it.
2106 Q. Has any railroad man told you that you can ship stuff in from Wisconsin and re-consign it to Chicago on these proportional rates, if so, name the man and the occasion when he so informed you, name the person?
A. Well, I had the rate matter up with Mr. Pierce of the Omaha line within the last two weeks and he said to me that the rate in that territory where I am located was based on the local charge to St. Paul and the Division which they accept from the western lines out of St. Paul, of 15½ cents which made about 25 cents and that 15½ was the rate that they accepted from the western lines.
Q. That he told you as the method in which they made a basis of rates?
A. That is what he got out of it. He told me that that was what they got out of it.
Q. Didn't he tell you that it made a difference where the stuff originated, that they got as low as 13 cents in some cases and as high as 20 cents in others?
A. He said they were forced——
Q. I want to know if he did not tell you that.
A. I am telling you what he said.
The COURT: You answer his question.

Mr. SEVERANCE:

Q. I am asking you if he did not tell you that the rate varied, having reference to the place of origin of the stock?
2107 A. He did not.

Mr. SEVERANCE: Well, that is all, then.

Mr. COWAN:

Q. Is it a fact or not that that 15½ cent rate which you said was commonly known to exist by the railroads, applied on shipments originating in Wisconsin that went into St. Paul and were re-consigned to Chicago?
A. Well, my information was that it applied on any shipments out of St. Paul at that time.
Q. Did it include shipments originating in Wisconsin?
A. It included all shipments wherever originating.
Q. Are you able to state it as a fact or not that that was com-

monly known among persons engaged in the live stock traffic and persons in that part of the country?

A. Yes sir.

Q. Was there any secret about it?

A. No sir.

Q. Did you ever know an instance in which anybody ever paid the 25 cent rate from St. Paul to Chicago on shipments of live stock no matter where they came from?

A. I do know of an instance, but we were asked to send the papers forward to J. J. Sutton of Columbus, Wisconsin, who made two or three shipments last season and through some error in the billing a rate of 25 cents was charged. I understood he afterwards had it refunded to him.

2108 Mr. DAWES: I move to strike that out.

The COURT: Strike out the last part of it, what he understood.

Mr. COWAN: The Court does not strike out the fact that he paid the 25 cents.

The COURT: No, what he understood, from there on.

Mr. COWAN:

Q. Now, the live stock which was shipped direct to Chicago from the local stations out from St. Paul, pays the 25 cent rate?

A. Yes sir.

Q. But that that goes into St. Paul may be billed out on the proportional?

A. Yes sir.

Q. Do you know of other instances beside the one you mention of shipments of 25 cents direct from St. Paul?

A. That is the only case that ever came under my observation.

Examination by Mr. RANSOM:

Q. Will you please state the locality of these shipments that you say formerly came to Chicago and now go to the Missouri river or Omaha, in Iowa?

A. Well, at Manning.

Q. Where is Manning?

A. About 75 miles this side of Council Bluffs.

Q. On what road?

A. It is on the Great Western, the North-Western and the Chicago, Milwaukee & St. Paul.

2109 Q. When were the shipments from that place all coming to Chicago? Do you live there?

A. No sir.

Q. Were you there?

A. I have been there frequently.

Q. How many stock shippers are there at Manning, farmers and all the rest of them put together?

A. I could not answer that.

Q. Do you know all of them?

A. No sir.

Q. Do you know how many there are?
A. No sir.
Q. You don't know how many cattle were formerly shipped there?
A. No sir.
Q. You don't know how many are shipped from there now?
A. No sir.
Q. Then why do you say that the shipments were formerly sent from Manning to Chicago and now go to Omaha?
A. I did not say all of them.
Q. How do you know that those that formerly went to Chicago now go to Omaha?
A. Because a number of the shippers who shipped to our house said that they could do better in Omaha.
Q. Could do better how, on the market?
A. Yes sir.
Q. They did not say it was on account of the rates, did they?
A. They did not explain anything except that they went there.
2110 Q. They thought they could sell their cattle for more in Omaha than in Chicago and therefore sent them to Omaha?
A. Yes sir.
Q. And no mention was made of anything else?
A. Oh, no.
Q. How many shipments did that represent?
A. I could not tell you how many.
Q. Now, then, what other places do you recall?
A. Aspinwall.
Q. Where is Aspinwall?
A. It is a station west of Manning.
Q. How far west of Manning?
A. Four or five miles.
Q. What road is that on?
A. Chicago, Milwaukee & St. Paul.
Q. How many shipments that used to come here now go to the Missouri river from there?
A. I could not answer that.
Q. Do you know whether any that used to come to Chicago now go to the Missouri river?
A. Men who have shipped to us, to our city told me of a number of shipments that they have made west, in fact, the bulk of the stuff that they have shipped went west.
Q. Did they tell you why?
A. That they could do better.
Q. And that was in reply to your soliciting agent o[illegible]f
2111 your soliciting them to send the stuff to your commis[illegible]
firm, wasn't it?
A. Well, it was in answer to my own question, where they had been shipping their stock.
Q. You were soliciting their patronage, were you not?
A. Yes sir.
Q. Now, what other place?
A. Irwin.

Q. Where is that, Irwin?
A. South-west of Manning, probably 12 miles.
Q. What is the rate from Manning to Chicago?
A. I think it is 23 cents.
Q. Where is Irwin, what road is it on?
A. The Great Western and the North-Western.
Q. Did you learn anything about the number of shipments they have made, how many were shipped into Chicago and how many now go to the Missouri river?
A. I have no accurate information.
Q. All you know about it is what some shippers told you there in reply to your soliciting business from them?
A. Yes sir.
Q. You don't know whether they ship to the Missouri river or not, do you?
A. Well, I have their statement for it.
Q. They told you that when you were trying to get them to ship to your firm?
A. Yes sir.
Q. Is the rate about the same in all this territory?
A. Yes sir.
2112 Q. Do you know of any other place?
A. There is Coon Rapids.
Q. Where is that?
A. 12 or 15 miles east of Manning.
Q. What road is that on?
A. That is on the St. Paul.
Q. Do you know anything about the number of shipments that formerly came from that place to Chicago?
A. No, I have not any accurate information on that.
Q. When did you understand that this change in shipments to Chicago and the Missouri river commenced to occur?
A. Probably four or five years ago or three or four years ago.
Q. Was it four or five years ago or was it 3 or 4 years ago
A. I cannot tell exactly.
Q. When were you out there on this drumming up of business for your firm? When was that that you were out there?
A. I have been there a great many times.
Q. Doing this soliciting?
A. I have been there a great many times.
Q. I mean when you had these talks and conversations there with these men, when was that?
A. I was there a number of times and had talks and conversations at a number of different times.
Q. You cannot tell the year that you were out there and had these conversations with the people at Manning?
A. I have been there every year.
2113 Q. You cannot tell the year that you had that conversation?
A. I have had conversations repeatedly, no sir. I cannot give you the exact dates.

Q. Could you give me the year?
A. I cannot remember every year.
Q. Do you know what the rates at Manning and in that country around in there are, to South Omaha?
A. I do not.
Q. You never made any inquiry into the rates?
A. I have, but I have forgotten just what it is.

Mr. RANSOM: That is all.

JOHN MCCARTHY, called as a witness on behalf of the complainant in rebuttal having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. State your name, place of residence and what your business is?
A. John McCarthy, Jefferson, Iowa, farmer.
Q. Do you feed and ship live stock?
A. Yes sir.
Q. To the Chicago market?
A. Yes sir.

Q. Speak out distinctly, please. How long have you been
2114 engaged in that business?

A. Twenty five years in Iowa.
Q. On what line of railroad is Jefferson?
A. Chicago & North-Western and the Chicago Milwaukee & St. Paul, a branch.
Q. How far from Chicago?
A. 365 miles.
Q. What rate of freight do you pay on cattle and hogs to Chicago?
A. 23½ cents.
Q. How is that?
A. 23½ cents.
Q. So you have been engaged in the shipping business for twenty five years, do you say?
A. Yes, in Iowa.
Q. Are you acquainted with the situation in respect to the live stock traffic in that part of the country over railroads?
A. Well, I think I am.
Q. Are you acquainted with the matters pertaining to the rates and the services performed?
A. Yes sir.
Q. Do you go in transit with the live stock to market?
A. Part of the time and part of the time I send a man, or either that or come in on a passenger train myself.
Q. Do you buy from other people and ship, or simply ship your own producing?

A. For the last 3 years I have shipped my own cattle. Be-
2115 fore that, I was buying and shipping on different roads.

Q. How extensively have you been engaged in that business?
A. For the last three years I have shipped about from 20 or 25 or 30 car loads a year.

1427

Q. Before that time, how many?

A. Well, I have handled some years as high as 2,000 or 2500 cattle.

Mr. DAWES:

Q. That is a little over a hundred cars?

A. It was a good many of them that were feeders and stockers that did not come to Chicago at that time.

Q. Do you know what it cost to maintain the stock yards in that vicinity or do you know approximately what it cost?

A. Yes sir.

Q. State it?

A. Do you mean to build a yard or to maintain it and keep it up?

Q. No, the maintenance of the yard and the keeping the yard up?

A. Well, I would judge from our own yards at our own place, my own town.

Q. What size yards are they?

A. Why, it is a four pen yard with one chute, one loading chute. There are sheds in all four of the yards. One of the yards the shippers don't use at all our home shipper has always claimed the right to use that yard and the others kept out.

Q. From what you know about it, what does it cost to maintain those yards?

2116 Mr. DAWES: I object to that. He states that he knows nothing of them except his home yard. That yard, of course, it would be competent for him to speak of.

A. I said I would judge from my home yard.

The COURT: Let him speak of the yard he knows about.

Mr. COWAN: Unless the witness is permitted to answer with respect to the yards generally, I will simply waive that question and proceed with something else.

The WITNESS: I think the way I answered that question was that I would judge from our own yards. Now, I am acquainted with yards in several other localities besides.

Q. From your acquaintance with those other yards do you know what it would cost to maintain and keep them in repair? The question is, do you know or do you not know? If you don't know, you can easily answer in the negative?

A. I do.

Q. How is that?

A. I do.

Q. Now, what will it cost on an average in the yards that you do know, for the matter of repairs?

A. There has not been any laid out at Jefferson yards for the last two years except $25.00, unless it be on the whitewashing of the fences.

Q. Now you said you knew what it would cost on the average in your judgment for the maintenance of yards. If you do know state how much it would run per yard?

2117 A. Well, it would run about the same proportion.

Q. What time do you load in order to reach the Chicago market, say on a Monday morning?

A. Well, they request us to load about from three to six o'clock.

Q. What hour, what day?

A. That is in the morning, on Sunday morning, for Monday's market.

Q. Where does your train come from that gets those cattle?

A. It comes from Omaha, generally.

Q. What time does the train get your cattle?

A. The last cattle that I shipped out of there——

Mr. LYNDE: Generally you were asked.

A. Sir?

Q. You were asked how it was generally.

Mr. COWAN:

Q. About what time, as a rule?

A. Oh from 5 to 6, not later than 7 o'clock.

Q. Forenoon or afternoon?

A. In the morning, A. M.

Q. Then how many hours does it take you to come to Chicago?

A. From 24 to 28 hours, a good run.

Q. Is that applicable to both roads?

A. I ship mostly over the Northwestern. I have made some shipments over the Milwaukee.

Q. What time does that require to make the Chicago market?

A. About the same.

2118 Q. What are the sizes of the trains in point of loaded cars of live stock, coming to the Chicago market?

A. Well, I have been on trains that have 30 cars and I have been on trains that had 40 cars.

Q. That does not answer the question.

A. Well, state the question.

Q. What are the sizes of the trains, I mean the average sizes of the trains that carry live stock in point of loaded cars, how many loaded cars per train as a rule?

A. Why, from 25 to 40.

Q. Are the trains larger now than they were eight or ten or twelve years ago?

A. Yes sir.

Q. To what extent, how much?

A. Well, it depends on the season of the year sometimes. I think they are about one third larger.

Q. How do the dressed meat trains compare in point of their size and the number of cars, to the live stock trains, if you know?

A. Well, I have noticed that the dressed meat trains as they passed us, I have noticed them sometimes when we were on the side track. Of course, I have not taken the interest in them that I have in our own trains.

Q. How do they compare in point of speed coming to Chicago over those lines?

A. They run faster.
Q. Which runs faster?
A. The dressed meat trains.
2119 Q. Which is the most desirable market for marketing live stock from your part of Iowa?
A. You mean the day?
Q. No, what place, what locality?
A. Well, I think Chicago, for cattle.
Q. What is it?
A. Well, there seems to be more competition and more demand for the different grades of cattle at Chicago.
Q. Do you ever make any complaints with respect to the amount of those rates, to any of the railroads?
A. Well, I have with our own man.
Q. Have you investigated the matter so as to be able to have an opinion with respect to the matter of whether those rates are reasonable or not?
A. I think I have.
Q. In your opinion, is the 23½ cent rate from your place to Chicago reasonable or unreasonable?
A. I think it is unreasonable.
Q. Why do you think so?
A. Compared with other rates.
Q. What other rates?
A. Well, on the dressed product.
Q. What are the average weights of the cars of cattle which you ship to Chicago? I don't mean the car itself, I mean the cattle in the car?
A. Generally, if I ordered big cars, I generally weigh my cattle to put in about 23,000 pounds. That is the way I generally
2120 do, and give myself plenty of leeway and when they would weigh up about 22,000 pounds here in Chicago. The last shipment of cattle I made, in May was 140 head. That was put in nine cars. They will average 14 or 16 when at home, and the first four cars shrunk 66 pounds that was delivered on Monday and the other five cars shrunk 80 pounds.
Q. When did they get in?
A. They got in on Wednesday morning. They were loaded on Tuesday morning.

Mr. LYNDE:

Q. Is that shrinkage per head?
A. Yes.

Mr. COWAN:

Q. How did they come to shrink so much?
A. Well, the run was not so good and we got into the yards here at a very—just at the time of a very cold rain.
Q. Ordinarily, what would you expect the shrinkage to be, what would it be ordinarily?

A. 40 to 50 pounds. Now, I can explain the way them cattle are weighed and that would make it a little plainer.

My feeding farm is about two miles from Jefferson. We have our scales and racks at this farm. In order to load for the early train in the morning we drive in at night and we weigh and sort up our cattle. By sorting up, I mean to even them up for loading, so the weight is at the stock yards, at the pens at the stock yards.

2121 Q. What did those average per carload that you have mentioned?

A. Sir?

Q. What did those average per carload which you have mentioned?

A. In weight out there?

Q. Yes.

A. About 23,000 pounds.

Q. What is the weight of the bedding that you use, how much will it weigh after you have unloaded your cattle here?

A. Well, in this particular case I know, these nine loads of cattle. I bought the bedding because I did not have time to draw it in. I bought it and paid for it. I put in about two tons of bedding in the nine cars, not quite two tons, it lacked about 100 pounds. I paid $8.00 for the bedding.

Q. What part of the weight of the shrinkage of these cattle remains in there when you unload, would all of it or would some of it work out and evaporate?

A. Oh, certainly.

Q. What would it weigh here after you unloaded your cattle, the weight of that bedding and manure and stuff left in there, assuming that you had a fresh car to start with?

A. From 400 pounds to 700 pounds, that would be according to conditions.

Q. Are there any dead freight cars in the train which picks up your cattle?

A. Sometimes.

2122 Q. Are you on the main line?

A. Yes, sir.

Q. How far are they moved as a rule, until they are cut out and put into a full stock train?

A. They are generally cut out at Boon, but at times they have brought them as far as Clinton.

Q. How far is Boon from Chicago, do you recollect?

A. 340 miles, I think.

Q. So you are the next station beyond——

A. The next county seat. We are about 26 miles from Boon.

Q. Do people from your locality patronize the Missouri river markets in shipments of hogs and cattle there for sale?

A. Yes, sir.

Q. To what extent?

A. Well, one of our shippers ships two thirds of his hogs to Omaha.

Q. Do you go there to market?
A. I have at times.
Q. Where are the most buyers for the live stock, the greatest number of persons buying live stock?
A. Chicago.
Q. Are you able to state whether the shipper of the dressed product of live stock to the Missouri river has any advantage or not over the shipper of the live stock itself.
A. Why, all I know is by what I have heard. I don't know it, that is my only way of knowing it.
2123 Q. You have not made any investigation into the subject?
A. No, sir, I have not.
Q. You said you had complained to your man about the rates. Do you mean the local agent of the railroad company at your town?

Mr. DAWES: Would it not be proper to ask him who he does mean?
The COURT: Yes. Objection sustained.

Mr. COWAN: I will put it in your way then. Whom did you mean when you said "your man," you complained to your man?
A. I talked with Mr. Whalen, he was one.
Q. Who is he?
A. He is superintendent of that division.
Q. What complaint did you make to him about it?
A. I not only complained about the rates but I complained about the condition of the yards.
Q. That is the man you meant when you said "Our man."
A. Yes, sir. Mr. Berry is another man.
Q. Who is Mr. Berry?
A. He is connected with the Freight Department.
Q. Of what Road?
A. The Chicago & Northwestern.
Q. Do you know whether it is a fact that the shippers in Iowa knew of the pendency of this suit being the Interstate Com-
2124 merce Commission as to the relative rates on packing house products and live stock?

Mr. DAWES: That is objected to.
The COURT: Objection sustained.
Mr. COWAN: I propose to show that the shippers generally knew of that fact, and knew that the case was pending and then I propose to make the further showing by the witness that it was generally regarded by the people that it would not do any good to make any complaint as to the amount of the rates.
Mr. LYNDE: That is objected to.
The COURT: Objection sustained.
Mr. COWAN: So I understand, the objection is sustained.

Q. At what expense is the railroad company in the matter of receiving the live stock which they ship from your part of the country to Chicago, in the matter of getting the stock, and receiving it at their station?

A. Well, there was a time that the expense was more than it was lately.
Q. How was that?
A. Well, the solicitors ran around after the stock men and spent money and time pretty freely.
Q. Did they pay rebates to get the business?

Mr. LYNDE: I object to that.
The COURT: Objection sustained.

Mr. COWAN: I think that is admissible. They claim that
2125 they are losing money on it. If they sent out men and paid out money to get it, it goes to show that that statement that they lose money on it is not, probably, true.
The COURT: Your question is pretty leading. I don't think I want to go into it anyway.

Mr. COWAN:

Q. Who loads the stock?
A. The shipper.
Q. Who furnishes the bedding?
A. The shipper.

Mr. COWAN: That is all.

Cross-examination by Mr. LYNDE:

Q. When was it that these complaints were made to Mr. Whalen and Mr. Berry?
A. Well, sir, it was right after our meeting with the Legislature a year ago last spring.
Q. That was in 1903?
A. Yes, I think so.
Q. Was it at the time of that meeting?
A. No, it was just after the meeting.
Q. That meeting was a conference of the shippers from different parts of Iowa and the railroad men representing the different railroads in Iowa together with the members of Legislature, was it not?
A. Well, there was a number of us that was down before the Railroad Committee of the House, and Senate and, of course, right after that Mr. Whalen was the man that wired me——
2126 Q. I don't want to interrupt you, but that meeting, that conference that you speak of was the conference between the railroad men and the shippers, with a Committee of the House or of the Senate?
A. Yes, sir.
Q. And the subject that was considered in that conference related in the main, did it not, to the action of the railroad companies in taking away the transportation privilege that had been extended to the shippers?
A. That was part of it.
Q. Also there was a complaint made as to service?
A. Yes, sir.
Q. It was in connection with that conference that you had, or

just after that, that you had your talk with Whalen and Berry, is that it?

A. Well, there was other men with them.

Q. But you referred to them?

A. Yes, sir.

Q. Were they there at that time?

A. Yes, sir.

Q. And this talk was had at that conference, wasn't it?

A. No, this was at Jefferson.

Q. But immediately following that?

A. Yes, sir.

Q. What was the complaint as to the service?

A. Well, I will state it the way that this was brought about, in my own way.

Q. I would rather that you would answer the question.

2127 A. Sir?

Q. If the question is intelligible I would rather that you would answer the question.

A. What was the question?

(The question was then read as follows: "What was the complaint as to the service?")

A. The complaint was that the time from our place to Chicago. We did not get as short a time as we had heretofore. That we were compelled to ride in old dirty cars without any conveniences at all. Also the condition of our yards, and the condition of the feed bunks and water privileges in the yards.

Q. Well, what was the result of that?

A. Well, Mr. Whalen assured me——

Q. Not what he said, but what was the result, if any, what followed?

A. Well, we got better service, some better service as to the run.

Q. Well, as a matter of fact, didn't you get what you asked for?

A. No sir.

Q. In what particular did you fail to get it?

A. We have not in regard to the yards, as yet.

Q. What is the matter with the yards?

A. Well, we have not got a feed bunk to feed in.

Q. What?

A. We have not got a feed bunk that is good for anything, to feed in in the yards.

Q. What is a feed bunk, just tell us?

A. It is a trough that is three planks wide, about a plank
2128 deep, and about three feet high, for the stock to feed out of.

Q. How long do you feed stock in the yards?

A. Well, we bring them in the night before, just one feed.

Q. Just one feed?

A. Yes, I can answer more in regard to that condition of the yards.

Q. I would be glad to hear it.

A. At a wet time you cannot go into the yards without hip boots.

Where they water the stock they almost have to stand on their heads, where they water the cattle.

Q. Did you hear Mr. Ames' testimony yesterday?

A. Yes sir.

Q. I got the impression from him that the Northwestern kept its yards in pretty good condition.

A. I guess he did not inspect our particular yard.

Q. How does yours compare with the other yards along the line.

A. It does not compare favorably.

Q. Yours are a bad sample of yards?

A. It don't compare with Scranton's.

Q. Where is that?

A. That is the next station west.

Q. Well, we will have to look into that, McCarthy.

A. Thank you.

Q. Now, this train that picks up your cattle—you are on the main line are you?

A. Yes.

2129 Q. It is a way train, is it?

A. Sir?

Q. It is a way train that takes your stock down?

A. Generally it is No. 132.

Q. Well, that is a regular scheduled dead freight train, isn't it?

A. Now, then, if in my case, they would make up a special—they agreed to, but I did not ship my cattle all in one day.

Q. If you had shipped your cattle all in one day and had a sufficient number of cars, they would have made up a special train and brought it into Boone for you?

A. They wanted me to include in my shipment cattle that belonged to another gentleman which would have made fourteen loads. I did not do it.

Q. What was the difficulty? why not?

A. He was not ready to ship.

Q. You had how many loads ready to ship?

A. Nine.

Q. If you had had fourteen loads belonging to you there already to ship they would have given you a special train to ship them in, wouldn't they?

A. They might have and they might not.

Q. Didn't you say that they had offered you one?

A. They disappointed me two years ago in that same condition.

Q. They did?

A. Yes sir.

Q. How often have they gratified you?

A. Well, occasionally.

2130 Q. Occasionally?

A. Yes sir.

Q. How often have they disappointed you?

A. When I go over to the other road I generally get very good service on the Northwestern.

Q. Just answer the question as to the Northwestern. How often have they disappointed you, once in two years?

A. Well, they have several times.

Q. But you can use them that way to advantage, that is, play off one against the other and that helps some, doesn't it?

A. Well, it helps, yes sir.

Q. There is a good deal of competition there, isn't there?

A. Well, I don't think so, I think they are pretty fair.

Q. Well, they are both after the cattle, are they not?

A. Yes, but there is only one of them that gets very many of mine.

Q. Which is that?

A. That is the Northwestern.

Q. The service must be fairly good then?

A. It is a little handier to get in.

Q. Isn't the service fairly good?

A. Yes sir.

Q. Now, your cattle are picked up by train No. 132 and that is a sort of a dead freight train. They carry dead freight and live stock and they take it down to Boone, is that right?

A. At times, yes sir.

Q. Well, it is a regular train, isn't it?

A. Yes sir.

2131 Q. And when live stock is ready for shipment, they will take it down to Boone on that train, will they not, regularly?

A. Yes.

Q. Now, at Boone, the live stock cars are cut out, are they not, as a rule?

A. Generally, yes sir.

Q. And consolidated into a live stock train, and then moved down east, is that right?

A. Well, they generally take on the M. & St. L. cars for the last four or five months.

Q. What do you mean, live stock coming down from there?

A. Yes sir, at Grand Junction.

Q. Where is that junction point, west of Boone?

A. Yes sir.

Q. But the live stock, from all of the branches west of Boone, when the cars get into Boone they are consolidated into a live stock train, are they not?

A. Yes sir.

Q. As a rule?

A. Yes sir.

Q. And then moved east from there?

A. Yes sir.

Q. You said Boone, I think, was 340 miles from Chicago?

A. Well, I live 365 miles, and Boone is about 25 or 26 miles.

Q. That is what I understood. From Boone on to Clinton, how far is it?

A. Well, it would be the difference between.

Q. I cannot easily give you the figures myself.
A. I cannot either unless I figure it out.
2132 Q. Then the movement is from Boone to Clinton?
A. Yes sir.
Q. If a train is a full train at Boone, it moves right through without any stops except for watering purposes, is that true?
A. Well, they sometimes side track it for other trains.
Q. Coming from Boone to Clinton?
A. Yes sir.
Q. How often does that occur?
A. Well, I have been on trains a number of times when they have side tracked it for other trains.
Q. How is it between Clinton and Chicago?
A. I did not go into that. About that time I generally go into my bunk and I don't know.
Q. You don't know what happens after you get there?
A. No.
Q. When you come here what time do you get in here to Chicago as a rule?
A. I like to get in about seven o'clock.
Q. I know, but when do you get in?
A. Sometimes from six or from five to nine.
Q. Do you ever get in earlier than five?
A. Not very often.
Q. You know that stock trains do get in here earlier than five o'clock?
A. Yes sir.
Q. The time of arrival here depends somewhat on what
2133 time your train happens to hit Clinton?
A. Well, I suppose so.
Q. Well, that is the fact. There are a large number of trains come in here from Clinton to Chicago?
A. Yes sir.
Q. If you happen to be the first train, you get here very much earlier than five o'clock?
A. Well, I have never got here much earlier than five.
Q. You don't know then about the time of the other trains?
A. No, I do not.
Q. You spoke about having noticed dressed meat trains as they passed you. Where would that be, going from your place down to Boone?
A. No. I have seen that east of Boone. I have had that experience at Tama City several times.
Q. How far is that east of Boone?
A. That is east of Marshalltown.
Q. You yourself ship to Chicago as a rule?
A. Yes sir.
Q. Have you ever shipped to Omaha at all?
A. Yes, I have.
Q. Do you buy feeders at Omaha too?

A. I buy feeders at Omaha, and Kansas City, and sometimes buy them out in the sand hills.

Mr. LYNDE: I think that is all.

2134 Examination by Mr. RANSOM:

Q. What is the rate from Jefferson to Sioux City on live stock, Mr. McCarthy?
A. Well, sir, I could not tell you.
Q. Do you remember what the rate is to South Omaha from Jefferson down to South Omaha?
A. You mean coming this way?
Q. No, going from your place down to South Omaha?
A. Well, sir, I have got their bills, but I could not tell just exactly.
Q. You are in the 23½ cent belt, are you not?
A. Yes sir.
Q. You don't remember the rates in to the river?
A. No, but I remember them this way though.
Q. How long has it been since you shipped to South Omaha?
A. I ain't shipped no cattle to South Omaha for two years.
Q. Or hogs?
A. No sir, I don't handle no hogs only my own raising.

J. W. MOORE, called as a witness on behalf of the complainant in rebuttal having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. State your full name to the reporter, your residence
2135 and your business?
A. J. W. Moore; 6933 Parnell Avenue, Chicago.
Q. And your business?
A. Live stock commission.
Q. Are you chairman of any committee in connection with the live stock exchange here?
A. Yes sir.
Q. What is that?
A. The Railroad Committee.
Q. What is the business of that Committee?
A. Not extensive since I have been a member of the committee. Namely to look after what the committee and the exchange consider irregularities in the conduct of the railroad business.
Q. Does that take into consideration the matter of rates and service?
A. It seems it did at the time this case was instituted. I was not a member of the committee at that time.

Mr. DAWES: Then I move that that answer be excluded.
Mr. COWAN: The fact that he was not a member of the committee at that time don't keep him from knowing the fact that he has stated.
Mr. DAWES: He says that it seems that it did. He thereby qualifies his answer and explains to you that he don't know anything about it. He made what he evidently considered a smart answer.

The COURT: Objection sustained.

Mr. COWAN: When did you become a member of the Com-
2136 mittee?

A. I think three years ago.

Q. Was that while this case was pending before the Interstate Commerce Commission?

A. Yes sir.

Q. Did that committee have anything to do with the matter of that case after you became chairman of it?

A. Yes sir.

Q. What did it have to do with it?

A. Well, it had this to do with it; there seemed to be some legal advisors to secure and the prosecution of the case in general before the Commission.

Q. In the course of your official position, did you make any examination or investigation or inform yourself with respect to the matter pertaining to the comparative rates on live stock and the product of live stock from the Missouri River to Chicago?

A. I satisfied myself in reference to that matter.

Q. Did you do that by informing yourself in regard to the facts?

A. Yes sir. My conclusions were reached partly from information secured from others and partly in reference to my views of the matter in general.

Q. State what your opinion is in reference to the matter of the comparative rate on live stock and its product from the Missouri River to Chicago, in that connection, stating what you think
2137 the relation of the rates ought to be and give your reasons therefor?

A. Judge Cowan, did you say to state my opinion?

Q. Read the question.

(The pending question was then read.)

A. My opinion in reference to the rate on live stock and packing house products is that at least the rate on live stock should not exceed the rate on packing house products; and the reason is that it is more unreasonable to me that the raw material should have a higher rate than the finished product.

Q. Why?

A. Simply because there is the most difference, almost the difference between shipping the products and the live stock that there is between junk and a carload of stoves. I don't know what the difference would be, but a carload of dressed meat would usually comprize forty or fifty steers or the carcasses of forty or fifty steers, whereas in live stock the number seldom exceeds 25. In live stock there certainly is a lot of fertilizer, fertilizing element, horns and hoofs and hair that would not compare with the finished product.

Q. Have you in connection with your official position and such investigations as you have made, ascertained whether the shipper of the dressed product has any advantage under the existing
2138 rates of freight, over the shipper of the live stock, from the Missouri River?

Mr. SEVERANCE: Simply state now whether you have arrived at any opinion and not what that opinion is. When he gives that opinion I want to object to it.

The COURT: The question is whether you have such an opinion, an opinion on that subject?

A. I have an opinion.

Mr. COWAN:

Q. Now state what it is.

Mr. SEVERANCE: I object to that as incompetent, and as asking for a conclusion, and as there is no foundation laid for it.

A. My opinion is that he has a decided advantage.

Q. In what way, explain it.

A. Just simply because as I have already stated, he ships it in a concentrated form and instead of 25 animals, he certainly could get 40 or 50 in there, the carcasses of 40 or 50, shipping it in a concentrated form.

Q. What advantage has he in the matter of the rates?

A. That I have half on my own knowledge and half of general hearsay. From the Missouri River points on live stock, 23½ cents, and on dressed meat. I have never shipped any, and I would only know that by hearsay.

Q. Well, is it greater or less than the live stock?

A. 18½ cents I am told.

Q. How does that give the dressed beef man an advantage
2139 over the shipper of live stock, wherein does the advantage lie in the matter of the rate which you have spoken of. You have spoken of the difference of the quantity.

A. Yes sir.

Q. Now, what does the advantage consist in if there is an advantage?

A. The advantage is that he has five cents per hundred pounds and he ships the finished product and concentrates it and ships a great many more animals.

The COURT: That is the same answer.

Mr. COWAN:

Q. Well, suppose a man comes in to the Missouri River with a bunch of cattle, one carload, and there is a buyer there who is buying cattle, and shipping to Chicago, and there is a buyer who is buying cattle to kill, and shipping the carcasses to Chicago. Can you explain wherein either has the advantage over the other upon the rates that you have named?

A. I should think that the gentleman that had the one carload shipped to Chicago would be at a decided disadvantage. He would have to pay five cents higher rate to begin with. He has to ship the raw material. The packer that would buy that carload there could put into a carload with that, probably a good deal more and ship it to Chicago at a less rate.

Q. Do you know whether it has had any effect upon the ship-

ments from the Missouri River to Chicago, that this differ-
2140 ence in the rate has been made. Do you know whether that has produced any effect?

A. My knowledge in that direction is very limited. I know of a few men who were engaged in the traffic, oh, four or five years ago. No, I will not be specific about that. I know that a few years ago they were in the traffic and since the inauguration of the present rates they have gone out of the business.

Q. In what traffic?

A. Cattle.

Q. The traffic in cattle how? Killing them, or buying them, or selling them, or shipping them or what?

A. They were speculating in cattle at that time, buying them at the river points, and shipping them to Chicago.

Q. Has that sort of business declined or not within the last four or five years?

A. So far as my information goes it has gone out of vogue entirely.

Q. Do you know what has caused that?

A. When it comes to absolute knowledge I have none.

Q. Are you a shipper of cattle yourself?

A. I have been a shipper of cattle for 25 years.

Q. Do you know who beds the cars out in Iowa, in that country this side of the Missouri River?

A. I have never shipped any cattle out of Iowa, I think. I have shipped them out of Missouri, but my operations have been confined to the State of Illinois.

2141 Q. That is all unless there is some other point that you wish to testify about. I have had no opportunity to talk with you.

A. No sir.

Cross-examination by Mr. RANSOM:

Q. Who went out of business on the Missouri River as speculators, after these rates went into effect?

A. A gentleman by the name of Meyer.

Q. Where did he do business?

A. He formerly bought at Kansas City and Omaha and shipped to Chicago, what is commonly known or popularly know as a speculator.

Q. You don't know why he went out of business?

A. In my other answer I said I did not.

Q. You don't know of any one that did go out of business in the last two, or three or four years, why they went out of business, do you?

A. No sir.

Q. Do you know whether the number of cattle received at the stock yards here in Chicago in the last three years has decreased or increased as compared with former years?

A. Inside of what time?

Q. In the last two or three years as compared with two or three years previous to that?

A. My information is that the receipts have increased.

Q. Increased?

2142 A. Yes. I don't study statistics very closely, but that would be my notion of it.

Examination by Mr. DAWES:

Q. You stated that a number of men had gone out of business for reasons that you don't know since the change of rates. What change of rate do you refer to?

A. The reduction on the packing house products.

Q. What was the rate on packing house products prior to the reduction?

A. In one of my answers this afternoon I told you that I did not know what it was now, except by hearsay, and the other would be just the same way.

Q. Do you know what the rates have been on live stocks in the last eight or ten years?

A. Not dating that far back.

Q. Do you know whether there has been any change in those rates?

A. I think there has been occasional changes from Kansas City to Chicago.

Q. But a temporary change?

A. Yes sir, temporary.

Q. You know, do you know, that, as a whole, there has been no change in those rates? I mean they have averaged practically the same right along?

The COURT: From here to Kansas City?

Mr. DAWES: Yes.

A. Well, now, from Omaha, and those points out there, I know of no change that has taken place in the last thirty

2143 years.

Q. Do you know on what rate the cattle are carried from Missouri River points to Chicago?

A. 23½ cents.

Q. Cattle coming from Missouri River points to Chicago, through cattle?

A. No sir, I don't know how that division is made, and yet we have received some from Nebraska and some from Kansas.

Q. You know, do you not, that they are carried on a rate very much less than 23½ cents and going down as low as 13 or 14?

A. No sir, I don't know that.

Q. And as low as 12 cents?

A. I don't know that.

Q. You know, do you not, that they have been carried at a proportion of the through rate and that the proportion applicable from the Missouri River to Chicago is very much less than twenty cents?

A. No sir, I don't know that.

Q. How long since you have had knowledge of cattle being

shipped from Missouri River Points to Chicago, calling Missouri River the original point of shipment?

A. Now, let me explain to you that prior to six or seven years ago, my operations were confined in the stock yards here to hogs, and that in the last six or seven years my attention has been called more particularly to cattle, and it is only since that time that I have had any occasion to notice the rates.

2144 Q. Do you as a matter of fact know very much about the rate question? That is the comparison which you have endeavored to institute?

A. I would not regard myself as an encyclopedia on that subject.

Q. Or as very much of an expert from the consideration you have given it yourself.

A. No sir, I explained how I arrived at it.

Q. Well, I think you are very fair, sir.

The COURT: Call the next witness.

2145 CHARLES W. BAKER, called as a witness on behalf of the Petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. State your name, and your business, and where you reside?

A. My name is Charles W. Baker. I am Secretary of the Live Stock Exchange and reside in Chicago, Illinois.

Q. Were you Secretary of that Exchange at the time this suit was brought before the Interstate Commerce Commission?

A. I was.

Q. How long have you occupied that position?

A. Ever since the formation of the Exchange, in 1884; twenty-one years.

Q. Are there other live stock exchanges at the different live stock markets of the country besides Chicago?

A. Every prominent live stock market in the country, has a live stock exchange.

Q. What are those markets which have exchanges?

A. Buffalo, Pittsburg, Cleveland, Indianapolis, St. Paul, Sioux City, Omaha, St. Louis, Kansas City, St. Joseph, Fort Worth and Denver. I guess I have named them all.

2146 Q. Is there an organization called the Live Stock Exchange at each of these markets?

A. Yes, sir.

Q. Is that similar to the organization at Chicago?

A. Yes sir.

Q. Composed of whom?

A. They are composed of buyers and sellers and feeders and shippers, resident at those markets principally.

Q. What are the commissions usually charged at those markets?

Mr. SEVERANCE: I object to that as incompetent and immaterial at any place except Chicago.

The COURT: The objection is sustained.

Mr. COWAN: That is one of the elements of the cost of marketing the live stock. It is not immaterial to show that it is the same elsewhere as it is at Chicago. It is one of the conditions.

The COURT: You have proved it already as to the other points.

Mr. COWAN:

Q. Do all these exchanges have any general organization?
A. Yes sir.
Q. What is it?
A. The National Live Stock Exchange.
Q. Do you hold any position in that Organization?
A. I am its Secretary.

2147 Q. In connection with your official position, have you made any investigation or informed yourself relative to the questions as to whether there is a preference or advantage, in the matter of the difference in rates on live stock from the Missouri River to Chicago, and with reference to the reasonableness of such preference or advantage as may exist.

A. I have studied the question somewhat.

Q. Do you know what the relative rates are from the Missouri River to Chicago for live stock and its product?

A. I understand the rate on live stock is 23½ cents, and on packing house products, 18½ cents.

Q. Assuming that in addition to the 18½ cent rate, that there is a 20-cent local rate to Chicago on the packing house product and dressed meat, state whether or not in your opinion the difference in the rate gives any preference or advantage to the shippers of the product as against the shippers of the live stock?

Mr. SEVERANCE: I object to that as asking for a conclusion and no foundation has been laid.

The COURT: The objection is sustained for the present. You better show what he has done in the way of qualifying himself.

Mr. COWAN:

2148 Q. State in detail Mr. Baker, what investigation you have made of the subject, what study you have made of the subject.

A. Well, as Secretary of the Exchange, I have necessarily been more or less familiar with the working of all its committees and all its officers. I have, in connection with its officers and representatives, investigated these subjects very carefully, as much so as my time would permit and tried to keep myself thoroughly posted and advised as to the situation.

The COURT:

Q. Have you studied the railroad reports?

A. The railroad reports and rates and testimonies and hearings and litigations and everything I could to qualify myself to fill the position I occupied.

Mr. COWAN: Now read the original question.

(Previous question read, commencing as follows: "Assuming that in addition to the 18½ cent rate that there is a 20 cent local rate to Chicago")

A. It does.

Q. State whether or not in your opinion that advantage is a reasonable or an unreasonable one?

Mr. DAWES: I object to that your Honor. I think the question of the reasonable character of the advantage or disadvantage is a judicial question.

The COURT: The objection is sustained.

2149 Mr. COWAN: If the objection is sustained on the ground upon which it is made, I desire, if the Court will permit me to call attention to the fact that the Supreme Court of the United States, in the case of the Texas Pacific Railway Company against the Interstate Commerce Commission, one of the very first cases that went before the Supreme Court, in reviewing the English decisions upon the subject, giving a review and history of the Interstate Commerce Act, lays it down as a rule absolutely that the question of the reasonableness of the rate, the question as to whether or not a preference is an undue preference or not, are wholly questions of fact and not questions of law. Now, I am asking the witness whether this is reasonable or unreasonable, not with a view to obtaining his opinion on a question of law, as the objection seems to indicate, as I understand, but to get his opinion as a matter of fact.

The COURT: I don't believe his opinion would be of much value unless he gives facts to sustain it. I am willing to hear why he thinks it is unreasonable.

Mr. COWAN: I will follow it up by that. I will change the form of the question.

The COURT: I assume he does, otherwise he would not have brought this suit.

Mr. COWAN:

2150 Q. Mr. Baker, state whether in your opinion the difference in the rate is a reasonable or unreasonable one, and in that connection state your reasons for the opinion you may give.

The COURT: Now state the reasons for your opinion that there is a difference.

A. Before stating my opinion as to whether there is a difference?

The COURT: You have stated there was. Now, give your reasons for it.

A. Well, to illustrate—I best can state my opinion in that way: A producer lands his load of cattle in a Missouri River market, Kansas City, to illustrate, and offers them for sale on the market. His competition is largely restricted to the slaughterers on that market, because a live cattle shipper, or he, the shipper himself could not ship those cattle on to Chicago and receive as many gross dollars for them as he could by selling them in Kansas City, and the slaughterer can ship that product on and can put it in competition with similar stuff in Chicago.

Mr. COWAN:

Q. Why couldn't he?

A. On account of the difference in the rate. The shipper of live cattle would send forward 24,000 pounds, at 23½ cents a hundred. The slaughterer in sending forward that amount of cattle, or what would make that amount of beef, would send forward less
2151 than 60 per cent. of 24,000 pounds at 18½ cents a hundred, and that beef would be in competition with the beef of the live cattle shipper who shipped it from Kansas City and slaughtered it in Chicago.

Q. What would it cost the live stock shipper per head assuming that there are 20 head to the car, and they weighed 1,000 pounds, to land his animals here, and what would it cost the shipper of the dressed product to land the product of those cattle here, or in any other form. If you have got the figures, state the relative difference in cost.

A. I have figured that out. A 1200 pound animal at 23½ cents a hundred, would cost, exclusive of shrink and necessary expense incident to his care and so forth in bringing them forward $2.82 to land them in Chicago. According to the general percentages of dressing of animals, and being very liberal, that 1200 pound steer would dress 700 pounds, which, at a 20-cent rate, would be $1.40 to land that beef in Chicago, the slaughtering conditions at Kansas City and Chicago being equal, would make a difference in favor of the Kansas City slaughterer of $1.42 per head.

Q. What about the other product besides the dressed meat?

A. The hide and other offal, do you refer to?

Q. All of the other product of the animal besides the dressed meat?

2152 A. There is some waste you understand. In killing a 1200 pound bullock, you don't get 1200 pounds of results.

Q. What do you get?

A. Well, if you weigh the contents of the intestines, I suppose you get somewhere about 86 or 88 per cent., together with all the other offal, but there is an absolute weight.

Q. Now, under the actual conditions, do you know whether or not the other products, that is the fertilizers made out of the bone, the fertilizer that is made out of the offal, do you know whether that is shipped to Chicago, or whether it is shipped to other points?

A. No, I don't know of my own knowledge.

Q. Have you any definite information with respect to the total product of the live animal in point of weight, as compared with the weight of the live animal. By total product, I mean the dressed meat and all of the packing house products and other stuff?

The COURT: By-products.

Mr. COWAN:

Q. By-products, yes?

A. About 90 per cent.

Mr. DAWES: Does that include the cooperage on the product?

A. No, sir.

Mr. COWAN:

Q. Where did you get that information Mr. Baker?

A. From practical experience slaughtering cattle.

2153 Q. Figured on the basis of 90 per cent., how much product and dressed meat have you got?

A. What is that question?

Q. 1080 pounds, 90 per cent. of 1200 pounds is 1080?

A. It is 10 per cent. less, yes.

Q. Now, answer the question as to whether in your opinion, the preference the shipper of the dressed meat has is a reasonable or unreasonable one?

Mr. DAWES: I object, your Honor. You have excluded that very question.

The COURT: I think I have. I sustain the objection.

Mr. COWAN:

Q. Are you acquainted with matters pertaining to the shipment of live stock from St. Paul to Chicago?

A. Slightly.

Q. Do you know what has been the prevailing freight charge on live stock shipped from St. Paul to Chicago?

A. On cattle?

Q. Yes.

A. Well, I do not of my own personal knowledge.

Cross-examination by Mr. BAXTER:

Q. Do I understand Mr. Baker, that the facilities for

2154 slaughtering at the Missouri River points are as good as they are in Chicago, or substantially as good?

A. I will answer that by saying, yes, except as to capacity.

Q. You mean as to the number of hogs, or animals that can be slaughtered?

A. Yes, sir, I think in the case of St. Joe, they are superior to the average of Chicago on account of more modern construction and machinery.

Q. Now, I am not clear that I understood Mr. Cowan's original examination and you will pardon me if I repeat anything that he has already brought out. What I am trying to get at here is, take a beef of any weight that you may see proper to assume; that beef is slaughtered at the Missouri River or Chicago. What per cent. of the live weight of the animal is absolutely lost, that is, does not reappear in the shape of dressed meats, or products of blood or bone, or horn, or foot, or anything, it is gone?

A. Well, that would depend upon the house at which it was slaughtered and the care that was exercised in saving all parts of the animal. To illustrate: The blood and the contents of the stomach are no inconsiderable part of the weight of the animal. In many houses, it is practically lost, in others, it is saved—it makes a difference, therefore, in which house an animal is slaughtered as to how much weight is retained of the original.

Q. Take the case where the animal is slaughtered by the
2155 most approved methods and by the most scientific managers, what per cent. of the live weight would be absolutely lost?

A. Well, anyway, 5, perhaps 10 per cent. It is pretty hard to tell definitely, cattle vary in their shrinkage and beef.

Q. Yes, I suppose so. I am just trying to get some reliable figure in the record. Now, take the average method of slaughtering on the Missouri River, not the best or the worst, but the average method of slaughtering at the Missouri River, and what per cent. of that beef would be absolutely lost?

A. Well, I am not familiar with the weights and figures at the Missouri River establishments.

Q. What would they be here?

A. Well, I should think about 90 or 92 per cent. would be saved.

The COURT: What is that?

A. 90 or 92 per cent. of the weight of the animal would be saved in beef, butter fat, casings, horns, feet, tails, switches, hides and all the other parts of the animal, contents of the stomach.

Q. Now, give me the per cent. of live weight of the hog that would be absolutely lost in the act of slaughtering?

A. I don't think I can do that, sir.

Q. Now, the products of the beef, take that. I under-
2156 stand the dressed beef, the dressed meat as it is called here in this tariff, to be the principal product of a beef, is that correct?

A. The carcass you mean?

Q. Yes, sir.

A. Yes, sir.

Q. That is transported in cars where it is hung up on hooks, as I understand it?

A. In quarters, yes sir.

Q. Now, the remainder of the meat, what becomes of that, is it packed in boxes or barrels, or what is done with it?

A. The remainder of the meat?

Q. Yes, of the beef?

A. Of the meat of the beef?

Q. Yes. You have accounted for the quarters; they are hung up in the car and transported as dressed meats.

A. Do you refer to the tongue, and the heart, and the liver and so forth.

Q. Yes, what is pickled beef?

A. That is made from the carcass.

Q. Is that part of the product of the beef or independent of the quarters?

A. No, sir, it is part of the quarters.

Q. Just a different mode of shipping it?

A. Yes, sir. That is, as I understand, packing house products, and the other is fresh beef, fresh meat.

Q. So much of the products of the beef as are not transported as quarters are made up into smaller pieces, or even the quarters themselves maybe?

A. Except the tails, tongue and liver. The liver is very
2157 seldom shipped on account of its spoiling and it is usually used locally for sausage, making sausage.

Q. Now, those products of beef that are not transported as quarters, what rates do they pay in their movement from the Missouri River to Chicago, the packing house rate?

A. I so understand it, yes sir, except—the manufactured products, I do not refer to the hides, horns, hoofs and that part of the animal, I refer to the meat part, the edible part of the animal, is moved at the packing house product rate. I don't know whether the others do or not, I am not advised in regard to that.

Q. You don't know whether the other product pays the same packing house product rate or not?

A. No, I do not, the hides and hoofs and so forth.

Q. Then a party who sold a steer weighing a thousand pounds at Kansas City, if he shipped back the product of that animal, he would ship back within 8 per cent. of the live weight of the animal, would he not?

A. I don't quite catch your drift, ship it back?

Q. For instance he sells, or has his animal slaughtered at Kansas City?

A. Yes sir.

Q. And he ships the product back here to Chicago in competition with the packers here. I understand that to be the ground of your complaint?

A. Yes sir.

Q. Now, wouldn't he pay freight on the live weight of the
2158 steer minus 8 or 10 per cent. of that?

A. No, I think not because all of the product of the slaughtering does not move to Chicago, or elsewhere out of Kansas City in that shape.

Q. Well, how much of it. That is what I am trying to get at, how much of it is lost there at Kansas City and that does not pay any further freight rate?

A. Well, I said I thought about 8 per cent. was absolutely lost. There is part of the product, the by-product of the slaughter of a steer animal that does not move in the same direction that the carcass and edible portions would.

Q. I am not talking about the directions, we are settling the exigencies of the case, and we want to know how much of it is lost that never pays another freight rate, I don't care whether the freight rate be paid from here to Chicago or paid in some other direction.

A. What I mean by that Judge, is the market for hides which is a very important part of the animal in weight and so forth, is practically the same at Kansas City as it is at Chicago.

Q. Well, if it was shipped from Kansas City, it would pay freight, wouldn't it?

A. Oh, presumably, yes sir.

Q. So that within 10 per cent. of the live weight of an animal, all of the product of the animal would pay a rate of freight either to Chicago, or in whatever direction they may happen to move?

2159 A. No, I am not prepared to say that, I have no knowledge on that score.

Q. Well, haven't you as much knowledge on that point as you had upon the other?

A. No, I don't think I have because I have investigated the other and I have not this.

Q. Well, how can you state then, that there is a disadvantage and a prejudice against Chicago based upon a difference between the rates of the live animal and the rate of the product, when you don't know what that difference is?

A. Because the by-products of the animal are practically of the same value in Chicago and Kansas City. The shipper in one instance sells his beef, you may say his beef, because it is his beef, the carcass beef plus a 20-cent rate, if you please, to Chicago, to put him on a parity with his live cattle, which he ships to Chicago and has slaughtered here on a 23½ cent basis.

Q. Well, now, if I own a farm in Western Iowa between Chicago and Kansas City, at a point equi-distant between Kansas City and Chicago, and I have raised a car load of cattle or hogs, and I can ship them to Kansas City and there dispose of them on the basis that you *not* indicate, that the entire weight of the animal minus 8 or 9 per cent. can be marketed as profitably at Kansas City as they can in Chicago, can you suggest why I should not have the right to choose between the two markets.

2160 A. No sir, you should have that right.

Q. Well, the rate from a point equi-distant from Chicago to Kansas City is the same to the one as to the other city, isn't it, upon the live animal. If I live half way between here and Kansas City, can't I ship as cheap to Chicago as I can to Kansas City?

A. I don't know. I should presume so, but I don't know.

Q. Then if I pay the same freight rate to each city and can dispose of my animal on equally favorable terms in each city, why shouldn't I have the right to make a personal selection between the markets?

A. You should have.

2161 Q. The first witness——

A. Mr. Buell——

Q. He was on the stand the other day and I asked him if it was possible that the Live Stock Exchange in Chicago, that had been in operation 30 years, I believe, had never been able to grade the cattle and hogs that were offered for sale here upon any intelligent basis, so that when the reports from this market were telegraphed abroad every other market in the United States would be able to know what prices would be ruling in Chicago, and I understood him to say that no such system of grading as obtains in cotton and wheat and grains had ever been invented, or could be invented here in Chicago. Now I hand you a copy of the Chicago Daily Drovers' Journal, dated, Union Stock Yards, Monday, October 2, 1905; is that paper a generally accredited journal, and regarded as authentic and reliable by people who deal in live stock. (Handing said Journal to the witness.

A. It is.

Q. Will you please look at the places marked with ink and read them into the record and explain what they mean?

A. Yes, sir. This is the Chicago Daily Drovers' Journal, published at the Union Stock Yards on Monday, October 2nd, 1905. Under the head "cattle" I find the following:

	Common to thin grassy steers	$3.50 to	$3.75
	Inferior and rough beef steers	3.75 to	4.00
	Common to fair corn-fed steers	4.00 to	4.35
2162	Fair to medium corn-fed steers	4.40 to	4.60
	Good to choice corn-fed steers	4.70 to	5.35
	Choice to fancy finished beeves	5.40 to	6.25
	Export steers, 1150 to 1450 lbs	4.75 to	5.60
	Poor to choice yearling steers	4.10 to	4.85
	Fancy finished corn-fed yearlings	4.95 to	5.75
	Corn-fed Western steers	4.25 to	5.90
	Northern-fed Texas steers	3.40 to	5.40
	Distillery steers	4.75 to	5.65

Q. Under what general head would that list of grades you have read be found?

A. Cattle.

Q. Under the general head of cattle?

A. Yes, sir.

Q. Is there any sub-head?

A. Yes, sir.

Q. What is that?

A. Referring to "Butcher stock," I find the following: "Revised quotations"—do you wish them read?

Q. If you please.

The WITNESS: "Revised quotations for native Butcher stock follow:

	Beef cows, inferior to fair	$2.35 to	$2.50
	Beef cows, medium to good	2.60 to	2.80
	Beef cows, choice to fancy	2.90 to	3.50
	Export cows, fair to good	3.00 to	3.75
	Heifers, inferior to fair mixed	2.00 to	2.55
	Heifers, good to choice mixed	2.60 to	3.20
2163	Heifers, good to choice selected	$3.25 to	$4.25
	Heifers, extra prime selected	4.30 to	5.00
	Stags, poor to choice mixed	2.75 to	3.60
	Stags, good to fancy selected	3.75 to	4.25
	Bulls, inferior to fair light	1.90 to	2.25
	Bulls, common to good bolognas	2.25 to	2.40

Q. What is meant by "bolognas"?

A. Sausage bulls.

	Selected bolognas	$2.45 to	$2.55
	Bulls, fair to choice butchers	2.55 to	3.10
	Bulls, fair to choice export	3.10 to	3.65
	Bulls, distillery-fed stock	3.65 to	4.00

Under the head "cattle" is still another classification known as "Western Rangers." There are no quotations on that. The paper has confined itself to quoting actual sales and giving the names and brands of the owners—quite a list of sales here.

Q. Is there any similar information in that paper with reference to the manner of classifying hogs?

A. Yes, sir.

Q. Will you read that?

A. In the same paper I find under the head "hogs":

Bulk of packing grades	$5.51 to $5.40
Bulk of shipping grades	5.45 to 5.65
Inferior to fair mixed	5.00 to 5.20
2164 Good mixed, 210 to 250 lbs	$5.25 to $5.35
Fair to choice medium weights	5.35 to 5.50
Good to fancy selected butchers	$5.47½ to $5.65
Rough heavy packing—odd lots	$4.60 to $4.85
Poor to choice heavy packing	4.90 to 5.20
Selected heavy packing	5.25 to 5.35
Fair to fancy heavy shipping	5.40 to 5.65
Poor to choice light bacon	5.35 to 5.50
Fancy selected light shipping	$5.52½ to $5.60
Grassy light weights	$5.00 to $5.30
Selected pigs, 100 to 140 lbs	4.90 to 5.55
Mixed pigs, 120 lbs. and under	4.30 to 4.85
Stags, according to weight	3.75 to 4.50
Boars, according to weight	2.75 to 3.25
Governments, throw-outs	2.00 to 4.25.

I might say, in connection with this, of course, all those quotations are not generally used in quoting the market, simply in the most general terms.

Q. Now I suppose it is true—take this grade, "Fat cows, choice to fancy," two purchasers, members of your Live Stock Exchange, living here in Chicago and looking at the same animal, might differ as to whether a particular animal would class as "choice" or "fancy," might they not?

A. Very materially.

2165 Q. And so they might differ as to whether beef cows were inferior or fat?

A. Well, not so much.

Q. Now my question to you is this: suppose you were a member of the Live Stock Exchange at any of the Missouri River markets; that you had followed the business for twenty or thirty years; that you were an experienced man in the cattle business; if those quotations which you have read to us were telegraphed from Chicago to Kansas City would you have any difficulty in knowing within reasonable bounds how the market stood at Chicago for that day?

A. No, sir.

Q. Would you have any more difficulty than a cotton buyer in

New Orleans would have if he had telegraphed to him the prices of the different grades of cotton published in New York?

A. Yes.

Q. What would be the difference?

A. A certain brand of cotton, like a carload of wheat, has its stamp of authority on it that makes it uniform throughout the world. A description of a live animal such as I have just read in the paper is not so definite and positive as in the case of grain or cotton, but is subject to a slight variation, I should say not to exceed 15 or 20 cents per hundred pounds.

Q. Isn't there exactly the same variation in the grading of cotton or the grading of wheat or any other commodity that is dealt
2166 in in these large markets or which have authority, as at New York in the cotton market?

A. I am not advised as to cotton. I know that grain coming to Chicago is inspected by the Board of Trade inspector before going to an elevator and a certificate is given for a carload of grain, or the amount involved, grading a certain number. That is definite and positive; there is no variation of a fraction either way from that. It is number one or number 2.

Q. Suppose your market reports show that the price of wheat, number 2, is $1.00 a bushel?

A. Yes, sir.

Q. Would a man out at Kansas City, or down at Mobile, Alabama—wouldn't he know what that class of wheat was selling for in Chicago?

A. Yes, but he would have to take the chance of his grading the same way. He would have to use his judgment.

Q. So the man at Kansas City would have to take the chance of seeing that the animal he is examining falls within the grade described in this paper?

A. Yes, sir.

Q. But assuming his experience in the business will enable him to do that, will not your daily quotation from Chicago, published abroad, enable the purchaser of cattle in all the cattle markets, to approximate very closely to what the market is doing here?

A. Yes, sir, that is true.

The COURT: Still another suggestion might be made. If
2167 the live stock market changed from any other market——

The WITNESS: Than the markets he has mentioned?

The COURT: Yes.

The WITNESS: I don't know that I am competent to mention that.

The COURT: Suppose the market is high today, 10, 15, 20 cents or half a dollar higher than elsewhere, wouldn't they flood the market so fast it would go down?

The WITNESS: Our market at the Chicago Stock Yards on cattle has but one fluctuation a day.

The COURT: In two or three days?

The WITNESS: In two or three days it may change two or three times.

The COURT: Isn't that one of the complaints that is made about

the Stock Yards—to manipulate the market, advertise that it is high today; then when they get the stuff in here, the stock in here they claim that they put it down on purpose?

The WITNESS: Yes, that is true, like a great many other complaints, made without foundation.

The COURT: Isn't this much true, that it will go down on account of supply and demand?

The WITNESS: Supply and demand govern our prices at the Chicago Stock Yards.

2168 Mr. BAXTER:

Q. Addressing myself to the theory of the complainant, that the market at Chicago governs the world, or at least the Western continent, if you are located in Chicago and from these market quotations can closely approximate what the Chicago market is doing, does not a man who lives near Kansas City have a great advantage in shipping to the Kansas City market rather than coming to Chicago, because he can rush his animals into Kansas City and get the price you are paying there, whereas it might take him a day to get it in Chicago, and in the meantime the Chicago market might drop on him; the nearer the man is to the market, if the Kansas City market is governed by the Chicago market, is not his situation better to get the price that is quoted for today in Chicago than if he lives three hundred miles from Chicago and has to bring them here?

The COURT: What do you say to that?

The WITNESS: Well, your Honor, I haven't stated that the Kansas City market was governed by the Chicago market, I think.

Mr. BAXTER:

Q. What is your opinion upon that?

A. Well, I think that the Chicago prices have a great deal to do with the prices paid at Kansas City, but there are a great many influences which control.

Q. Well, isn't the chief of that supply and demand?

2169 A. Why I think the prime factor is controlling prices at Kansas City is supply and demand.

Q. That operates out West as well as it does here, doesn't it?

A. Yes, sir.

Q. And a man, therefore, is just as apt to catch a short market and get a high price as he is here, isn't he?

A. I think so.

Q. If, then, these quotations enable purchasers in the West to know approximately what the market at Chicago is doing, why is it necessary for people to send their animals here to Chicago to be sold? Why can't they get the same, or substantially the same prices out there as they can here?

A. Because it is very generally known and understood among not only the producers of the United States, but the shippers of the country that Chicago has the best market in the world for the sale of live stock on account of the great competition we have at this place, and they are anxious to avail themselves of that competition. They

are better satisfied to take the Omaha price plus the loss of coming to Chicago and the cost of transporting by rail; they are better pleased to take that price here in Chicago than they would be in Omaha, feeling that they have got the full strength of the market by the greater competition they get at this market than they would at the Omaha market.

2170 Q. The fact that everybody thinks that way is one of the reasons why your market is so frequently flooded, everybody rushing in here to get the benefit of that supposed advantage conferred by the supposed great competition here, isn't that true, and don't you have as much gluttin- of your market as there is in any market of the United States?

A. Well, we frequently have gluts at the stock yards. We have a committee that has been working on this proposition the last year trying to make a uniform five-day market. It has grown into a custom to ship principally the cattle for the Chicago market on two days of the week, Mondays and Wednesdays, thereby causing a glut on those days, and the consequent depression of prices, and practically no cattle whatever on Tuesdays, Thursdays and Fridays. A year ago our exchange organized a committee to take up this matter and get in touch with the country and try and convince them of the great error in judgment in all seeking to market their offerings on two days. To a large extent this committee has been successful in equalizing and distributing receipts over the five days, but not to a point where they hope to arrive.

The COURT: Suppose they brought their cattle in there on Thursday and Friday; would there be anybody there to buy them?

The WITNESS: Yes, sir, yes, sir, the buyers are there on all days, and the committee has especially provided that the cattle

2171 be taken care of at any time they arrive.

Mr. BAXTER: That is all I have to ask.

The COURT: About this competition, how is there more competition in Chicago than there is in Kansas City or St. Joe?

The WITNESS: There are more buyers.

The COURT: Who are they?

The WITNESS: I don't know that I can give you a list of them offhand. I can file a list here. I prefer to do that because I can give you a more complete list.

Mr. RANSOM: In doing that will you separately state as in regard to each of the markets on the Missouri River?

The WITNESS: That would not be in my own knowledge. I can write and secure it.

Mr. RANSOM: You know the packers who are doing business?

The WITNESS: I wouldn't confine myself to the packers. I can tell you the packers and where they are doing business now.

The COURT: Get the people who bid at these different Missouri river points?

The WITNESS: I know the packers. I can testify to that.

The COURT: Wait until you get your statement. Anything else?

Mr. SEVERANCE: I would like to ask a question, please?

2172 The COURT: Certainly.

Mr. SEVERANCE: Can you state whether there is more or less live stock shipped to Chicago from the 23½ cent zone that you have discussed or from the territory beyond the Missouri river?

The WITNESS: Not off-hand, no, sir. I can ascertain it.

Mr. SEVERANCE: Haven't you an opinion on that subject?

The WITNESS: Well, I wouldn't like to venture an opinion, when I can put my hand on the figures.

Mr. SEVERANCE: Have you the figures here in court?

The WITNESS: No, I have them in my office.

The COURT: You can bring them in the morning.

The WITNESS: Let me get that down.

Mr. SEVERANCE: Whether there are more cattle and hogs shipped *from* Chicago from the 23½ cent zone, this side of the Missouri river or from the territory beyond; that is I mean from——

The WITNESS: Any other territory?

Mr. SEVERANCE: What I want to get at is this: Hogs and cattle that are moved to Chicago on the proportional rate from the Missouri river towns, by reason of the fact they originate beyond the river.

The WITNESS: That would cover any other territory than the Missouri river in the 23½ cent zone.

2173 Mr. SEVERANCE: It wouldn't cover this side of the 23½ cent zone?

The WITNESS: No.

Mr. SEVERANCE: I want to find out whether there are more cattle moved to Chicago on the proportional rate, that is cattle originating beyond the Missouri or from the 23½ cent zone this side?

The COURT: Whether there is more on the other side of the river everywhere.

Mr. SEVERANCE: I want to see how this works out. The witness has been making some comparisons of rates.

The COURT: You may bring the figures.

Mr. SEVERANCE: I want him to make a comparison on the proportional rates that Mr. Ripley gave.

Mr. LYNDE: We can ask him some further questions then in the morning?

Mr. RANSOM: Did I understand you to say that the by-products of live stock in Chicago and on the Missouri river were the same as to price?

The WITNESS: I only offered an opinion in regard to that.

Mr. RANSOM: That is my understanding.

The WITNESS: Very closely.

Mr. RANSOM: How is that?

The WITNESS: I am not advised in regard to it.

2174 Mr. RANSOM: That is my understanding, but do you know why that is?

The COURT: What is your understanding? I didn't catch that.

The WITNESS: My understanding?

The COURT: Yes.

The WITNESS: That they are very closely alike in regard to price. I refer now to the coarse offal of the steer?

The COURT: The by-products, prepared where?
Mr. LYNDE: The same as on the Missouri river markets, as I understand it.
The COURT: The same price there and here?
The WITNESS: Practically so, yes. I don't say that they are.
Mr. RANSOM: Can you give the reasons for that?
A. No, I don't know that I can.
Mr. RANSOM: The price of the meat on the Missouri river, the finished product, is not the same as the price here in Chicago, is it?
The WITNESS: I don't know in regard to that. I am not advised as to the price of meats on the Missouri river.
Mr. RANSOM: Where do you understand the product on the Missouri river is marketed?
The WITNESS: All over the country, but principally east of
2175 the Missouri river.
Mr. RANSOM: Principally where east of the Missouri river, in Chicago?
The WITNESS: Oh, yes, as far as Liverpool and London.
Mr. RANSOM: Well, would the price on meat in Chicago, prepared product, be the same as it would be out on the Missouri river if the market was east of Chicago?
The WITNESS: I don't quite understand that.

(The question was read.)

Mr. RANSOM: Here is, say, a million pounds of meat in Chicago that have been prepared in Chicago——
The WITNESS: Yes, sir.
Mr. RANSOM: A million pounds of meat out in Kansas City prepared there?
The WITNESS: Yes, sir.
Mr. RANSOM: The market, we will say, is east of here?
The WITNESS: Yes, sir.
Mr. RANSOM: In Boston.
The WITNESS: Yes, sir.
Mr. RANSOM: Would the million pounds of product here be worth the same amount of money at the same moment as the product out on the Missouri river?
The WITNESS: To who?
Mr. RANSOM: To anyone that wanted to buy it?
2176 Mr. SEVERANCE: To the owner, in the market?
The WITNESS: I think the meat would be the same. I don't see why it should not be.
Mr. RANSOM: What do you understand is the rate on packing house product from the Missouri river to Chicago.
The WITNESS: Twenty cents local.
Mr. RANSOM: What is the 18½ cent rate you spoke of?
The WITNESS: That is a rate that has been applied to packing house products.
Mr. RANSOM: Applied to them how?
The WITNESS: It has been collected for transporting the stuff from Missouri river points to Chicago.

Mr. RANSOM: Then there is an 16½ cent rate to Chicago on product, and also a 20 cent rate?

The WITNESS: I presume so.

Mr. RANSOM: And the shipper can take his choice of whichever of those he wants to ship on?

The WITNESS: I don't know that he can.

Mr. SEVERANCE: Isn't that 18½ cent rate applied to shipments going East of the Illinois and Indiana state lines?

The WITNESS: You mean the pro-rate?

Mr. SEVERANCE: Yes.

The WITNESS: I presume very likely that is true.

2177 Redirect examination by Mr. COWAN:

Q. Mr. Backer, I want to ask you a question or two about that shrinkage of 92 per cent. Is it a fact or not that the packers, in putting up the offal into fertilizers, dry it out?

A. Yes, sir.

Q. Is it a fact that when they save the blood that they dry the blood and that it is manufactured and used, in one form and another dried?

A. Yes, sir.

Q. When you water the cattle when they come in to get their fill, does the packer can that and save that?

A. No, sir.

Q. Don't they dry the bones when they grind them up into fertilizers?

A. Yes, sir.

Q. Isn't it a fact that the carcass evaporates after it is skinned, so that it weighs considerably less constantly?

A. Yes, sir, 2 per cent. in three days.

Q. When you think of these things, don't you believe you are very much mistaken in your estimate in regard to the total gross weight of the product of a steer?

A. No, sir, not in the way I stated it.

Q. I don't want to argue it with you; I just want to call it to your attention.

2178 A. I want to tell you why, your Honor, if I may be permitted.

The COURT: Certainly.

The WITNESS: The question was asked me how much a twelve hundred pound steer would yield in the weight of everything at the time of slaughter.

Mr. COWAN: Not in my question.

The WITNESS: That is the way I understood the question; that is the reason I answered it the way I did, and I still add here to the position that it would yield 90 per cent., 88 or 90 per cent. Of course when you talk about dressed beef and manufactured product, that is entirely another proposition.

Mr. COWAN: I want to know what is the relative weight of a 1200-pound steer when it is put into the manufactured product, as it is shipped and marketed?

The COURT: Maybe he can figure that out better in the morning.

The WITNESS: I can give you the actual figures in regard to that. I have them in my office.

Mr. COWAN: That is what I thought, that you misunderstood my question.

The COURT: We will adjourn here and we can get the rest of this in the morning.

Mr. DAWES: Be kind enough to add the estimated cooperage, &c.

Can't you find that out so that we can have this question
2179 accurately determined, how much the whole dressed product weighs when shipped out?

The WITNESS: Yes, I will try.

Mr. DAWES: And get it on hogs.

The WITNESS: The cooperage you mean?

Mr. DAWES: Yes, the same question.

The WITNESS: All right.

Mr. SEVERANCE: Anything from the point at which the product is shipped out.

Adjourned until 10 o'clock A. M., October 5th, 1905.

2180 TUESDAY, *October* 5, 1905—10 o'clock a. m.

Court met pursuant to adournment.

Counsel present same as before.

Whereupon CHARLES W. BAKER, resumed the stand for further direct examination by Mr. Cowan, and testified as follows:

Q. On adjournment yesterday, you were requested to produce certain statements, as definitely as you could with respect to the matters of the traffic in the live stock at different points and with respect to the actual results in the slaughtering of cattle, and possibly some other figures that I don't recall. Have you prepared those statements which were requested of you?

A. So far as possible.

Q. Will you please offer them in evidence with explanations thereof, without further questions?

A. I may say at the beginning that I have made diligent search and effort to prepare such a statement as was asked for by Mr. Severance in regard to the movement of cattle to Chicago out of the 23½ cent zone, but I find upon consulting my figures at the yards
that it will be a matter of three or four weeks or a month,
2181 if I could prepare it at all. It would hardly be worth the effort because I have not the data from which to compile such a statement accurately.

Mr. SEVERANCE: All right.

The WITNESS: I would have been very pleased to have furnished it.

The COURT: You say you have not the data from which you could furnish it?

A. No, I could not furnish an accurate statement as to the movement of cattle out of the 23½ cent zone.

The COURT: Can you give a fairly accurate statement?

A. No, sir, I would not, I would not like to attempt it at all. I could furnish a statement of that but it would be very general, as to the receipts of cattle at Chicago from the different places, but that is not accurate. It is absolutely impossible to get an accurate statement of that nature.

Mr. SEVERANCE: Well then, Mr. Baker, if you will pardon one question in that connection, you would not be able to give us an estimate of the relative amount of cattle and hogs coming from the 23½ cent zone on the one hand and other points beyond the Missouri river which takes the proportional rate to the river towns, on the other hand?

A. I would not feel like filing a statement of that kind.
2182 I don't think I could compile a satisfactory one from my data.

Q. From your general knowledge of the situation would you be willing to give the court your opinion as to which is the greater of the two, or are the shipments east of the Missouri all so intermingled that you cannot pick out the proportion that comes from the 23½ cent zone so as to give any opinion at all?

A. Well, I should dislike to make a statement of that kind offhand. It might be subject to a great deal of criticism.

Q. I appreciate that you are perfectly fair.

The WITNESS: Now there seems to be a little misapprehension in regard to the statements asked me on direct examination yesterday in regard to the results of the slaughtering of a given weighted animal. I was subjected to some criticism by counsel for the complainant here for making the statement last night that I did; but he either asked the question wrong or I misunderstood him. My understanding of the question was, "What net results do you get from a certain steer, immediately after slaughter," and I said, "Ninety per cent. or thereabouts," and that I am prepared to verify by actual figures.

In my opinion a one thousand pound steer, slaughtered, will yield immediately after the slaughtering has been consummated, 91.8 per cent. of his weight but there will be an absolute unaccountable loss of 82 pounds.

2183 Mr. DAWES: That is a 1200 pound steer?

A. I am taking a one thousand pound steer just because it is easier to get the percentage. 48 to 72 hours after slaughtering, that product of 918 pounds will have shrunk to 830 pounds. That 830 pounds in the preparation for food and other purposes for which it is used, will have shrunk to 721 pounds or 72.1 per cent., which I figure to be the net results of merchantable product derived from a one thousand pound steer.

The COURT:

Q. What per cent.?

A. 72.1. I have the items here which go to make it up. In my experience there is 57 per cent. of that product shipped as dressed

meat and packing-house product. There is 42 pounds or 4.2 per cent. that is not shipped. There is 109——

Mr. DAWES: Pardon me, just a moment. Is that loss, or some product that is sold on the ground? What do you mean by "not shipped."

A. Well, I will tell you. It is substantially loss, it is stripe, melt, blood and excrement. There is 109 pounds of that 721 pounds that may be either used at home or shipped as packing-house product and by that I refer to the heart, the scrap, the liver, the hide, the tail and switch, the hoofs, the shanks and the head and horns.

2184 These figures are my own, derived from my experience in handling or slaughtering cattle for the last twelve years.

Mr. DAWES: While you are about it, that tripe, why don't you reckon that, doesn't that have any value? I thought you estimated that as a total loss.

A. No, sir, I said it was very seldom shipped.

Q. And that is true of the liver and all those other things?

A. Well, the parts that I have put in as dressed meat and packing-house product is the beef, that is the carcass, the butter fat or oleo, the casings, the tongue and cheek meats. They take the head and there is a whole lot of meat there. There is 6 pounds originally of fresh cheek meat to a thousand pound bullock, which is taken off of the cheeks and made into sausage.

Those are the products that are—Well, the tripe is practically worthless. There is very little of that shipped and that is generally thrown into the tank along with the melt, the peck, the blood and excrement.

The products that might be either consumed at home or shipped are the heart, the scrap, the fat, the liver, the hide, the tail and switch, the hoofs and shank, head and horns.

2185 I was asked to prepare a list of the buyers at the Union Stock Yards at Chicago and I desire to submit in response to that inquiry or request, an exhibit showing 35 packer and slaughter buyers and in that list of 35 I would say that I have only given the heads of the concerns. They number will probably embrace a great many more buyers.

To illustrate, in the three departments of cattle, hogs and sheep, I presume Messrs. Swift & Company have 20 buyers but they are only enumerated here as one buyer. Also a list of shipper buyers at the Chicago market, of 124. A list of scalpers, speculators and other traders of 101.

The COURT: Let me look at that.

Mr. COWAN:

Q. Mr. Baker, how does the number of buyers in this market compare——

Mr. DAWES: Were you not asked, as far as you could, to produce that list with reference to other markets?

Mr. COWAN: I was just going to ask him the question.

The WITNESS: Yes, when I got onto that subject I was going to explain that.

Mr. COWAN: (Question continued)—with the buyers on other markets.

A. Chicago has a great many more buyers than any market in the United States.

Q. What do they buy for and what is done with the live stock which they purchase?

2186 A. The buyers on the Chicago market?

Q. Yes?

A. A certain percentage of it is slaughtered here, manufactured into meat and commercial products, and others are shipped to different points for slaughter and still others are exported alive.

Q. What is the proportion of live stock sold on this market, which is slaughtered here, to that which is shipped from here elsewhere?

A. Well, I can best answer that from the official figures.

I have had compiled for a number of years, a statement showing the receipts and slaughter of cattle, hogs, sheep and horses—Well, the horses are not slaughtered—at the markets of Chicago, Kansas City, St. Louis, Omaha, St. Joseph and Sioux City.

Chicago, in 1904 received 40.9 per cent. of all the cattle marketed at these six markets, amounting to 3,526,684 head.

Q. Of what?

A. Of cattle. There were slaughtered in Chicago of those receipts, 42.2 per cent. or 2,176,936.

Q. What became of the balance?

A. The balance was shipped, either as I have indicated, to other markets for slaughter, export or back to the country as feeders.

Q. Now, when you say "shipped to other markets for slaughter" do you mean back to the Missouri river or do you mean eastward?

A. East.

2187 Q. Now can you state what percentage of the receipts of the Missouri markets for cattle are shipped and what percentage slaughtered?

A. Kansas City in 1904 received 2,163,471 cattle or 25 per cent of the gross receipts of the six markets I have indicated. Of the cattle received at Kansas City, there were slaughtered in that city, 1,111,284 head or 21.5 per cent. The balance of the cattle at Kansas City were disposed of the same as the balance of those at Chicago.

Q. Now, in what direction are the shipments from Kansas City?

A. East and north.

Q. Is there relatively a larger number of cattle shipped eastward from Kansas City, to the amount slaughtered, than there are from Chicago?

A. I don't know as I quite catch the question.

(Question read.)

A. Do you mean relatively to Chicago? I will have to make some figures on that.

Mr. SEVERANCE: That is, you mean in proportion to the number received at each place?

Mr. COWAN: That is what I am asking.

A. Well, I think you can figure that out from this exhibit, Mr. Cowan. I desire to offer this exhibit as a true and correct statement of the receipts at these markets.

2188 Q. Will you please again state the number received at Kansas City and the number slaughtered?

A. 2,163,471 received at Kansas City. 1,111,284 slaughtered.

Q. Then I understood you to say that they slaughtered only 26 per cent?

A. The slaughtering at Kansas City was 21 per cent.

Q. Of what?

Mr. SEVERANCE: Of the total receipts of all these markets.

A. Of the slaughtering at all these markets.

Mr. COWAN:

Q. But, of the number of head received at Kansas City, what percentage of them were slaughtered?

A. Well, I would have to make a computation from these figures.

Q. You had it at Chicago, you said 42 per cent. were slaughtered?

A. No, I say at Chicago——

Q. I will look at that (referring to exhibit.)

The WITNESS: There is 8,000,000 head of cattle received at these six markets; now, of that 8,000,000 head Chicago received 40 per cent. and when you come down here, here was the slaughtering at these markets, 5,000,000.

Q. You have not then a statement showing the percentage of the slaughtering at each place to the amount received at each place?

A. No, I have not compiled those statements.

2189 Mr. SEVERANCE: It is a mere matter of computation. Here are the figures right on the face of the paper here.

The WITNESS: Yes, that is true.

Mr. COWAN:

Q. Now, what is the largest feeder market, that is for the sale of feeders which are shipped out?

A. Kansas City, everybody acknowledges that.

Q. What is the largest market for the sale of those which are shipped out for the purpose of slaughter at other places?

A. Chicago.

Q. You may make such further explanation of that exhibit as you please, and then file it as a part of your testimony.

A. Well, of the total receipts of cattle in the year 1904, the St. Louis market received 12.5 per cent., the Omaha market, 10.9 per cent., the St. Joseph market, 6.8 per cent., and the Sioux City market, 3.8 per cent.

Of the number of cattle slaughtered at the six markets in the year, 1904, the St. Louis market slaughtered 14.2%, the Omaha market, 12.4%, the St. Joseph market, 8.3% and the Sioux City market, 1.4%.

I don't know that I have anything further to explain about this exhibit, and, if I am permitted, I desire to offer it as a part of my testimony.

(The statement so produced by the witness is marked "Baker Exhibit 1" and attached hereto.)

2190 Mr. SEVERANCE:

Q. Have you similar tables to that for other years than last year?
A. Yes sir.
Q. Will you bring them down here and let us look at them?
A. Yes sir.
Mr. DAWES: I don't suppose it is made up for this year.
A. No, we could not make it till the close of the year.
Mr. SEVERANCE: Well, during the last 6 or 7 years.
A. I don't think I have been doing it that long, but I will bring them, as far back as I have them.
Mr. COWAN: This other paper to which you referred, the names of the buyers, you may file that also as a part of your testimony.
A. Yes.

(The statement last above referred to by the witness is marked "Baker Exhibit 2" and attached hereto.)

Mr. DAWES:

Q. Does that show the cattle shipped out of those different markets, can you tell from that exhibit whether they are shipped for slaughter or for feed?
A. No sir, you cannot.
Q. You made the statement that more were shipped for slaughter from Chicago than from any other market; did I understand you right about that?
A. Yes sir.
2191 Q. Well, do your statistics enable you to determine that? I understood you to say that there were more shipped out from Chicago than from elsewhere for slaughter but can you state the destination of the cattle that were shipped out or the purpose for which they were used?
A. The only way I can do that is by taking the shipments and the purchasers and knowing the object for which they were purchased.
Q. But from this table——
A. It could not be told.
Q. That is your estimate or your judgment rather than your figures on the table?
A. Well, to illustrate, Shamberg & Son of New York never buy any feeder cattle.
Q. It is not that you could not with labor determine it. My question went to this point; you have not gone to that labor to sort them out so that when you say that more cattle are shipped out of Chicago for slaughter than any other market, that is your impression?
A. No, I have figures to that effect.
Q. Have you?
A. Yes sir.
Q. You did not produce them here?

A. No sir, I was not asked to.

Q. I would be glad to have you do that, covering also the other markets.

A. I don't know so much about the other markets.

Q. You said more were shipped from Chicago than any
2192 other market?

A. No, that was in regard to Kansas City. Mr. Cowan asked me what was the largest feeder market in the world and I said Kansas City. Chicago is the largest shipper of other cattle.

Q. Would you be quite sure that it was in percentages, that is that more were shipped——

A. In proportion to the receipts?

Q. Yes.

A. No, I would not want to say that without looking it up, but as to being the largest market, I am satisfied I am correct on that. Now you wish a statement——

Mr. DAWES: Oh, no, I don't care for it.

The WITNESS: All right, sir.

Mr. COWAN:

Q. What is the approximate relative value of the 570 pounds of a one thousand pound steer that is shipped, and the other products some of which may be shipped or may not, as shown in your statement?

A. Well, the 570 pounds that is sure to be shipped is the choicest and most valuable part of the animal, by a long ways.

Q. Say a steer was worth 4 cents a pound, $40.00 for a thousand pound steer on the hoof. What part of that $40.00 would be in the 570 pounds approximately?

Mr. DAWES: 57 cents, wouldn't it?

Mr. COWAN: No, it would be a good deal more than that.

2193 Mr. SEVERANCE: It would all depend on the relative value of the product.

Mr. COWAN: Undoubtedly.

The WITNESS: I would not attempt to give anything but a general answer to that.

The COURT: Well, give the general answer and let's get done with it.

A. Why, $28.00.

Mr. COWAN:

Q. Now, what is the balance that is worth the other $12.00.

A. The hide. The hide is very valuable at the present time, and there is the scrap and the liver and the tail and switch and hoofs and horns and heart.

The COURT:

Q. How about the casings?

A. The casings I have included in the shipment of the 570 pounds.

Mr. COWAN:

Q. What is the dressed meat worth per pound out of a steer that would sell for $40.00.

Mr. SEVERANCE: Can you give a correct answer to that?

A. No sir, I cannot, it is too indefinite.

Mr. COWAN:

Q. Well, you slaughter a great many cattle and ship them?

A. Yes.

Q. About what is the dressed meat worth?

2194 A. Well, take a 1200 pound bullock and it is worth $2.00 a hundred more dressed, in a general way, than it is alive. If it is bought at 5 cents, the meat costs you 7.

Q. If you had a thousand pound steer and he slaughtered out 550——

A. 530.

Q. —and it was worth 6 cents, that would be $33.00.

A. Well, you are talking about a thousand pound steer and a 1200 pound steer. The ratio don't apply as you get to the cheaper grade of live stock.

Q. Well, the 1200 pound steer is more representative of the quality of the steers that are slaughtered?

A. Yes.

Q. Take a 1200 pound steer which would slaughter 55 per cent.; that would be 660 pounds.

Mr. DAWES: 57 per cent. on a thousand pound steer.

The WITNESS: No, 55 on a thousand pounds.

The COURT: And 57 on 1200.

The WITNESS: He is talking just about the beef alone, just the beef.

Mr. COWAN: I understood you to say about 55 per cent. is what a 1200 pound steer would slaughter.

A. A 1200 pound steer will dress more.

Q. How much will they dress?

A. Right close to 700 pounds.

2195 Q. Assume it to be 700.

A. Yes.

Q. That would be worth 6 cents, if the steer sold for 4?

A. Yes sir, anyway.

Q. So that would be $42.00 out of the $48.00 which the steer would bring?

A. Yes. Right at this particular time, Mr. Cowan, to account for these figures, hides are exceptionally high and all this by product, when the steer is slaughtered, this by product is always put in at the market price, and that price taken off of the beef, and what is left is what it costs, so it don't cost as much at the present time of high prices or high priced by products, to kill a steer as it does ordinarily.

Q. Take the average for five or six years back, the average price paid for hides, then would your estimtae of $28.00 out of the $40.00 be correct?

A. No, I think it would be more.
Q. How much more?
A. Well, about $33.00 for the beef.

Mr. DAWES:

Q. What average value did you give to hides in answer to that inquiry?
A. I did not put any price on it.
Q. You made some estimate in your own mind, didn't you?
A. Well, in this last statement?
Q. Yes.
A. Well, I should figure the hides at about 11 cents, 10½ or 11.
Q. Per pound?
A. Yes sir.
2196 Q. What is the value of the hide, roughly speaking, on a 1200 pound steer?
A. They probably make 7%, that is 84 pounds.
Q. Well, a hide of 84 pounds at 11 cents would be $9.20?
A. Yes sir.
Q. And a thousand pound steer——
A. That won't hardly make 7%. It won't make over 62 pounds.
Q. That would be about $7.00?
A. Hides are worth a little more at the present time.
Q. I understand that, but the general average value of the hides, taking the steers as they come would be about $8.00, roughly speaking?
A. All of that.
Q. $8.00 out of the $48.00 is a little higher percentage than you made, wasn't it?
A. He was talking about a different proposition. When I made that average I said $32.00 or $33.00 on the thousand pound bullock.
Q. You estimate the price of a thousand pound bullock at about $40.00, don't you?
Mr. SEVERANCE: No, Mr. Cowan said that.
Mr. COWAN: I assume that.
Mr. DAWES: Well, you assume it to be $40.00.
A. Yes sir.
Q. Then you said, I understood, taking out the hide, you gave the hide a value of say $8.00?
2197 A. Well, 62 pounds——
Q. Well, you need not go into any computation about it.
A. Yes, about $8.00, hides are worth about $8.00, a 62 pound hide.
Q. That is 20% of the value of the whole animal on the $40.00 basis?
A. You gentlemen are getting confused or you are getting me confused on two bases. You are talking about the cost of the animal and the value of the animal for sale. There is a different proposition there. There is supposed to be an intermediary profit.
Q. I was assuming that for either the selling or the buying price.

A. One talking on the buying side and the other talking on the selling side, you won't get any results here.

Q. Well, what was this $40.00 price that you were assuming?

A. That was the original cost of the bullock.

The COURT: That is what the farmer gets.

Mr. COWAN: How much is he worth when he is slaughtered up into his product, above the selling price? In other words, when the slaughterer ships the product, that is the dressed meat and the hide and the other product, how much greater value is that than the animal on the hoof was?

A. The entire results? Do you mean the entire results of the by products and beef and everything?

Q. Yes, that is what I mean.

2198 A. Well, sir, it is fair to state that a $40.00 animal is worth $44.00.

Q. 10% additional?

A. Yes sir.

Q. And that goes in in the labor and expense of doing the work?

A. I beg pardon, what is that?

Q. That goes in in the expense?

A. No sir. There is not that much profit. People are glad to kill cattle for $1.50 a head.

Mr. SEVERANCE:

Q. $4.00 includes the profit and the expenses?

A. Yes sir.

Mr. COWAN:

Q. A great deal of this stuff, in order to be sold has to be manufactured?

A. Yes sir.

Q. That does not go into the dressed beef——

A. It does not come in with the dressed beef. It costs money to kill a beef.

Q. Is the market for the fertilizer via Chicago or to the southeast from Missouri river points?

A. I have only a very limited knowledge in that respect, Mr. Cowan, but my understanding is from my experience and in looking over the records, that it goes largely south and south east, particularly south.

Q. And these hides, do they come to Chicago or go to other points?

2199 A. Well, my knowledge in that respect is confined and very limited. Outside of the local consumption, by that I mean our local tanneries, I think our hides move very largely to the east, to the shoe manufacturing district.

Q. Do. you know whether there are large tanneries at Kansas City and St. Louis?

A. I understand there are.

Mr. COWAN: That is all.

Mr. SEVERANCE:

Q. What do you say the net profit is on the manufacturing, about $1.50 a head?

A. No, I say there are many slaughterers here in Chicago who are very glad to kill cattle for $1.00 or $1.50 a head profit.

Q. About twice or three times what the commission men get.

A. Yes, but you must understand they have a great deal more to do. They have their plant and the interest on that and then they trust out their beef and have to make their collections, etc. There is a great deal of detail.

Q. So they really perform more service for this $1.50 than the commission man does for 50 cents a head?

A. Very much.

Cross-examination by Mr. BAXTER:

Q. I notice it has been stated that the term "packing-house products" as employed in the tariffs of the defendants covers the following articles. I shall not enumerate all of them however, but
2200 just for instance; it covers bacon cured, in bags, barrels, boxes, casks, or crates; beef, dried, loose or in sacks, boxes, barrels, casks or crates; beef pickled—Is that pickled beef, would that be in barrels or boxes or how, pickled beef?

A. Barrels.

Q. Beef intestines, in boxes or barrels; bladders in boxes or barrels; cracklings; how are they shipped?

A. In boxes, I think.

Q. Cotton seed foots—what does that mean?

A. I don't know.

Q. Dry weasands, what is that?

A. That is an intestine.

Q. That seems to be shipped in boxes or barrels?

A. Yes sir.

Q. Glue, shipped in bulk or ground, how is that?

A. Glue?

Q. Yes?

A. Sometimes in boxes and barrels or in bulk.

Q. Grease in buckets, tubs, pails or barrels. Hair of hogs; how is that shipped?

A. The hair of hogs?

Q. Yes.

A. Principally in bulk, in bales.

Q. Lard in barrels or boxes or crocks. I want to ask you, taking the conditions upon which you have been making your calcu-
2201 lations, where you have stated that there is a certain amount of product of various kinds, including dressed beef, etc; now, in the shipment of those products what would be the weight of the boxes, barrels, casks, crates and so on in which those products are transported by the railroad?

A. In the products of beef and the by products derived from the slaughter of beef?

Q. Yes.

A. One to two per cent. of the weight contained in the box.

Q. I don't understand that.

A. Well, if the——

Q. If the animal weighed 1,000 pounds, what would be the weight of the packages in which these products would be shipped?

A. Well, considerable of these products are not put into any package whatever.

Q. That I suppose is so.

A. In fact, you take the steer, the animal and it is a very, very small percentage of the by product or any part that is derived from the slaughter, that is put into package for shipment.

Q. What does this mean here, "beef in sacks, boxes, barrels, casks or crates?"

A. Oh, well, beef in sacks?

Q. Boxes, barrels, casks or crates?

A. That is not dressed beef, that is cured meats, such as dried beef and pickled beef and mess beef and that class of stuff. What I mean to say is that in my opinion that in these by products
2202 of the beef animal that are shipped in dry form, the weight of the package is one or two per cent. of the amount contained in that package. With pickles or anything containing liquid to preserve the beef, the weight of the package or barrel of beef is 60 to 70 pounds.

Q. And the beef in the barrel and the salt would weigh how much?

A. I beg pardon?

Q. The beef and the salt in the pickle?

A. Well, the pickle and the salt would vary quite largely. I am not familiar enough with it to give you a correct figure on the liquid and the salt, but it would be no inconsiderable item.

Mr. DAWES: No inconsiderable item?

A. No sir.

Mr. BAXTER:

Q. When you ship dressed beef, are any preservatives put in the cars in which the dressed beef is carried?

A. Nothing but ice.

Q. I got the term from the commission's report where they refer to "ice and other preservatives." I want to know what that is?

A. I am not wise enough to answer that, I don't know.

Mr. SHAVER: Salt, isn't that a preservative?

A. There is no salt used with the fresh meat.

Q. The Commission mentions salt?

A. Yes sir.

2203 Mr. SEVERANCE: That is put in with the ice.

The WITNESS: That don't come in contact with the meat. It is not a preservative. It is to make the ice colder, to keep the temperature in the car down.

Mr. BAXTER:

Q. This exhibit which you filed, showing the relative receipts at

the six different markets enumerated in the exhibit, as I understand it, shows that in the receipt of cattle, hogs, sheep and horses, Chicago exceeds any of the other markets mentioned in the exhibit?

A. Yes sir.

Q. And so in the slaughtering of cattle, hogs and sheep, Chicago exceeds all the other markets?

A. Yes sir.

Q. Now, I see this statement at the foot of the exhibit "No market in the country can afford to purchasers and shippers of live stock so many or such great advantages as are found at the Union Stock Yards at Chicago. Live stock of all kinds finds a sure and ready sale here, at all times for cash and an immense country patronage extending over 32 states tells the st-ry of general satisfaction." Is that true?

A. Well, it is a very poor merchant that won't cry his own wares. Sometimes he is perhaps inclined to exaggerate a little bit. I don't know that I care to stand sponser for that statement par-
2204 ticularly.

Q. Is it not also a characteristic of the average merchant that he is always complaining about his freight rate?

A. Yes? I expect that is right, too.

Mr. DAWES:

Q. Now in reference to that question about the number of buyers at Chicago market, you prepared a statement or a list don't you?

A. Yes sir.

Q. Were you able to do that with reference to the other markets?

A. No sir, I could not get that without writing to the other markets.

Q. You have no basis, I suppos- of estimating the number of buyers at each of these markets with any reasonable degree of accuracy?

A. Well, I would say this, so far as the large packers are concerned, the packers who slaughter; I could of my own knowledge tell about these other markets where they were represented, but in regard to the other buyers it would be quite vague.

Q. Then in explanation you stated that where you put down a buyer who was a representative of a great house, you only put down the one.

A. I only put down Swift & Company, to illustrate that, and they probably have 20 buyers in the market.

Q. Of course, it would not be fair to do otherwise, because all of those buyers would bid the same price for

2204*a* Union Stock Yards & Transit Company.

Daily Purchase Report.

Date, ——— —, 190-.

The following animals were weighed to Packers today:

Packers & Slaughter-.		Cattle.	Hogs.	Sheep.	Total.
Armour & Co	C. Quinlan				
Anglo-American Pro. Co	J. Rowan				
	W. O. Mally				
Boyd, Lunham & Co.	S. Healy				
Boore, H. & Co	Guthman Pkg Co				
	Bauer & Sweeney				
Continental Packing Co	W. Sheahan				
Guth Pkg Co					
Hammond & Co	T. Mulroony				
Hoff & B.					
	J. Levi				
Libby, McNeill & Libby	O. F. Mayer & Br.				
	Arnold Bros				
	Aager Pkg Co				
Morris & Co	A. Stem				
	A. Strauss				
National P. Co					
Pfalzer Pearce & Hess	T. Mulroony				
Pfaelzer & Son					
Roberts & Oake	Miller & Hart				
	C. Unath				
Swift & Co					
Schwarzschild & Sulzberger Co.	J. Wimp				
Standard Slaughtering Co					
Total Packers					

2204*b* Union Stock Yard & Transit Company of Chicago.

Daily Report of Shipment.

Date.....190

Shippers.	Cattle.	Hogs.	Sheep.	Total.
Anthony, D. M.				
Armour & Co.				
Bartlett, G. V. & Co.				
Bimbler, Van W. & Co.				
Blackshear, E. A.				
Bloomer & S.				
Boden P. Co.				
Brelsford P. Co.				
Boston P. Co.				
Burkhart P. Co.				
Cleveland Prov. Co.				
Comstock & Co.				
Crane, M. & Co.				
Cudahy Bros.				
Cauton P. Co.				

Shippers.	Cattle.	Hogs.	Sheep.	Total.
Collins, W. J.....				
Croninger, M.				
Coffin P. Co.....				
Daniel, W.				
Davis, C. H. & Co.....				
Davis, E. W. & Co.....				
Doud & K.....				
Dunlavey Bros.				
Dunning & S.....				
Dold P. Co.....				
Eckart P. Co.....				
Egan, E.				
Ellsworth-Cross Co.				
Erick Bros.				
Ehrman, C.				
Evans, R. D.....				
Felm, J. J.....				
Figge, H. Bros.....				
Fullerton, D.				
Focke & Son.....				
Folger, J.				
Gross Bros.				
Gillett, C. H.....				
Googins, H. F.....				
Gray & Judic.				
Guinz, R.				
Gardner, M.				
Halsted & Co.....				
Hammond S. & Co.....				
Hathaway, J. A.....				
Homan & Son.....				
Huffman, J. D.....				
Home, D. B. Co.....				
Hildreth, J.				
Hauser, C. M.....				
Hammond, G. H. & Co..				
Jersey City P. Co.....				
Kniers Bros.				
Klinck, C.				
Kerrus P. Co.....				
Kennedy, J. B.....				
Kindball C. Co.....				
Kurdle, T. J.....				
Leavitt, Cal.				
Lutes, Lee.				
Lehman Bros.				
Louisville P. Co.....				
Lake Erie P. Co.....				
Lima P. Co.....				
Lowe, O.				

Shippers.	Cattle.	Hogs.	Sheep.	Total.
McIntyre, P. J.				
Merwin P. Co.				
Moog & G.				
Monroe, W. H.				
Morris, Edward				
Myers, H.				
Myers & Son				
North P. & P. Co.				
New England D. B. Co.				
Newhoff, L.				
Overman, W. H.				
Ohio P. Co.				
Palmer, S.				
Parker, W. & Co.				
Penley, D. W.				
Pittsburgh P. Co.				
Plankinton P. Co.				
Porter N.				
Rea & Co.				
Reeves & Co.				
Rohe & Bro.				
Rush & Son				
Rosslyn P. Co.				
Schrath & P. Co.				
S. & S.				
Shenk & Son				
Schluderberg & Son				
Schwartz & Co.				
Shamberg, G.				
Smith, F. A.				
Sperry & B.				
Springfield P. Co.				
Squires, Jno. P.				
Stern J. & Son				
Sadler, J. F. & Co.				
Sellmayer, L.				
Swift & Co.				
Seltzer Bros.				
Stowers P. Co.				
Swope H. & Co.				
Theur P. Co.				
United D. B. Co.				
Ulmer P. Co.				
Vogel & Son				
Virginia P. Co.				
Wheeler, J. E.				
Waldock, W. A.				
Weaver, P.				
Webber, R.				
Weiner & Son				

Shippers.	Cattle.	Hogs.	Sheep.	Total.
Weinrich, W. A.....				
White, P. & D.....				
Wilson, G. B.....				
Witte, A.				
Weaver, A. J.....				
Wood, M. B.....				
Young, E.				
Zehmer Bros.				
Zaller, Wm.				
Totals				

2204c Union Stock Yard & Transit Company of Chicago.

Daily Purchase Report.

Date.....190

The following animals were weighed to speculators.

Speculators.	Cattle.	Hogs.	Sheep.	Total.
Adams, E. C.....				
Ayers, W. E.....				
Baker & Sons.....				
Bragg & Co.....				
Barlow, A.				
Bligh, W. J.....				
Barnett & Co.....				
Bagley, M.				
Clark, M.				
Cannon, J. D.....				
Clefford, R.				
Clark, J.				
Connors & Morris.....				
Callaghan, Jno.				
Callaghan, M. J.....				
Colvin, F. J.....				
Darlington, W.				
Daniels, W.				
Dory, Wm.				
Daly, Thos.				
Doty, L.				
Dunn & H.				
Ettlinger, M.				
Eastburn, A. C.....				
Ellis, E.				
Flanagan, Wm.				
Foster, M.				
Foale & Son.....				

Speculators.	Cattle.	Hogs.	Sheep.	Total.
Fuller & O'Connor.....				
Fitzgerald, P.				
Finnegan, J.				
Fitzgerald, J.				
Geisler, W.				
Guthman, D.				
Goodfellow, F. R.....				
Golden, M.				
Gray, Fred.				
Greenebaum, Joe.				
Hagenbuck, H.				
Henderson, Sacks.				
Herman, B.				
Hart, W. C.....				
Heffernan, L.				
Hale, Wm.				
Healey, S.				
Hayes, H.				
Haesler, P.				
Joslyn, M. L.....				
Killackey, J.				
Killackey, C.				
Kirk, J.				
Kiel, H. W.				
Krump, J.				
Kellogg Bros.				
Kinst, L.				
King, John				
Knowles, J.				
Law, Wm.				
Lawler, J. J.				
Loefler, J.				
Lee & Co.				
Long, P.				
Long, W.				
Martin, S.				
Martin, C. H.				
Marlow, E.				
Morgan, J. L.				
Murray, Wm.				
Maher, M.				
Minteer, M.				
Miller, John				
Mahoney, D.				
Mahoney, Thos.				
Martin, Geo.				
Newton & H.				
Nichols, G. E.....				
Neiss, O.				
O'Brien, E.				

Illustrated and Demonstrated

Supremacy of Chicago as the Live Stock Market of the World

1904

RECEIPTS

	MARKETS	Per Cent.	HEAD
CATTLE	CHICAGO	40.9	3,526,684
	KANSAS CITY	25.1	2,163,471
	ST. LOUIS	12.5	1,074,128
	OMAHA	10.9	944,192
	ST. JOSEPH	6.8	587,261
	SIOUX CITY	3.8	331,293
	TOTALS	100.0	8,627,027
HOGS	CHICAGO	43.9	7,238,746
	OMAHA	13.9	2,299,837
	KANSAS CITY	13.5	2,227,170
	ST. LOUIS	11.9	1,954,902
	ST. JOSEPH	10.0	1,656,949
	SIOUX CITY	6.8	1,113,177
	TOTALS	100.0	16,490,471
SHEEP	CHICAGO	51.4	4,504,630
	OMAHA	20.0	1,754,365
	KANSAS CITY	11.4	1,004,099
	ST. JOSEPH	9.1	794,379
	ST. LOUIS	7.8	687,898
	SIOUX CITY	.3	28,464
	TOTALS	100.0	8,773,833
HORSES	CHICAGO	32.8	105,949
	ST. LOUIS	31.0	100,041
	OMAHA	14.5	46,845
	KANSAS CITY	11.5	37,139
	ST. JOSEPH	8.9	28,704
	SIOUX CITY	1.3	4,185
	TOTALS	100.0	322,863
CARS	CHICAGO	45.6	286,873
	KANSAS CITY	18.3	115,218
	OMAHA	12.9	81,035
	ST. LOUIS	11.0	69,141
	ST. JOSEPH	7.8	49,066
	SIOUX CITY	4.4	27,991
	TOTALS	100.0	629,324

SLAUGHTER

	MARKETS	Per Cent.	HEAD
CATTLE	CHICAGO	42.2	2,176,936
	KANSAS CITY	21.5	1,111,284
	ST. LOUIS	14.2	734,648
	OMAHA	12.4	642,277
	ST. JOSEPH	8.3	430,298
	SIOUX CITY	1.4	71,599
	TOTALS	100.0	5,167,042
HOGS	CHICAGO	41.9	5,612,724
	OMAHA	15.5	2,087,606
	KANSAS CITY	15.5	2,083,020
	ST. LOUIS	11.6	1,562,306
	ST. JOSEPH	11.6	1,562,340
	SIOUX CITY	3.7	500,008
	TOTALS	100.0	13,421,003
SHEEP	CHICAGO	53.6	3,142,360
	OMAHA	15.1	885,421
	KANSAS CITY	12.5	731,259
	ST. LOUIS	10.0	587,308
	ST. JOSEPH	8.7	509,006
	SIOUX CITY	.1	6,199
	TOTALS	100.0	5,861,553

No market in the country can offer to producers and shippers of live stock so many and such great advantages as are found at the Union Stock Yards of Chicago. Live stock of all kinds find a sure and ready sale here at all times for cash, and on shortest railway passenger, extending over seventy-two lines, tells a story of general satisfaction.

Speculators.	Cattle.	Hogs.	Sheep.	Total.
O'Donnell, J.				
O'Keefe, J.				
Ottman & Co.				
Prucka, W.				
Parmenter & Co.				
Rosemon, R. G.				
Rose, J.				
Sheehan, P.				
Sheehan, Wm.				
Sinclair, R. E.				
Shea, M.				
Sheehan, J.				
Smith, J.				
Sparks, Wm.				
Shirley, J. W.				
Shonsey, J.				
Sweetland				
Taylor, W.				
Valentine, G.				
Williamson, H.				
Wolf Bros.				
Wolf, H. M.				
Wood, F. P.				
Totals				

(Here follows facsimile marked p. 2204*d*.)

2205 Swift & Company.

A. No, I want to illustrate that. Swift has in the cattle business there at the yards, he has a head cattle buyer. He has a buyer for export cattle and a buyer for market cattle and a buyer for bulls, two buyers for market cattle; a buyer for canners and one or two buyers for calves, and so on through the category, and they don't anyone interfere with the other.

Q. Each one is in a separate department, but it is Swift & Company that is bidding all the time?

A. Yes sir.

Q. And their price?

A. Yes sir.

Q. So if he has two buyers for foreign market cattle, it is simply their business to attend to that and they would not of course, bid against each other?

A. No, not two in the foreign market.

Q. Or if they came in the same division of purchases, there is only one price bid by Swift & Company?

A. That is correct.

Q. And when you have said Swift & Company, that is right?

A. I made that explanation, Mr. Dawes, at the time I filed this exhibit, that I put Swift & Company in only as one buyer although they had 20 or 25.

Q. As a matter of fact there is only one man for Swift & Company, although he is split up into several departments.

2206 A. It is only one concern.

Mr. DAWES: That is all.

Mr. SEVERANCE: When Mr. Stickney was on the stand, he was requested to have made up from the books of the Great Western, a statement showing the number of cars of packing-house product and fresh meats shipped from Missouri river points to Chicago and the amount of damages to such shipments on account of wrecks and otherwise paid during the fiscal year 1905.

I have in my hand this statement which I will read into the record as Mr. Stickney's response to that request.

The COURT: Go ahead.

Mr. SEVERANCE: It is headed

Chicago Great Western Railway Company.

Statement of the number of cars of packing-house products and fresh meats shipped from Missouri river points to Chicago and the amount of damage to shipments on account of wrecks and otherwise paid during the fiscal year 1905. It is under four heads.

2207

Name of packer.	No. of cars.	Damage paid.	Average per car
Armour Packing Co.....	3718	$1,042.32	28 cents
Cudahy Packing Co.....	1890	753.91	40 "
Fowler Packing Co.....	859	32.88	4 "
Hammond Packing Co.....	1025	122.81	11 "
Nelson Morris Co.....	1452	31.49	2 "
Swarzschild & Sulzberger...	1822	110.86	6 "
Swift & Co.....	6214	2,183.51	35 "
Omaha Packing Co.....	861	No damages	
Being an aggregate of..	17841	4,277.85	24 "

Mr. SEVERANCE: Or being a general average of 24 cents per car. That is from all damages by wrecks or otherwise during that fiscal year.

Mr. COWAN: I would like to ask you, if you are willing to make the statement, with respect to whether you had a wreck in the year 1903 of any cars of Nelson Morris & Company that cost you between $6,000.00 and $7,000.00?

Mr. SEVERANCE: I do not know that personally. You told me that but you only asked Mr. Stickney for a statement of this year but I understand that you have subpœnas out for the representatives of the different packers, and, if there was such a thing, of course, when you put Nelson Morris & Company's man on the stand it will be developed.

Mr. COWAN: I thought you knew about it.

Mr. SEVERANCE: You told me about it, but, of course when Nelson Morris & Company's representative goes on, he will testify to it and I would a little rather have him do it than to admit it, because I don't know the facts otherwise than what you told me that
2208 Nelson Morris & Company's man told you.

Mr. COWAN: We desire to introduce in evidence now a lot of testimony that was offered and received by the Interstate Commerce Commission in this case, the testimony of some of the railway representatives, for example, Mr. Darius Miller the Vice President of the Burlington and various other witnesses.

They stated it as their opinion that the live stock rates were too low. We are not offering the testimony on those points for the purpose of proving that that was the fact, we simply offer that testimony on the other point, with respect to the comparative and relative rates on the two commodities, that being the issue in this case as we understand it but for convenience, supposing that counsel on the other side would want the-r part of it read, if they desire it read we

will do that. Otherwise, we will simply read that part of the testimony now, making the statement to the court that we are not offering the other part of it, because we are not attempting to prove that that is the fact.

The COURT: Well, if you offer part, you will offer all of it, of course.

Mr. COWAN: How is that?

The COURT: If you offer part, it is your duty to offer all,
2209 but I would not claim that you were bound by any statement made in there.

Mr. COWAN: That is the point that we desire to reserve.

Mr. SEVERANCE: Before your Honor receives that, we want to renew our objection and to make one or two suggestions in addition, as to why that testimony should not be received.

Mr. COWAN: We now read the testimony of Darius Miller, Vice President of the Burlington.

The COURT: I understand that you offer to read his testimony taken before the Interstate Commerce Commission in this case?

Mr. COWAN: Yes sir.

The COURT: And there is an objection to it.

Mr. SEVERANCE: Yes, your Honor. We make the objection that it is incompetent. In the first place, there is no showing that Mr. Miller has been out of the jurisdiction of this court. In fact, I think counsel will admit that during practically the entire time that this case has been on trial before your Honor, Mr. Miller has been within the jurisdiction of this court. His home is in Chicago and his office is in Chicago.

There is no claim made and no showing made that Mr. Miller is dead; that Mr. Miller is disabled from testifying, is ill or
2210 anything of that sort. Now for that reason Mr. Miller should be produced here as a witness, and that reason is in addition to the suggestions that we made to your Honor at the beginning of the trial.

In the course of the examination into this case, the defendants have introduced a great deal of testimony. They have offered for the consideration of your Honor a great many facts which bring about certain results as they claim, showing the impossibility (not only the inadvisability, but the impossibility) of granting the relief prayed for by the complainant in this case. Tables of statistics have been offered and all kinds of evidence has been produced before your Honor.

Now, if Mr. Cowan desires to contradict that testimony by the testimony of Mr. Miller, a witness who has been within call all the time, he should bring Mr. Miller on the witness stand so that we would have an opportunity to cross-examine him in the light of the facts that have been developed upon this hearing. That is a right which is of the highest importance to these defendants.

Now when Mr. Miller was sworn in the hearing before the Interstate Commerce Commission, he went on the stand in the haphazard way that witnesses are called and examined before that body,
2211 and he was called by the Government. The counsel who are trying this case here were not present. I think that counsel

will bear me out when I say that there is not one counsel here present, aside from Judge Ransom, who was present at the hearing before the Interstate Commerce Commission.

The case before the commission was not prepared as this case has been. The facts that have been shown here, it seems to me, as to the rates and as to the other considerations that enter into the making of the rates are of the greatest importance and they were not before the Commission at the time Mr. Miller was sworn and testified there. There was no opportunity to confront him with those facts and break down his testimony, assuming now that his testimony was unfavorable to the contentions of the defendants. I am not saying that it is, but he, being called by the Government, it is only a fair assumption that his testimony is unfavorable to our views.

Now if your Honor please, it seems to my mind that, even if the testimony was under any rule of evidence competent, it would be a gross abuse of the discretion of this court to permit this testimony of Mr. Miller to be read in evidence, when Mr. Miller has been right here in Chicago during all the weeks that this case has been on trial and could have been produced here and counsel for the defendants could have had an opportunity to cross examine him and en-
2212 deavor to get from him admissions in the line of their views and contentions urged here.

Now, I assume that we are trying to get at the truth in this case. I assume that your Honor wants to get at the real facts in regard to this controversy. The Interstate Commerce Commission in its finding, held that the relative cost of performing the one service was practically equal to that, to the cost of the other. Now that being the case, that being as counsel himself has said very important (yet it is not the only feature in this case as we hope to convince your Honor) but it being a very important question in the case, your Honor is certainly entitled to have not an offhand statement, practically an *ex parte* statement, because that is what it amounts to when we consider that Mr. Miller's testimony is to go in without an opportunity to cross examine him in the light of the facts that have been developed here, but the very fullest information obtainable. The evidence that has been adduced for the purpose of this trial was not introduced before the Interstate Commerce Commission.

I say, your Honor, it would be a gross abuse of the discretion of the court even if the testimony were otherwise competent, to permit that testimony to be read here and the defendants deprived
2213 of the right to cross examine the witness, when it will be conceded by counsel for the complainant that Mr. Miller has been within the call of this court for the last three weeks and could have been produced at any time.

Now further than that, I undertake to say that counsel, outside of that one opinion that he read in the Federal Court at Cincinnati, cannot find a decision, either in an Interstate Commerce case or any other kind of a case, where the testimony of a witness given upon a previous trial of an issue between the same parties, can be read in evidence except in cases where the witness is absent from the jurisdiction of the court or has died since the former trial.

Mr. RANSOM: Or where the case is being heard on appeal?

Mr. SEVERANCE: Yes, of course, but this is not an appeal. This is a trial *de novo*. It is so as to both cases, they being consolidated and there is no authority in the books, I undertake to say, for the reading of such testimony as that in a new trial, and that is what this is, of the same issue except in the cases that I have mentioned.

Now it seems to me further, your Honor, that in view of the fact that Judge Kohlsaat, who is the Circuit Judge of this circuit, has made a square ruling upon the identical question here involved, that in the orderly administration of justice, that should become
2214 the rule with this circuit so long as the court is sitting as a *nice prius* court.

This is not a trial in the circuit court of Appeals and that ruling, of course would not control then, but it should control, it seems to me so long as the case is in the same court in which Judge Kohlsaat made his ruling. But the rule of evidence is so well settled that testimony of that kind cannot be read, where the witness can be produced, that it don't seem to me that it requires any further elaboration on that point but even if we concede that your Honor's first impression, I apprehend it was only a first impression, even if we concede that your Honor's first impression in that regard is correct and that the testimony is admissible, I must urge upon your Honor the suggestion that it would be a gross abuse of the discretion of this court to allow those statements of Mr. Miller to go in here, whatever they may be, without affording us an opportunity to cross examine him upon the facts as they have developed in this trial, when he has been within the reach of the court during the three weeks that the case has been on trial.

That, of course, is in addition to the further ground which was suggested by Mr. Dawes the other day (when Mr. Ripley was put upon the stand) namely, that this testimony is not rebuttal
2215 testimony but a part of counsel's case in chief, if it is proper to be received at all.

Counsel cannot claim to be taken by surprise because when he made his offer originally, the matter was under discussion and I asked your Honor whether he would be permitted to read in evidence anything that was not rebuttal and your Honor said he would not. That is in the record of the first day's proceedings.

The COURT: Very well, objection overruled.

Mr. COWAN: It will probably be somewhat tiresome for me to stand up and read all this so I will ask permission to sit down when I grow tired.

Mr. SEVERANCE: I understand, your Honor, that we all are to have exceptions to that ruling?

The COURT: No exceptions are necessary. This is a chancery case, and all your rights are preserved and as I have said before, the Court is presumed not to listen to incompetent testimony.

Mr. SEVERANCE: But your Honor cannot stop his ears, you will have to hear this.

The COURT: I will take care of that part of it.

Mr. SHAVER: It has been customary in these cases not to read the

testimony, but to allow counsel to refer to such portions as they rely upon in their argument. I have had a number of cases with Mr. Baxter and we never have read the testimony to the court.

2216 Mr. DAWES: We would like to object to particular matters possibly and see whether they are competent.

Mr. BAXTER: Referring to what Mr. Shaver says, the statement is true, but we have always under those stipulations, given each other ample time to get ready to prepare for the argument so that he would furnish me with his brief and I would furnish him mine and we would always have plenty of time for the argument of the case.

If this case is to proceed, if we are to proceed immediately after the conclusion of the testimony, with the argument, your Honor sees how important it is that the defendants should have the opportunity to hear what is going to be put in against them.

The COURT: Well, I am willing to take any course you may agree upon.

Mr. SHAVER: The gentlemen can read the testimony and make a note of whatever parts they except to.

The COURT: You can serve a notice on them (addressing Mr. Cowan) stating what portions of the testimony you will read.

Mr. DAWES: Before your Honor enters upon this, I would like to inquire if this is likely to take much time? I would like again to ask about Mr. Cusey. There was a solemn undertaking and

2217 engagement on the part of counsel to produce him here this morning. Some of us have gone to some inconvenience in making arrangements with reference to his possible cross-examination, and we have, in our own case, our Traffic Official here, he is waiting and who has been here on two or three occasions. I would like to know if it is not reasonably convenient for counsel to advise us when he will call Mr. Cusey.

The COURT: What do you say about that?

Mr. COWAN: I thought, when I said that he would be here this morning, that he would be here.

Mr. DAWES: Yes, of course.

Mr. COWAN: I made inquiry again yesterday afternoon and, on the report coming that he would not have his figures ready before noon to-day, I said that I had told the attorneys that he would be here this morning. I received a reply that he could be here this morning, but that he would not have his figures completed before noon. I said then that I wanted him here at the afternoon session. I have no control over him whatever.

Mr. LYNDE: He has been subpœnaed, I presume?

Mr. COWAN: He has been subpœnaed.

Mr. SEVERANCE: The Court ordered him to be back here two days ago.

Mr. COWAN: I don't know that the court made any special order about it. He was requested to produce certain statements

2218 and they will take considerable time.

Mr. DAWES: I was informed by his counsel yesterday that he had his figures.

Mr. COWAN: I am only telling you what they reported to me. I did not know that he had any counsel in the case.

Mr. LYNDE: Why, he communicated with you.

Mr. DAWES: Certainly, Mr. Boyesen is his counsel and seems to be his present keeper.

Mr. LYNDE: We get so much credit through the newspapers for Mr. Cusey's statements and action that we want him here.

Mr. COWAN: Who gets the credit?

Mr. LYNDE: Discredit, I might say. I don't know who it is that runs the press bureau.

Mr. DAWES: I do not think it is unfair at this juncture to call the attention of the court to the fact that we are being made the subject of more or less editorial criticism. There was an editorial in the Tribune this morning to the effect that the evidence here had developed the fact that the railroads had been paying rebates right along when everybody knows that knows anything about it, that there has not been the slightest suggestion of that kind made in this court.

The COURT: The court cannot be held responsible for the newspapers.

2219 Mr. SEVERANCE: Somebody must be giving them information.

The COURT: Look here, gentlemen, that is not fair. I have had experience with the newspapers of Chicago and they generally get those things through the energy of the newspaper men.

Mr. COWAN: I don't know anything about it.

Mr. SEVERANCE: I am very sure counsel don't.

The COURT: It is due to the energy of the newspaper men that they imagine such things.

Mr. SEVERANCE: The curious thing about it is that all their imagination has been on one side.

The COURT: Not very much. My experience is that you will find the papers in this city are back of the capital in this city and that they see that misrepresentations are not made against it.

Mr. COWAN: I now offer the testimony of Mr. Darius Miller, First Vice President of the C. B. & Q. Railroad Company, taken before the Interstate Commerce Commission in the original trial of this case before the commission at a session held at Chicago beginning on the 15th day of December, 1902.

Mr. SEVERANCE: It has been suggested by counsel that there should be something entered on the record to show that each and every question is permitted to be answered over the objection

2220 which we have made heretofore in a general way.

The COURT: You are entitled to have the record show your point in every possible view, and have all your rights preserved.

Mr. SEVERANCE: To every question, to each question and to each witness and that in addition, any special objections that we may urge to various questions as they are read by counsel, and I would ask Mr. Cowan to read slowly enough so that we can stop and put in our objections, if we desire, specially.

Mr. COWAN: Won't the objection already entered cover it?

Mr. SEVERANCE: I don't understand that the court has held that he will allow you to read everything? Is that the ruling?

The COURT: Don't you think you had better fix it some way so it won't delay matters unnecessarily?

Mr. SEVERANCE: It seems to me, your Honor, that the matter of preserving our rights is more important than saving time just now.

The COURT: You can save your point in the upper court.

Mr. SEVERANCE: I don't want to proceed on the assumption that your Honor is going to decide against us in this court. What I am trying to do is to prevent the reception of improper evidence.

2221 The COURT: I have stated my views on that, that I thought it was the duty of the court in this sort of a case, to hear almost everything that is presented that is apparently material. I have done that on your side of the case and I think the shortest way is to do it on the other side and let you people argue it out later.

Mr. SEVERANCE: I don't think your Honor has done that where objection was urged by complainant's counsel. We are not responsible for the way he tries his case. I want to understand whether your Honor by your ruling intimates that you will receive all of the answers of these various witnesses because if you do I don't want to spend any time objecting specially.

The COURT: I think you can each read what you want to from these records, and you may have the right to make any objection you want to or raise any point you want to, the same as if you had objected and excepted and in that way not delay matters by standing up and arguing about it.

Mr. SEVERANCE: I don't know how——

The COURT (addressing reporter): Put in the record there that the counsel for the railroad companies are presumed to object to every question that comes up and are entitled to their exception to the ruling as to every particular question.

Mr. SEVERANCE: That the objection will be entered to each 2222 question as incompetent, irrelevant and immaterial, and that in each case the objection is overruled.

The COURT: And you object, also, on the ground that it is not rebuttal.

Mr. SEVERANCE: Yes, and that the testimony is not rebuttal, and that there is no showing that the witness is or has been since the trial before the Interstate Commerce Commission, without the jurisdiction of this court, and no showing that the witness has died or is for any reason unable to be present in court and testify.

Mr. DAWES: I would like to enter another objection. Whatever may be the court's view as to the propriety of this testimony in the Interstate Commerce case, in which they found—not under the Elkins Act——

Mr. SEVERANCE: The first case.

Mr. DAWES: Those cases having been consolidated, there can be no question, I suppose that the evidence would not be admissible in either of them.

Mr. COWAN: We offer it in the case brought to enforce the order of the commission.

Mr. DAWES: Those cases having been consolidated, the testimony goes in in both cases, and I interpose the objection that, having been consolidated, they now constitute one case before the court, and if the testimony is incompetent in either, it is incompetent in both.

2223 The COURT: Well, now, have you got it where you want it? The Court will announce that he will consider testimony that is competent only, when he passes on the case. Now, can't you arrange some way to save time?

Mr. COWAN: I am not going to attempt to read all the testimony. I offer all the testimony and will only read certain parts of it.

Mr. SEVERANCE: I understood the court held you were to offer it all.

Mr. COWAN: I say I offer it all, but I don't like to read it all.

Mr. SEVERANCE: Now do you make the offer of all of Mr. Miller's testimony?

Mr. COWAN: Subject to the qualifications that I have stated with respect to his testimony concerning the reasonableness of the rates.

Mr. SEVERANCE: In other words, you don't offer matters that are brought out by your own examination?

Mr. COWAN: I offer that part of the testimony with the exception, no matter who asks him the question, with the exception of that part wherein he testified (if he did testify, and my recollection is that he did, I have not read it in a long time) that in his opinion the rates on live stock and the rates on packing-house products were both too low.

2224 Mr. SEVERANCE: See the situation that that leaves us in.

The COURT: I think that has been pretty well canvassed, Mr. Severance.

Mr. SEVERANCE: Well, very well then, if I am trespassing upon the time of the court, I will sit down.

Mr. DAWES: At the risk of infringing upon your Honor's patience still further, I want to say that I understood your Honor to rule on that that he must offer it all, but whether he was bound by it or not was another consideration.

The COURT: You have a right on your side to read that part of it if he don't read it, and that will give you the benefit of it.

Mr. DAWES: We don't care to read it. He must either introduce the testimony according to your ruling, he must either offer the entire testimony or none of it. Now, whether he is bound by

2225 what he offers is a question for futher consideration.

The COURT: Yes, that is what I said.

Mr. DAWES: I understood your Honor so ruled.

Mr. COWAN: I didn't understand the Court so to hold, that we were bound to offer all the testimony.

The COURT: You are not bound to read it all, but it is here.

Mr. SEVERANCE: That shows that counsel does not understand your Honor's ruling as we do. He says he does not understand your Honor's ruling to be that he must offer all of the evidence. I understand your Honor to rule that he must offer all the evidence.

The COURT: It is here now, and either one of you may read it or

not. This case in this court or in any other court, will not be decided on quibbles and debates about immaterial matters and I suggest that you get down to the merits as soon as you can. I have not decided anything, I am an absolute blank on every question and I am anxious to hear you on them.

Mr. DAWES: At the risk of abusing your Honor's patience, I have one further suggestion: Will it be possible in anyway, after the case comes to your Honor for final consideration to determine accurately what evidence your Honor has considered and what you have rejected? That is the point that gives us concern and I speak
2226 that with all respect to your Honor. Of course, in your Honor's sound discretion and in your knowledge of the law, you will reject such portions of the testimony as, to your judicial mind, shall not seem competent.

The COURT: We will pass on that when we come to it. I will announce no opinions until I get through. I will certainly not decide anything until I get to it. I am not going to have counsel arise and say: "You said this, you said that and the other", because I have not decided any proposition in this case up to date as to evidence, or anything else. Now, go ahead.

Mr. COWAN: (Referring to the record in these cases before the Interstate Commerce Commission.) From page 318, I will begin where I did before in order that the stenographer may get it consecutively; I will simply read the questions and the answers without calling the name of the party who was questioning except where it seems necessary.

Mr. Cowan thereupon proceeded with the reading from the record of the Interstate Commerce Commission, as follows:

Testimony of D. Miller.

"Q. Mr. Miller, will you kindly state your name and official position with the Burlington System?

A. D. Miller, First-Vice-President of the C. B. & Q.

2227 Mr. TOMLINSON: Will you kindly state what action your Company took at the time that the 16½ and 20 cent rates were established by the Great Western.

Mr. MILLER: We established the same rates from Kansas City and Omaha.

Mr. TOMLINSON: At the time the 14.7 and 15 cent rates were put in from St. Paul what action did your company take?

Mr. MILLER: We met them.

Mr. TOMLINSON: At the time the Santa Fe put in the 12 cent rate ..at action did your Company take?

Mr. MILLER: We adjusted our freight rates from the west on the basis of 12 cents.

Mr. TOMLINSON: With a minimum of 23½ cents?

Mr. MILLER: With a minimum of 23½ cents.

Mr. TOMLINSON: Your line is a very large carrier of live stock to the Chicago market and other markets, is it not?

Mr. MILLER: Yes, sir.

Mr. TOMLINSON: What is the average weight of the live stock car in which live stock is transported—single deck cars?

Mr. MILLER: The 36 foot car weighs about 31,000 pounds.

Mr. TOMLINSON: And smaller cars would average less?

Mr. MILLER: Yes, sir.

Mr. TOMLINSON: What would the average be for the entire equipment of your line?

Mr. MILLER: I do not know that now. They are mostly 36
2228 foot cars.

Mr. TOMLINSON: What is the minimum of cars of that dimension for hogs and cattle?

Mr. MILLER: Our tariffs show that I could not say from memory.

Mr. TOMLINSON: In the Northwest the minimum is 24,000 pounds, is it not?

Mr. MILLER: That is my information.

Mr. TOMLINSON: What is the average weight of refrigerator cars used in the transportation of fresh meats and packing house products?

Mr. MILLER: I think it runs about 34,000 pounds.

Mr. TOMLINSON: Do you know how much ice and salt are usually transported in fresh meat cars?

Mr. MILLER: I have made up some figures here if you want to demonstrate the relative difference between the live stock and fresh meat rates.

Mr. TOMLINSON: That is exactly what we wish to demonstrate.

Mr. MILLER: I have tried to make out some figures and to go into details. I have taken into consideration the rate of mileage and have charged for the stock cars the customary mileage of six mills.

The CHAIRMAN: You charge your own cars a mileage of six mills?

2229 Mr. MILLER: Yes, sir; that has been the customary rate we pay one line to another as an off-set to the one cent to the private owners.

The CHAIRMAN: Does the statement you produce cover traffic on your entire system or only on some portion of it?

Mr. MILLER: This deals only with the relative rates as between Missouri River and Chicago.

Com'r PROUTY: Does that represent actual movement of traffic or is it simply an estimate?

Mr. MILLER: The actual movement of the traffic.

The CHAIRMAN: Then you are using actual figures?

Mr. MILLER: I am speaking with reference to the movement from the Missouri River to Chicago.

The CHAIRMAN: So it is the entire traffic of your road from the Missouri River to Chicago for a given period?

Mr. MILLER: Yes, sir.

Mr. BIRD: Mr. Miller, you say that you credit, or charge up to your own cars six mills mileage?

Mr. MILLER: Yes, sir.

Mr. BIRD: Have you ever ascertained about how much it costs

to keep those cars in repair? The one cent a mile on refrigerators pay for the use of the cars and the owner pays all his repairs. To make it a fair comparison, you would have to add to the six mills the average of the cost of the repairs, would you not?

2230 Mr. MILLER: That is the reason I charged the six mills to our cars. We do not maintain our private cars. The owners do out of the six mills mileage.

Mr. BIRD: But the railroads must maintain their cars themselves and to make the comparison complete, does it not require you to add to it the average per mile cost of repairs?

Mr. MILLER: I think not.

Com'r PROUTY: If you repair a foreign car, do you charge it to that Company?

Mr. MILLER: If the damage occurred on our line, no. We assume that ourselves. I have taken into account in one statement switching charges and endeavored to get at the net revenue received by the Company.

The CHAIRMAN: Let me ask whether your experience shows that six mills is a fair allowance to cover the interest on the cost of the car, depreciation and cost of keeping the car in repair, or have you taken that because that is what is paid between one road and another?

Mr. MILLER: Because it is paid between one road and another.

The CHAIRMAN: Do you know what proportion that bears to the interest on the cost of the car, depreciation and keeping in repair?

Mr. MILLER: I think it is under, considering mileage. On

2231 refrigerator cars we make a very large mileage per day, perhaps three times as much as on our own cars. Therefore, one cent allowance on refrigerator cars is very much more out of proportion to six mills than appears on the face of it. I do not suppose we make more than thirty miles a day average on our own stock cars, while on refrigerator cars it will run very much in excess, probably twice as much. There is a greater difference in the earnings per car than is shown by the one cent and six mills.

Mr. TOMLINSON: You may now proceed with your figures, with the permission of the Commission.

Mr. MILLER: I have got these figures from the Western Railway Freighting Association, covering some 300 cars of freight actually moved within the last few days. Average weight of freight paying contents, cattle 23,800 pounds, hogs 17,600 pounds, fresh meat 21,600 pounds and packing house products 26,800 pounds; average weight of preserva-ives in fresh meat cars 6,000 pounds, in packing house product cars 4,000 pounds, and I have charged to live stock cars an average weight for bedding, etc. 2,000 pounds. Then the fresh meat cars carry an average in the way of racks, hooks, boxes, ice cones, etc. of 3,000 pounds, making the relative weight of total contents of cars, cattle, 25,800 pounds, hogs, 19,600 pounds,

2232 fresh meat 30,600 pounds and packing house products 30,800 pounds. The average weight of cars used, live stock 31,000 pounds, fresh meat 34,000 pounds and packing house products 34,000 pounds. Gross weight transported, cattle 56,800 pounds, hogs 50,600 pounds, fresh meat 64,600 pounds and packing house

products 64,800 pounds. The percentage of paying weight hauled is on cattle 41.9 per cent., hogs 34.8 per cent., fresh meat 33.4 per cent., packing house products 41.2 per cent.

Mr. TOMLINSON: Have you any figures showing how much that yields for dead weight?

Mr. MILLER: Yes, sir. The average revenue per car on fresh meat, based on a 20 cent rate would be $43.20 from Kansas City to Chicago; deduct for car mileage $9.80 and switching $3. and it would make an average net revenue of $30.40, or a net revenue per hundred pounds of gross weight carried of 4.7 cents per hundred pounds and a net revenue per car mile of 6.2 cents. On packing house products the gross revenue per car would be $53.60; deduct for car mileage $9.80, and for switching $3.; that would make an average net revenue per car of $40.80 or 6.3 cents per hundred pounds for the gross weight carried. On cattle the gross revenue per car would be $47.60.

Mr. TOMLINSON: At what rate?

Mr. MILLER: At 20 cents. The net would be $41.22.

Com'r PROUTY: What did you say the gross was?

2233 Mr. MILLER: $47.60.

The CHAIRMAN: You deduct six mills mileage?

Mr. MILLER: Deduct six mills mileage and fifty cents a car absorbed at Kansas City.

The CHAIRMAN: And the switching charge, too?

Mr. MILLER: No, no switching charge. We pay none. I only deduct the switching charge where it is actually paid.

Com'r PROUTY: Give us the figures on the hogs.

Mr. TOMLINSON: What did those cattle pay on the dead weight of the train?

Mr. MILLER: I will get to that in a minute. I have not got that worked out on a 20 cent rate but the average gross weight of a car of fresh meat is 64,600 pounds and the net revenue to the carrier is $30.40 per car, or 4.7 cents per hundred pounds of gross weight transported. To give the carrier the same rate per hundred pounds on gross pounds of each cattle, hogs and packing house products carried as per statement attached, the following *fates* would be necessary:

Cattle 13.89 cents on an averaging paying load of 23,800 pounds.

Hogs 17.13 cents per hundred pounds on an averaging paying load of 17,600 pounds.

Packing house products 16.13 cents per hundred pounds on an averaging paying load of 26,800 pounds. That is to get the same equivalent through. Leaving out the question of mileage, switching charges, car rental, etc., it would figure out this way: taking

2234 fresh meat at 20 cents a hundred as the standard: It would make the equivalent, cattle, 16; hogs 19.2 cents and packing house products 16.2 cents.

Com'r PROUTY: Have you figured that out taking packing house products as the standard?

Mr. MILLER: I have taken fresh meats. No, I have not.

Com'r PROUTY: What part is fresh meats and what part is packing house products?

Mr. MILLER: I do not know.

Mr. TOMLINSON: It is shown in Exhibits No. 1 and 2. I will read for your information that the tonnage of fresh meat out of Kansas City, Atchison, Leavenworth and St. Joseph during 1901 was 462,000 tons and packing house products 349,000.

Com'r PROUTY: The fresh meat exceeds the packing house products?

Mr. TOMLINSON: That is true in all the markets.

Com'r PROUTY: I think it appeared in some other hearing that the larger part of the fresh meat was consumed in this country and the larger part of the packing house products were exported.

Mr. TOMLINSON: I hardly think that is correct.

The CHAIRMAN: Mr. Miller, have you concluded your statement from the tables you have prepared?

2235 Mr. MILLER: Yes, sir.

The CHAIRMAN: Are they in shape to be filed with the stenographer?

Mr. MILLER: Yes, sir.

The CHAIRMAN: Very well; will you file them with the stenographer as an exhibit in the case in connection with your testimony?

Mr. MILLER: I will.

(The same is hereto annexed and marked "Exhibit No. 7, Miller.")

Mr. TOMLINSON: I do not know whether I asked which carried the most traffic, the 20 cent rate or the 18½ cent rate. Under which rate does the bulk of the traffic move. You have an 18½ cent proportional rate and a 20 cent local rate. Does the bulk of the traffic move under the 18½ cent rate?

Mr. MILLER: Under the 18½ cent rate.

The CHAIRMAN: Pardon me. That would be true, of course, as to the fresh meats and packing house products?

Mr. MILLER: Yes, sir.

The CHAIRMAN: There is a 20 cent local rate and an 18½ cent proportional. Most of it does go east. Therefore, the 18½ cent rate practically applies to the bulk of that traffic?

Mr. MILLER: Yes, sir.

2236 The CHAIRMAN: That is not true as to live animals?

Mr. MILLER: No, sir.

The CHAIRMAN: Since that is so, why did you use the 20 cent rate on fresh meats and packing house products instead of 18½ cents?

Mr. MILLER: My statement will cover all the rates, but I only used as a comparison the 20 cent basis because that is the rate between Kansas City and Chicago on that commodity.

Mr. TOMLINSON: If you used the figures from St. Paul the showing would be even more favorable to live stock would it not, on account of the great disparity in the rates?

Mr. MILLER: The rate would affect it materially, of course.

Mr. TOMLINSON: Do you understand what the rate on cattle and hogs is?

Mr. MILLER: Twenty five and 27½ cents.

Mr. TOMLINSON: And the fresh meat and packing house product rates are 14 and 17 cents?

Mr. MILLER: Yes, sir.

Mr. TOMLINSON: If you used those rates the disparity would be greater?

Mr. MILLER: Yes, sir.

Mr. TOMLINSON: That is all.

The CHAIRMAN: Any further questions to be asked Mr. Miller?

2237 Mr. SPENCER: I would like to ask Mr. Miller a question.

Mr. Miller, what is the result of your figuration there as to the present rate of 23½ cents on live stock as to whether it is reasonable or not?

Mr. MILLER: I think it is an exceedingly low rate. It is relatively lower than any other commodity we handle except packing house products.

Mr. SPENCER: From the figures, what would you say would be the relative rate between live-stock and packing house products?

Mr. MILLER: Leaving out the question of mileage and taking into consideration only the cost of transportation, the rates should be the same.

Mr. SPENCER: On the raw material and the packing house products?

Mr. MILLER: Yes, sir.

The CHAIRMAN: And there is nothing in your experience or in the figures you submit or in the conditions that now apply to transportation which, as I understand you, would justify a higher rate on the live animal than on the product?

Mr. MILLER: No, sir; I think the mileage paid on refrigerator cars is away out of proportion to the value received for them.

Mr. SPENCER: You think the 18½ cent rate on packing-house products is too low, do you not?

2238 Mr. MILLER: Decidedly.

Mr. SPENCER: You do not think it would be fair to reduce the 23½ cent rate to 18½ cents, do you?

Mr. MILLER: No, sir. There is no patron of our Company that gets so much service and gives so little for it as the packer.

Com'r PROUTY: You say that when Mr. Stickney put in the 18½ cent rate you met it. It seems his road at that time reached Kansas City but did not reach Omaha and Sioux City. You say that you put in the 18½ cent rate at Omaha?

Mr. MILLER: We did.

Com'r PROUTY: Why?

Mr. MILLER: It is only a short time before Mr. Stickney will have his line at Omaha, only a matter of a few months.

Com'r PROUTY: Have the rates on dressed beef and packing house products from St. Paul to Chicago been reduced since this 18½ cent rate was put in?

Mr. MILLER: Yes sir.

Com'r PROUTY: What were they before that rate was put in?

Mr. MILLER: I have forgotten.

Mr. SPENCER: The St. Paul put that rate in first from Omaha, did it not?

Mr. MILLER: Yes, sir.

2239 Mr. SPENCER: And you put it in to meet the St. Paul?

Mr. MILLER: But I think the great factor was that the Great Western contract covered Omaha and that they would have their line there soon.

Com'r PROUTY: Do you know who reduced the rate from St. Paul and why?

Mr. MILLER: No sir.

Com'r PROUTY: Has there been any reduction in the live stock rate from St. Paul?

Mr. MILLER: Not locally, no sir.

Mr. BIRD: It has been said that a rate of a cent a mile probably yields too great a profit to the owners of the refrigerator cars. If the owners and packers did not own their cars, is it not a fact that the railway companies would have to provide equipment for handling that business and in doing so each road would have to provide a very large equipment so that the aggregate railroad equipment in such a case would greatly exceed the equipment now in the service? Would not each road have to have a large equipment itself so as to get a share of the business? In other words, is it not a fact that the number of cars engaged is greatly reduced by reason of the ownership of the packers? Does it not require a smaller number of cars owned and controlled by the packers than would be necessary if each road furnished its own cars?

Mr. MILLER: That is undoubtedly true.

2240 Mr. BIRD: And that is the reason why the mileage is so great. They have just about enough cars to take care of their business and consequently they are kept busy. If you owned the cars and each road owned the cars, could they make as much mileage?

Mr. MILLER: No sir.

Mr. BIRD: And in consideration of the mileage paid on these refrigerator cars is it not fair to take into account that if they did not have their cars as they now have the expense would be very much greater to each of the roads than it is now?

Mr. MILLER: If we undertook to furnish the cars I think it would cost more.

Mr. BIRD: They would cost eleven or twelve hundred dollars each to the companies for a surplus of those cars? It is a matter of economy after all?

Mr. MILLER: If each company undertook to furnish the cars to do the business I think it would, but I think that is theoretical.

Mr. BIRD: But if it had enough cars to take care of the business it tries to get would not the number be greatly in excess of the number now?

Mr. MILLER: Very true, but I do not think you would pay any-

body but the packers a cent a mile to furnish the cars. It is only by reason of the packers controlling the cars that you pay
2241 that much.

The CHAIRMAN: Do you agree that while the mileage may make a comfortable return to the owner of the car that still it is as cheap to the railroads as it would be for them to furnish their own equipment?

Mr. MILLER: Yes, sir; but I do not think that is the cheapest way of doing it.

Mr. TOMLINSON: Mr. Miller, you were formerly connected with the Great Northern, were you not?

Mr. MILLER: Yes sir.

Mr. TOMLINSON: You are familiar with their live stock rates into St. Paul from North Dakota stations, are you not?

Mr. MILLER: Not very. I know some of them.

Mr. TOMLINSON: As an off-hand proposition, would you say they are fair and reasonable?

Mr. MILLER: They generally make them so. I do not think a comparison of rates from Minnesota and Dakota would have anything to do with the rates from Kansas City.

Mr. TOMLINSON: Ought rates in North and South Dakota to be higher or lower than rates in Iowa generally, taking into consideration density of traffic and other things?

Mr. MILLER: I think they are higher.

Mr. TOMLINSON: Do you think they ought to be higher?

Mr. MILLER: Yes, sir.

2242 Mr. TOMLINSON: Do you think also that rates from points west of the Missouri River into the Missouri River ought to be relatively higher than from east of the Missouri River into Chicago?

Mr. MILLER: Relatively, yes sir.

The CHAIRMAN: How do rates on live stock on the Great Northern road into St. Paul and similar distances compare with the rates from this territory in Iowa to Chicago?

Mr. MILLER: They are higher, because their traffic is very much lighter. There is comparatively little live stock in that country and it is very expensive to handle.

The CHAIRMAN: That seems to be all.

Mr. COWAN: One question, Mr. Miller said, as I understood, that leaving out the matter of mileage, the rates on live stock and packing house products ought to be the same. I wanted to know what he meant by leaving out of consideration the matter of mileage.

Mr. MILLER: I think what we pay for the use of the car should be taken into consideration in fixing the rate.

Mr. COWAN: And you ought to have a higher rate for the product than for the live animal?

Mr. MILLER: No, it does not figure out that way.

Mr. COWAN: Just what did you mean?

Mr. MILLER: Oh, yes, you are right.

Mr. TOMLINSON: As a general proposition, are not rates
2243 throughout the United States adjusted so that the rates on the product are higher than on the raw material?

Mr. MILLER: That is generally the basis.

Mr. TOMLINSON: You think that is generally a correct basis.

Mr. MILLER: Yes sir.

Mr. BIRD: Speaking of the application of the reduced rates on provisions from Omaha, making it the same as St. Joe and Kansas City and the reason for putting the rates in at South Omaha, is it a fact that a considerable territory west of the Missouri River is common to Omaha and St. Joes? Is there not a considerable area of territory from which the rates to Omaha and St. Joe are the same?

Mr. MILLER: Yes, sir.

Mr. BIRD: And if the rate had not been made from Omaha the conditions so far as that particular country is concerned would not have been changed, because the stock would take the same area to St. Joe as Omaha and avail itself of the 12 cent rate or of the 20 cent rate.

Mr. MILLER: That is true.

Mr. BIRD: Relative conditions were not materially changed by the application of those rates to South Omaha in that respect.

Mr. MILLER: That is right.

Com'r PROUTY: Mr. Bird, who first put in the reduced St.
2244 Paul rate?

Mr. BIRD: I think it was the Burlington.

Com'r PROUTY: Mr. Miller does not think so.

Mr. BIRD: I am not clear about it.

Mr. MILLER: I thought it was the Wisconsin Central.

Mr. BIRD: I will admit I was mistaken. I did have in mind that it was the Burlington because they suggested it one time.

Com'r PROUTY: Mr. Miller, why should the rate be reduced on packing house products from St. Paul to Chicago because it had been reduced from Omaha?

Mr. MILLER: I do not know any good reason for it. We would not do it voluntarily—would not make any of these reductions voluntarily.

(Witness excused.)

2245 *Comparison of Earnings.*

Kansas City to Chicago.

490 miles.

Commodity.	Rates.			
Gross per car:	12	18½	20	23½
Cattle	$28.56	$44.03	$47.60	$55.93
Hogs	21.12	32.56	35.20	41.36
Fresh meat	.....	39.96	43.20	50.76
P. H. P.	.....	49.58	53.60	62.98
Net per car:				
Cattle	22.18	37.65	41.22	49.55
Hogs	14.74	26.18	28.82	34.98
Fresh meat	.....	27.16	30.40	37.96
P. H. P	.....	36.78	40.80	50.18
Per 100 lbs. of gross weight carried:				
Cattle	.039	.0663	.0725	.0872
Hogs	.0291	.0517	.0569	.0691
Fresh meat	.....	.0420	.047	.0588
P. H. P.	.....	.0567	.063	.0774

2246 Items of Cost and Revenue per Car Incidental to the Transportation of Live Stock and Packing House Products from Kansas City to Chicago via C. B. & Q. Lines, Distance 490 Miles.

	Live stock per 36 ... car	Fresh meat in refgr. cars.	P. H. P. in refgr. cars.
Cars used.	Carrier's.	Owner's.	Owner's.
Rental rate per mile on owner's cars	....	1c.	1c.
Cost per mile of maintenance, interest, depreciation, when carriers' cars used	.006		
Mileage per car paid private owner for round trip to Chicago	....	$9.80	$9.80
Average weight of freight paying contents:			
Cattle	23,800		
Hogs	17,600	21,600	26,800
Average weight of preservatives	....	6,000	4,000
Average weight bedding	2,000		
Average weight racks, hooks, boxes, ice cones, etc	....	3,000	
Weight of total contents of cars:			
Cattle	25,800	30,600	30,800
Hogs	19,600		
Average weight of cars used	31,000	34,000	34,000
Gross weight transported:			
Cattle	56,800	64,600	64,800
Hogs	50,600		
Percentage of paying weight:			
Cattle	41.9	33.4	41.2
Hogs	34.8		

2247 *Live Stock.*

	Rates.		
Average revenue per car:	18½	23½	12c.
Cattle	$44.03	$55.93	$28.56
Hogs	36.56	41.36	21.12
Deduct for car maintenance, depreciation and interest,—980 miles	5.88	5.88	5.88
Deduct for switching absorbed at Kansas City	.50	.50	.50
Net Revenue:			
Cattle	37.65	49.55	22.18
Hogs	26.18	34.98	14.74
Revenue per 100 lbs. based on gross weight transported:			
Cattle	.0663	.0872	.039
Hogs	.0517	.0691	.0291
Net revenue per car per mile of loaded haul:			
Cattle	.0768	1.011	.453
Hogs	.0534	.0714	.0301
Per cent. of gross weight per car to gross weight of fresh meat per car:			
Cattle	.879		
Hogs	.783		
Per cent. of gross weight per car to gross weight of P. H. P. per car:			
Cattle	.876		
Hogs	.781		

2248 Kansas City to Chicago.

490 miles.

	Fresh meat.		Pkg. house products.	
	20c.	23½c.	20c.	23½c.
Average revenue per car	$43.20	$50.76	$53.60	$62.98
Deduct for car mileage	9.80	9.80	9.80	9.80
Deduct for switching at Kansas City	3.00	3.00	3.00	3.00
Average net revenue per car	30.40	37.96	40.80	50.18
Net revenue per 100 lbs. of gross weight carried	.0470	.0588	.063	.0774
Net revenue per car per mile—490 miles	.0620	.0775	.0832	.1024

2249 As shown by attached statements, the average gross weight of a car of Fresh Meat is 64,000 pounds and the net revenue to carrier is $30.40 per car, or 4.7 cents per 100 pounds of gross weight transported.

To give carrier the same rate per 100 pounds on gross pounds of each Cattle, Hogs and Packing House Product carried, as per statement attached, the following rates would be necessary:

Cattle .1389 per 100 lbs. on average paying load of 23,800 lbs.
Hogs .1713 " " " " " " " " 17,600 "
P. H. P. .1613 " " " " " " " " 26,800 "

Above rates are arrived at by adding to car earnings $5.88 mileage and 50 cents loading for live stock.

2250 Eliminating the items, car rental, car maintenance, etc., and switching charges, the following comparison is made:

Fresh Meat.

Gross weight 64,600 per car: paying contents 21,600 at 20 cents $43.20

or 6.7 cents per 100 lbs. on gross weight carried.

To obtain same pay per 100 lbs. of gross weight transported the following rates would be required:

	Gross weight transported.	Weight of revenue paying contents.	Rate per 100 lbs. necessary to equalize.
Cattle	56,800	23,800	.16
Hogs	50,600	17,600	.92
P. H. P.	64,800	26,800	.62

2251 Mr. COWAN: There is an explanatory letter that we do not care to read. If the Court desires, however, to inspect it, and the gentlemen desire to read it, we offer it but do not care to take the time to read it at this time.

Mr. LYNDE: Do you offer the whole testimony Mr. Cowan?

Mr. COWAN: That has been repeatedly stated.

Mr. LYNDE: I don't know what your offer is; I would like to know.

Mr. DAWES: I think it is fair for the purpose of the record that he should state whether he offers the testimony of Mr. Miller.

Mr. COWAN: That is what I say.

Mr. DAWES: In an entirety?

Mr. COWAN: I said I offered the testimony.

The COURT: I think so. I hold you do offer it. You can read whatever you want of it.

Mr. SEVERANCE: How do you propose to get it into the record Mr. Cowan, if you don't read it?

Mr. COWAN: The only way is to file it.

The COURT: If you don't insist on his reading it, he need not do it.

Mr. SEVERANCE: We do not insist on it. But the stenographer is taking down everything that transpires in court. I assume your Honor, these are in the nature of depositions, and I suppose they are being admitted practically in the same way as depositions. Ordinarily a deposition won't go into the record unless it is read.

2252 Mr. COWAN: Well, we have read his testimony as given before the Commission, all of it. Now, then, he files subsequently an explanatory letter with regard to it.

The COURT: If the gentlemen say so, I will be very glad to hear that.

Mr. COWAN: Which we do not offer except for the purpose of informing the Court what is in the record, we are not offering it as testimony.

Mr. SEVERANCE: Then, he does not offer all the testimony, because this is explanatory.

Mr. COWAN: I have offered all the testimony that is in the record.

The COURT: It is in the record.

Mr. SEVERANCE: Before the Commission adjourned, I understand Mr. Cowan, Mr. Miller stated he desired to offer this letter in explanation of some things he said.

The COURT: I think if it helps you any, you ought to read it.

Mr. SEVERANCE: I don't ask him to read it; I am not asking him to read any of it.

Mr. DAWES: You can give a copy of it to the stenographer.

Mr. COWAN: I will read it to save time.

Mr. SEVERANCE: It either ought to go in, or not.

Mr. COWAN: I will read the letter as explanatory of his statement, the whole of it.

2253 Chicago, Burlington & Quincy Railway Company.

Office of First Vice-President.

CHICAGO, ILLS., *March* 19, 1903.

Honorable Martin A. Knapp, Chairman, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: In the matter of the complaint of Chicago Live Stock Exchange involving live-stock rates between Missouri River points

and Chicago and the relation of same to the rates charged on packing house product, etc.:

On January 22nd our General Attorney, Mr. C. M. Dawes, presented to the Commission, then sitting in this city, our request for permission to file an additional statement as part of my testimony in this case. This permission was granted and I therefore beg leave to submit for your consideration the following notes, the purpose of which is to make more clear the testimony which I gave before the Commission and to lead to a better understanding of those facts which the Commission apparently wished to develop:

1. I stated that 21600 pounds was the average weight of dressed meat shipped in private refrigerator cars, according to a statement furnished me by Superintendent of the Western Railway Weighing Association covering 100 cars.

2254 I have since compiled a statement of all fresh meat shipped from Kansas City in private refrigerator cars by the lines of this company in the period October to December, 1902, inclusive, a total of 1231 cars, and the average weight of same was 22433 pounds. I am advised that the average loading of cars during this period probably exceeded the average loading for the entire year, on account of car shortage, and with this additional information I would state if again called upon, that the average weight of dressed meat in private refrigerator cars is 22000 pounds per car.

2. I stated that 26800 pounds was the average weight of packing house product as shipped in private refrigerator cars, this being based on a statement furnished me by Superintendent of the Western Railway Weighing Association covering 100 cars received at Chicago by various lines.

I have since compiled a statement which includes all packing house product shipped in private refrigerator cars from Kansas City by this Company's lines in the period October to December, 1902, inclusive, 332 cars, and the average weight is 29425 pounds. I am advised that the average loading of cars during this period probably exceeded the average loading for the entire year, and with this additional information I would state, if again called upon, that

2255 the average weight of packing house product shipped in private refrigerator cars is 2900 pounds.

3. I stated that 23800 pounds was the average weight of cattle in 36-ft. cars, this being based on a statement furnished by Superintendent of the Western Railway Weighing Association covering 255 cars shipped to Chicago over various lines from Iowa, Illinois and Missouri points. A similar statement covering three months' shipments by this Company's lines from Kansas City in the period October to December, 1902, inclusive, shows that 497 cars, or 65.8 per cent. of the total shipments were in 36-ft. cars, and that the average weight was 23116 pounds; the difference in the average weight per car of cattle shipped from Kansas City and the average weight per car of cattle received at Chicago being due to the fact that the Chicago receipts largely originated in territory which produces heavier cattle than are shipped from Kansas City. These figures suggest 23500 pounds as the average weight of the cattle shipped in 36-ft. cars.

4. I stated that the average weight of hogs, single deck loads, in 36-ft. cars was 17600 pounds. This was based on a statement furnished by Superintendent of the Western Railway Weighing Association showing the weight of 224 cars shipped to Chicago by various roads from Iowa, Illinois, and Missouri points. It is my
2256 opinion that the average weight of hogs shipped over this company's lines in 36 foot cars would not exceed 17,000 pounds.

"5th. I stated that refrigerator cars used in transportation of fresh meat weighed 34,000 pounds, average weight of preservatives, 6,000 pounds; average weight of equipment, 3,000 pounds; total, 43,000 pounds. We have since weighed a total of 52 private refrigerator cars of various ownership returning empty to the Missouri River shipping points, and the average weight of these 52 cars is 43,590 pounds. Considering the season of the year and prevailing weather conditions, it is safe to assume that many of these cars carried a portion of the original charge of ice. In view of the above figures and further information which has been obtained, I conclude that the figures which are shown in the exhibits filed with my testimony are not correct, and would substitute the following figures as representing to the best of my knowledge and belief the average weights in connection with shipments of fresh meat; private refrigerator cars empty, including equipment, 40,000 pounds; average weight of preservative, 6,000 pounds; total, 46,000 pounds. The average weight of private refrigerator cars as employed in the transportation of packing house product was stated at 34,000 pounds. The average weight of preservatives with such shipments at 4,000 pounds. For reasons which are stated in the preceding paragraph, I would substitute the following figures: Average weight of refrigerator
2257 cars used for packing house product, 39,000 pounds; average weight of preservatives, 4,000 pounds; total, 43,000 pounds.

"6th. Terminal charges on packing house product and live stock, namely, loading and unloading charges, switching charges to other lines are difficult of comparison. They stand in a different relation at different terminal points, and the comparison would not be the same in the case of any two carriers because their means of access to the places of loading and unloading are seldom the same at any one point, nor is their relative situation the same at any two points. For illustration: This company reaches the Kansas City stock yards with its own rails, therefore, does not pay any switching charge on live stock, but is obliged to pay $3 per car on packing house products shipped from the same point. At St. Joseph, we pay a switching charge of $1 per car on live stock, while the Chicago Great-Western pays a total of $4 per car. We pay $1.50 per car on packing house products shipped from St. Joseph, while the Chicago Great-Western pays a total of $4.50 per car. At Chicago we pay a switching charge of $3.50 per car on packing house product delivered at Union Stock Yards, which charge includes return of the empty car to our tracks.

We pay from $2 to $5 per car for switching packing house
2258 products delivered to other lines in the City of Chicago; on live stock delivered at Union Stock Yards we charge $2 per

car in addition to the regular tariff rate and pay for trackage and unloading $1.75 per car, which does not include the cost of our own switching service. There is no difference in the practice of the several lines that deliver live stock and packing house product at Chicago and Union Stock Yards from Western points.

"7th. I stated that 10 per cent. of the stock cars and refrigerator cars were loaded on return trip. Subsequent inquiry confirms this statement. But it is nevertheless fair to charge the east bound shipments of either live stock or packing house product with the cost of returning the empty car to original loading point, because under normal conditions, the preponderance of tonnage is eastbound. We always have a sufficient number of box cars moving westbound to accommodate all westbound freight. While we may occasionally serve our own convenience by loading such freight into stock and refrigerator cars, no material saving is thereby accomplished.

"8th. A statement compiled in connection with my testimony before the Commission shows the average gross weight carried and resulting revenue in connection with fresh meat shipments and the rates which would be necessary to insure the same pay per
2259 hundred pounds of gross weight carried in the case of live-stock, etc.

In connection with this statement the difference in train tonnage according to gross weight per car should be considered. For illustration, an engine which could haul 1548 tons gross weight of dressed meat, or 48 cars weighing 32¼ tons each, could only haul 1431 tons of cattle, or 53 cars at 27 tons gross per car, the rate of speed being the same in each case. This is based on the rating of Class H-2 engine, and class C, or slow train from Galesburg to Chicago, as shown by book of tonnage ratings for freight engines, issued January 1, 1902, a copy of which is herewith submitted. This difference is due to wheel friction, and even greater allowance should be made for this item on those roads or on those divisions of this road where the curvature is greater than it is between Galesburg and Chicago.

"9th. In comparing rates of cost of service and profit incidental to the transportation of live stock and fresh meat, packing house product and dead freight, due consideration should be given to difference in the speed of trains and the consequent difference in the number of tons of each class of freight which may be hauled by an engine of a given capacity. As shown in the book of tonnage ratings for freight engines referred to in paragraph 8,

2260 Fresh Meat is hauled in Class "A" trains.
Live Stock " " " " "B" "
Dead Weight " " " " "C" "

To illustrate the difference in the train tonnage for engines of a given class hauling "dead freight," live stock and fresh meat, the following figures are submitted, the same being based approximately on the ratings which are shown in the exhibit "Tonnage Ratings for Freight Engines" previously referred to:

Class H-2 Engine, Galesburg to Chicago.

	Cars.	Gross tons per car.	Total tons.	Tonnage per cent.
"Dead Freight,"				
Class "C" Train.....	41	40	1640	169
Cattle,				
Class "B" Train.....	39	37	1053	109
Fresh Meat,				
Class "A" Train.....	30	32¼	967	100

10. The maximum weight capacity of this Company's 36-ft. stock cars is 60000 pounds; in connection with the movement of live stock from Missouri River to Chicago we estimate the revenue for round trip haul of car as follows:

Cattle, 23500 at rate 23½¢ per 100 lbs., earnings..... $55.22
Hogs, 17000 " " 23½¢ " " " " $39.95

11. A large proportion of this Company's box car equipment has capacity 60000 pounds; a still greater proportion has capacity
2261 50000 pounds or more. Following named commodities can be loaded and are commonly loaded to full capacity of car and the average loading of these commodities may be fairly stated as 25 tons. We therefore estimate as follows the earnings arising from the transportation of these commodities between Chicago and Missouri River points and in estimating the cost of service we would consider the cost of loaded haul only, because the cars are, as a rule, loaded with other freight on return trip:

Corn,—	50000 lbs. at	17¢	per	100	lbs.	.....	$85.00
Wheat,—	50000 " "	19¢	"	"	"	.....	95.00
Soft coal,—	50000 " "	$2.25	"	ton,	"	.....	56.25
Hard coal,—	50000 "	$2.50	"	"		.....	62.50
Scrap iron,—	50000 "	15¢	100	"		.....	75.00
Brick,—	50000 "	16¢	"	"		.....	80.00
Wire,—	50000 "	27¢	"	"		.....	135.00
Nails,—	50000 "	27¢	"	"		.....	135.00
Coffee,—	50000 "	27¢	"	"		.....	135.00
Sugar,—	50000 "	27¢	"	"		.....	135.00
Canned Goods,	50000 "	27¢	"	"		.....	135.00

12. In my oral testimony I stated, as a general proposition, that the rate on a finished product should not be less than the rate on the original raw material; I would not wish the Commission to understand this as meaning that the rates on the raw material and on the finished product of same should be the same, or that the rate
2262 on the raw material should be based on the rate which is charged for transportation of the finished product, because it is the general practice of railroad carriers, and in my opinion correct, to fix the rate on raw material in its proper relation to the rates

on other kinds of freight transported and then fix the rate on the finished product, taking into consideration any difference in conditions which would affect the cost or value of service performed.

13. In my oral testimony I stated that the rates on live stock and packing house product should be the same, leaving out of consideration the item of car mileage; to prevent any misunderstanding I desire to call your attention to the fact that the term "packing house product" as used in framing the exhibits filed with my testimony and as generally employed in the discussion of this complaint does not embrace dressed beef or other fresh meats, and in determining the relation of rates on cattle, hogs, fresh meats and packing house product the carriers should consider, and it is assumed that the Commission will consider, the difference in conditions attending the transportation of each class of freight and the effect of these conditions on the cost of service.

14. I stated that our rates on live stock are relatively lower than our rates on any other commodity except live stock products, and, if it is my privilege to do so, I wish to supplement that statement
2263 by saying that it is our desire to so adjust the live stock rates as to put them in proper relation to the rates which are charged for the transportation of other commodities, and having accomplished this we would establish the rates on the different kinds of live stock products in their proper relation to the rates on live stock, but if we are prevented from making a proper adjustment of these rates by the action of a competitor who established and guarantees for a stated term rates on the product of live stock, which rates are of themselves unreasonably low and out of proportion with the rates charged on other kinds of freight, we do not for that reason conceive it to be our duty to make abnormally low rates on live stock or other kinds of freight on which we may be charging relatively higher rates but which are of themselves just and reasonable.

15. If such further explanation of my testimony is permissible, I will also state that we do not believe our right to charge on live stock, rates which are in themselves reasonable and remunerative, should be prejudiced or taken away because we engage in the transportation of live stock products at rates which are relatively lower or actually lower when such lower rates have been forced upon us by a competing line which does not see fit to adjust its tariff in accordance with rules and principles which it is our desire to follow and which, in our opinion, should govern the making of rates
2264 by all carriers.

16. As indicating the relative importance of this Company's traffic in live stock and its traffic in packing house product and fresh meat, the following statement of such shipments handled during the periods named is respectfully submitted:

For the year 1901 Burlington System lines carried to the markets of Chicago, Kansas City, St. Joseph, Omaha and Nebraska City, 111,841 cars of live stock, and in the same period carried out of Kansas City, St. Joseph, Omaha and Nebraska City, 16,242 cars of fresh meat and packing house product.

From January 1st to December 31st, 1902, there was shipped into

the markets of Chicago, St. Joseph, Omaha, Kansas City and Nebraska City over the lines of the Burlington System 104,581 cars of live stock, and during the same period we carried out of Omaha, Kansas City, St. Joseph, and Nebraska City destined Chicago, Mississippi River and Illinois points 23,217 cars of fresh meat and packing house product.

If the Commission so desires, I will be very glad to submit detailed statements in support of the foregoing and will also be glad to furnish any further information which may be desired with respect to the business handled over this Company's lines.

Yours truly,

D. MILLER,
First V.-Pres't.

2265 Mr. COWAN: We offer in evidence, without reading it, the book of tonnage ratings submitted in connection with that testimony.

The COURT: Do you want that copied into the record?

Mr. COWAN: Such portions only as are referred to.

The COURT: Well, you want to fix it so the stenographer can get the record.

Mr. COWAN: I will be compelled to refer to Mr. Tomlinson, about the amount that we want to get in.

Mr. DAWES: Mr. Miller has testified as to the particular ratings and submits the book in verification of the evidence. If the book bears out the ratings he gives, it doesn't seem to be necessary to put it in.

Mr. COWAN: I rather think you are correct about that, but if there is some portion that we want to submit, we will select that out.

Mr. DAWES: He says this is the rating, and the book shows it. And it will be sufficient if we accept his figures.

A recess was here taken until 2:00 o'clock p. m. of the same day, Thursday, October 5, 1905.

2266 THURSDAY, *October 5*, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Mr. COWAN: I would like to offer in evidence next——

Mr. SEVERANCE: What about Mr. Cusey?

Mr. COWAN: He is here and will be in as soon as I get through presenting this testimony.

The COURT: After you present all this testimony?

Mr. DAWES: May he not be called now, your Honor? I do not think it will interrupt the continuity of Mr. Cowan's case.

Mr. COWAN: I do not see that there is any special reason for stopping now to have him come in.

The COURT: How long do you expect it will take you to read this?

Mr. COWAN: This testimony is comparatively short.

The COURT: I think they are entitled to have him put on.

Mr. DAWES: There are some of these gentlemen here that are waiting for him and I ask it simply as a matter of courtesy.

Mr. COWAN: The only reason for the delay is that in refer-
2267 ence to the hides, some of his statements had the green weight of the hide and did not have the dry weight and I have asked him to fix that up. As soon as he has that fixed up, we are ready to examine him.

We now offer the testimony of Mr. W. B. Biddle, the testimony given by him before the Interstate Commerce Commission beginning at page 224.

Mr. SEVERANCE: It is understood that our objection to the other stands to this, the same way.

The COURT: Certainly.

Mr. COWAN: If I may be permitted to state it, without doing it under oath, I will say that Mr. Biddle at that time was the Freight Traffic Manager of the Atchison, Topeka & Santa Fe Railway Company and is now Vice President in charge of all the traffic on the Rock Island System.

Mr. LYNDE: Yes, and living in Chicago and having his office here.

Mr. SEVERANCE: You admit that he lives in Chicago and has been here in Chicago during the trial of this case.

Mr. COWAN: No, he has not. He has been absent but that would not make any difference. He will be here and I will admit that I could subpœna him and get him here before this trial closes, so far as I know.

Mr. SEVERANCE: You admit that he has been within the
2268 jurisdiction of this court since this case was set for hearing.

Mr. COWAN: No, I don't know about that. I do know that he left here—

The COURT: Since it was set down for trial, he says.

Mr. COWAN: Oh, certainly, he could have been subpœnaed for this trial.

(The said testimony of the witness Biddle given before the Interstate Commerce Commission at the hearing aforesaid and so offered in evidence by counsel for complainant, is in the words and figures following, to wit:)

2269 W. B. BIDDLE, the witness called on behalf of complainant, being duly sworn, testified as follows:

Mr. TOMLINSON: Kindly state your name and official position.

Mr. BIDDLE: W. B. Biddle; Freight Traffic Manager of the Atchison System.

Mr. TOMLINSON: You have been present during the examination of the previous witnesses and doubtless understand the issue. What action, if any, did the Santa Fe take at the time the Great Western is reputed to have made a contract on dressed meat and packing house products and published a rate thereunder?

Mr. BIDDLE: We simultaneously with the taking effect of the Great Western rate, or probably a little later, we published the same

rate on packing house products and fresh meat that the Great Western did.

Mr. TOMLINSON: Did you take any other action regarding live stock rates?

Mr. BIDDLE: Either then or a little later we reduced the rate on live stock.

Mr. TOMLINSON: To what figure did you reduce the rate on live stock?

Mr. BIDDLE: To 12 cents, from the Missouri river to Chicago.

2270 Mr. TOMLINSON: Did you apply that rate intermediate?

Mr. BIDDLE: Yes, sir.

Mr. TOMLINSON: Do you know whether the other lines apply that intermediate or not?

Mr. BIDDLE: My information is that they do not.

Mr. TOMLINSON: Without asking you as to the reasonableness of that 12 cent rate on live stock, or its remunerativeness, I will ask you to state whether the present relation between the rates on fresh meats and packing house products of 18½ cents proportional from the Missouri river to Chicago, and the 12 cent rate on live stock represents your views as to what is the proper relation between the rate on the product and on live stock.

Mr. BIDDLE: I do not know that it does, necessarily. In other words, I do not know that a difference of six cents per hundred pounds between the rate on one commodity and the other represents our ideas of the proper difference, nor do I know that a rate of 150 per cent. of the rate in one case of what it is in the other represents our ideas, but our opinion is that there should be a difference in the rate on live stock and on the product of the live stock.

Mr. TOMLINSON: And your view is that live stock should be higher or less than the product?

Mr. BIDDLE: That the product should be higher than the raw material.

2271 Mr. TOMLINSON: You heard Mr. Stickney's statement here this morning. Do you agree with his views in any sense on that point?

Mr. BIDDLE: I did not hear all of Mr. Stickney's testimony.

Mr. TOMLINSON: What do you figure that the rate of 18½ cents proportional from Kansas City to Chicago pays you as compared with the 12-cent rate on cattle?

Mr. BIDDLE: The rate of 12 cents per hundred pounds on live stock from the Missouri River to Chicago pays the Atchison road as much in gross for the transportation of a carload of live stock from Kansas City to Chicago as the 18½ cent rate pays us for the transportation of a carload of fresh meat.

Mr. TOMLINSON: How do you arrive at that conclusion?

Mr. BIDDLE: By actual figures.

Mr. TOMLINSON: Kindly give me—in order that it may go in the record—the basis for that conclusion.

Mr. BIDDLE: When I say it pays us as much it may be within a few cents or a dollar a car, but approximately the gross revenue—

and when I say the gross revenue I mean the charges that we collect and retain after paying the terminal charges, switching charges, mileage, etc.,—they are practically the same in one case as in the other. I could sit down and figure a shipment for you.

2272 Mr. TOMLINSON: What is the average weight of the contents of a fresh meat car?

Mr. BIDDLE: Twenty thousand pounds.

Mr. TOMLINSON: Does it ever average more than that?

Mr. BIDDLE: It may average a little more than that, but the minimum weight of fresh meat is twenty thousand pounds, and my experience is that it is the policy of the packers to load just as near the minimum as they can.

Mr. TOMLINSON: They do that in order to enjoy the mileage on their refrigerator cars, do they not?

Mr. BIDDLE: I presume that is one reason.

Mr. TOMLINSON: That is probably the most important reason in your mind, is it not?

Mr. BIDDLE: I cannot tell you what the reasons of the packers are. I simply know my experience in the handling of that business shows that the loading of the cars is confined practically to the minimum.

Mr. TOMLINSON: 18½ cents per 100 pounds for twenty thousand pounds pays your company $37 gross revenue. What switching, if any, do you absorb; or, would be compelled to pay at Kansas City?

Mr. BIDDLE: I think there is an expense of about $3 a car in getting it to our line at Kansas City on an average; possibly $4.

2273 Mr. TOMLINSON: Well, assuming that it is $3; what is the cost in mileage on refrigerator cars?

Mr. BIDDLE: It is $9.16 cents by the Atchison road.

Mr. TOMLINSON: In delivering that car to the eastern line, what will it cost you at Chicago?

Mr. BIDDLE: I don't know that we bring any live stock into Chicago destined for the east. Our deliveries are all made——

Mr. TOMLINSON: I mean fresh meat.

Mr. BIDDLE: Our deliveries are all made via Illinois Junction points, where there is no expense except of setting it in for the connection. That is done because it is a matter of economy in time.

Mr. TOMLINSON: You save, by delivering at these outlying junctions. That makes a total expense of $12.16, which, according to my figures, leaves about $24.80.

Mr. BIDDLE: I should say we earn about $25 a car.

Mr. TOMLINSON: And you earn on cattle, at 22,000 pounds at 12 cents, how much?

Mr. BIDDLE: You can figure it up.

Mr. TOMLINSON: $26.40; is that correct?

Mr. BIDDLE: It is practically the same as the other.

The CHAIRMAN: In that calculation you do not allow anything for the interest on the cost of your car, and keeping it in repair; in other words, you make no deduction there which corre-

2274 sponds to the mileage you pay on the car which is furnished by somebody else and maintained by somebody else?

Mr. BIDDLE: That is true, Mr. Chairman. This calculation is

based entirely on dressed meats, which is loaded in cars furnished by the packer and loaded by them, and on live stock at 12 cent rate, which is taken in our own equipment.

Mr. FIFER: If you balance the calculation, how would it stand?

Mr. BIDDLE: I do not think I am qualified to testify as to what deductions ought to be made from that freight revenue for wear and tear on our equipment as compared with the mileage we pay the packers for the refrigerator cars. There is something over a dollar in favor of the live stock shipment.

Mr. HANSON: You have not considered the return haul of the car.

Mr. BIDDLE: We return a heavier car in the case of packing house products and dressed beef than we do in live stock. Not only that, but I want to say, in reply to a question that Mr. Hanson has asked, that we are required to practically return the refrigerator cars to the packers; at practically the same speed at which we ship the product, while, in our own equipment, we load a large percentage back.

2275 Mr. TOMLINSON: What is the average weight of a live stock car?

Mr. BIDDLE: Well, I think that would be difficult for anyone to say, because the weight has changed so. I think probably it would be 26 or 27 thousand pounds.

Mr. TOMLINSON: And the average weight of a refrigerator car would be what?

Mr. BIDDLE: They run all the way—the cars that I have made analysis of, and that we handle—all the way from 32 and 33 thousand to 45 thousand pounds.

Mr. TOMLINSON: They average somewhere around ten thousand pounds above the average of the live stock cars?

Mr. BIDDLE: No, I do not think so. I do not think that they average in the case of the cars that are in the fresh meat trade is ten thousand pounds in excess of the weight of our live stock equipment, because the heavier cars are in the California fruit trade.

Mr. TOMLINSON: What would you think would be a safe average of the gross weight of the refrigerator cars in the meat business between the Missouri River and Chicago?

Mr. BIDDLE: I should think they would probably run from 33 to 34 thousand pounds.

Mr. TOMLINSON: Do you know how much ice and salt is usually loaded in these refrigerator cars?

2276 Mr. BIDDLE: It depends altogether on the season of the year. I should say that it would probably average 3 tons of ice from the point of shipment and about 20 per cent. of the weight of ice in salt.

Commissioner FIFER: Is that for the year round?

Mr. BIDDLE: Well, there is more ice required at certain seasons than others, of course.

Commissioner FIFER: Is that average that you gave for the whole twelve months of the year?

Mr. BIDDLE: I doubt if it would run as high as that the year round.

Mr. BIRD: That is only in extreme cases, in very hot weather?

Mr. BIDDLE: Yes, sir.

Mr. TOMLINSON: Fresh meat is iced at all seasons of the year, is it not, Mr. Biddle?

Mr. BIDDLE: I think it is.

Mr. TOMLINSON: Is there any difference between the service accorded live stock and its products as to speed of transportation by railroads?

Mr. BIDDLE: Well, so far as we are concerned, if there is any difference, it is in favor of live stock in the way of lesser speed required than it is in the transportation of dressed meats.

Mr. TOMLINSON: It is in favor of live stock, as against fresh meat?

2277 Mr. BIDDLE: Yes, sir.

Mr. TOMLINSON: Is there any difference in the risk involved in the transportation of these products, leaving out of the question the relative value of them?

Mr. BIDDLE: I think there is very little.

Mr. TOMLINSON: And if you consider the relative value of the two commodities, naturally the risk would be a little greater on account of the increased value of the product, would it not?

Mr. BIDDLE: Not only on account of the increased value of the products, but on account of the fact that it is handled in equipment not the property of the railroad company, and not subject to their instruction or supervision or anything more than the inspection that comes over the line.

Mr. TOMLINSON: Do you mean to say that this equipment of the packers is not as good as your own refrigerator cars?

Mr. BIDDLE: My judgment and understanding of it is that the equipment built and used by the packers today would not be accepted as standard by our company.

Mr. TOMLINSON: Do you think that claims for loss and damage are any more frequent on live stock than on fresh meats and products from Missouri river points?

Mr. BIDDLE: Yes, sir; there is a great deal—they are a great deal more frequent with us because we handle a great deal
2278 more of it. I do not know about that from the Missouri river.

Mr. TOMLINSON: I mean from points east of the Missouri river. You say claims are paid more frequently on live stock.

Mr. BIDDLE: I thought you said, or asked, as to claims arising from the transportation of live stock, that they were greater than from the transportation of dressed meat. No, I do not think so, for the same number of cars. Claims may be more frequently presented, but I do not know that any larger percentage of them is recognized or paid.

Mr. TOMLINSON: As a general proposition, don't you think the rates on the products should be higher than the rates on the raw material, and is it not generally recognized; is not that principle generally recognized by the railroads throughout the United States?

Mr. BIDDLE: That is my belief, that that is the proper principle, and that it is generally recognized.

Mr. TOMLINSON: Can you recall any single rates except these rates between the Missouri River and Chicago where that principle is not observed?

Mr. BIDDLE: Oh, yes; practically all of the products of grain are handled at the grain rates throughout the country. Flour is taken at the same rate as wheat, and some other products.

2279 Mr. TOMLINSON: That is the only instance?

Mr. BIDDLE: That is the only important commodity that I recall now.

Mr. TOMLINSON: There is not any instance where they haul the raw material for less than the product?

Mr. BIDDLE: If there is, I do not recall it.

Mr. TOMLINSON: Have you sufficient information to express an opinion as to what the value of a refrigerator car is per mile of railroad? That is, are they really worth a cent a mile?

Mr. BIDDLE: I do not think that I could express any opinion about that that would be of any value to you. I know it has been conceded by the railroads up to this time that the private refrigerator car was not only a necessity, but possibly it was cheaper for the company to pay mileage on private cars than it was to own its own equipment. I think that is undoubtedly true today so far as the transportation of fresh meats and that sort of thing are concerned. So far as our own company is concerned we are building our own refrigerator cars and it has discontinued the use of private cars in the refrigerator business.

Mr. TOMLINSON: There was some attempt made some years ago to reduce the mileage on refrigerator cars down to six mills, was there not?

2280 Mr. BIDDLE: My recollection is that an attempt was made to procure the consent of private car lines to accept three-quarters of a cent, but leaving out of consideration the question as to whether that was a reasonable or proper mileage, any effort in that direction was defeated, I think, by the fact that there was a contract in effect which compelled the payment of one cent per mile between the Missouri River and Chicago.

Mr. TOMLINSON: What proportion of the products of live stock shipped east from Kansas City and St. Joe move at this 18½ cent rate, and what proportion moves under the 20 cent rate?

Mr. BIDDLE: I have not any information about that, but I think a very small percentage of it would move at the higher rate. I have no figures on that, however. You understand that I have had no preparation in this case at all. The case was dismissed so far as our company was concerned, and I did not suppose I would be brought into it until I got a subpœna from you.

Mr. TOMLINSON: I would like to have you explain about packing house product rate. What is the average weight of packing house products?

Mr. BIDDLE: The minimum is 26 thousand pounds and I think the average loading of packing house products will run somewhat

over the minimum. I think that the same conditions that
2281 influence the shippers in loading the cars as near the minimum as possible govern in respect to packing house products as well as fresh meats.

Mr. TOMLINSON: West of the river the minimum is 24 thousand pounds, is it not?

Mr. BIDDLE: Well, I think it has been 24 thousand pounds east of the river until recently.

Mr. TOMLINSON: It was 22 thousand pounds until recently.

Mr. BIDDLE: I am not altogether familiar with the changes in classification.

Mr. TOMLINSON: Then the minimum of 26 thousand pounds is not uniform by any means on packing house products?

Mr. BIDDLE: No, I do not know that the minimum on dressed beef or live stock is uniform throughout the country.

Mr. TOMLINSON: What is the average weight of a carload of hogs according to your knowledge?

Mr. BIDDLE: I doubt if it runs much over the minimum. I do not know but what the minimum is——

Mr. TOMLINSON: The same thing is true of cattle?

Mr. BIDDLE: I think so. I think the minimum was established on the idea that it was reasonable for the loading. I imagine that the live stock people would kick if they were called upon to pay anything in excess for any length of time over what they can get into the car.

Mr. KELLOGG: Mr. Biddle, what was the rate on cattle from Kansas City to Chicago prior to putting in a 12-cent rate.

2282 Mr. BIDDLE: I think it was 23½ cent.

Mr. KELLOGG: How many years has that been in existence?

Mr. BIDDLE: Well, for a long time, Mr. Kellogg.

Mr. KELLOGG: On your line?

Mr. BIDDLE: Yes sir.

Mr. KELLOGG: Your packing house rates for many years have not been over 18½ cents.

Mr. BIDDLE: Are you referring to the published tariff or the rate?

Mr. KELLOGG: I am referring to the contract that Mr. Morton testified to before the Commission.

Mr. BIDDLE: You had better refer to Mr. Morton's testimony, if you are referring to testimony that has already been given.

Mr. KELLOGG: I am not asking you anything that does not apply to all of them. The rate on the Great Western was the same last winter.

Mr. BIDDLE: The rate at times on our line was 18½ cents, but I would not testify that it was the prevailing rate for years.

Mr. KELLOGG: It was prior to March, last.

Mr. BIDDLE: Not by the Atchison road, because we were out of the dressed meat and packing house product business for months at a time.

2283 Mr. KELLOGG: I am referring to testimony before the Commission:

Mr. BIDDLE: I understand that you are trying to make a point, that the rate on packing house products and dressed meat has been, or was for a period, lower than on live stock. I say that has not always been so, even when 18½ cents was the rate on the other roads.

Mr. KELLOGG: When it was not less it has been the same, has it not?

Mr. BIDDLE: Yes.

Mr. KELLOGG: Well, did that represent your views?

Mr. BIDDLE: No, sir; never has.

Mr. KELLOGG: Never has?

Mr. BIDDLE: No, sir; never has.

Mr. KELLOGG: No more than the present rates of 12½ and 18½ represent your views?

Mr. BIDDLE: No; my belief has always been, as I said, that the product ought to carry a higher rate.

Mr. KELLOGG: That is the general principle that you believe in—that the raw material should have a lower rate?

Mr. BIDDLE: It is the particular principle as applied to dressed meat and packing house products as compared with live stock.

Mr. KELLOGG: It is not a principle that *that* railroads apply to grain and the product of grain?

2284 Mr. BIDDLE: No, sir.

Mr. KELLOGG: That is a very large item of the country's traffic, is it not?

Mr. BIDDLE: Yes, sir.

Mr. KELLOGG: Now is it not an advantage to the producer of live stock to have as many good markets as he can as near his farm as he can?

Mr. BIDDLE: I think so.

Mr. KELLOGG: So the markets on the Missouri River are not only a great benefit to the producer but to the railroads and the people generally?

Mr. BIDDLE: I think so; yes.

Mr. KELLOGG: Where does the most of the live stock on the Santa Fe road originate?

Mr. BIDDLE: It is so scattered that it would be hard to tell.

Mr. KELLOGG: Well, east or west of the Missouri River?

Mr. BIDDLE: West of the Missouri River.

Mr. KELLOGG: East of the river a very small percentage?

Mr. BIDDLE: Yes, sir.

Mr. KELLOGG: If you hauled that live stock into Kansas City and it was sold in that market and manufactured, you might or might not get the product out? Isn't that true?

Mr. BIDDLE: We may not. We know that.

Mr. KELLOGG: But if you haul it through to Chicago you

2285 do get it? Is not that true? Instead of letting it stop there—you are sure of getting it clear through.

Mr. BIDDLE: Of course, if we haul it through we get it through.

Mr. KELLOGG: It is to your interest to haul all the stock from Texas and Kansas and the district west straight through to Chicago.

Mr. BIDDLE: I do not know whether that would be true under all circumstances or not.

Mr. KELLOGG: That is a plain proposition—that it is to your interest to get all of that live stock you can and haul it clear through to Chicago.

Mr. BIDDLE: We might get the packing house products.

Mr. KELLOGG: But if it stops there, there are a great many roads that may get it.

Mr. BIDDLE: Of course, if it were true that we could not haul the products out from the Missouri River to Chicago, it would be to our interest to haul the live stock through to Chicago.

Mr. KELLOGG: I thought you did not get it.

Mr. BIDDLE: We happen to be getting some of it now.

Mr. KELLOGG: Now, Mr. Biddle, how many cars of stock does the Santa Fe Road haul from west of the Missouri River, either to Kansas City or Chicago—you can give me an approximation—in a year?

Mr. BIDDLE: It is a very small number of cars.

2286 Mr. KELLOGG: You don't understand me. How much stock do you haul on your line to all markets, either to Kansas City or Chicago?

Mr. BIDDLE: We move from 80 thousand to 90 thousand cars of stock a year.

Mr. KELLOGG: And that practically all originates in Texas, Kansas and points west of the Missouri River?

Mr. BIDDLE: A large percentage of it originates west of the Missouri River. I do not know how much there is of it from Illinois and Missouri.

Mr. KELLOGG: It is a small percentage of the total?

Mr. BIDDLE: Yes, sir.

Mr. KELLOGG: It is manifestly to your interest to haul that stock directly to Chicago, is it not?

Mr. BIDDLE: Well, it is to our interest to haul it to Chicago if we can get a reasonable rate for the transportation of it.

Mr. KELLOGG: It is more to your interest to haul it to Chicago than it is to haul it to Kansas City and then take your chances on getting the product out?

Mr. BIDDLE: I will say this as to what our interests are, that there never has been any adjustment of live stock rates made by the Atchison road that was intended to discriminate either against Kansas City or the St. Joe market and in favor of Chicago.

2287 Mr. KELLOGG: There has been as to grain? Don't you remember of the Santa Fe making a rate from Topeka to Chicago of only one cent more than the rate to Kansas City and this 12 cent rate was put in to get even with the Great Western.

Mr. BIDDLE: Not the slightest; neither with the Great Western nor with the packers.

Mr. KELLOGG: Why was the grain rate made one cent more from Topeka to Chicago than to Kansas City?

Mr. BIDDLE: When was that made?

Mr. KELLOGG: During 1896. During the whole season.

Mr. BIDDLE: One cent more into Chicago than to Kansas City?

Mr. KELLOGG: From Topeka, and many other stations the same.

Mr. BIDDLE: I do not remember of any such adjustment of rates.

Mr. KELLOGG: I have a very distinct recollection of it. That was for the purpose of hauling the grain through to Chicago, was it not?

Mr. BIDDLE: I would have to look that up and see if the rate was made. I don't know that it was.

Mr. KELLOGG: Assuming that those rates were made from all points west of the Missouri River to Chicago from one to two and three cents more than to Kansas City, what was the object of making that rate?

2288 Mr. BIDDLE: Not know- what the rate was, I cannot tell you what was the object.

Mr. KELLOGG: You do not remember of any injunction having been brought against the Santa Fe road to prevent them from doing it?

Mr. BIDDLE: I have some recollection, but I do not remember the circumstances.

Commissioner PROUTY: Was that about the time that the Iowa Development Company operated?

Mr. KELLOGG: Yes, sir. They undertook to run the Great Western out of business and the Iowa Development Company undertook to get some of the business and it did.

Mr. BIDDLE: We can all testify to that.

Mr. KELLOGG: Now the speed, you say of the live stock trains and the fresh meat trains are comparatively the same.

Mr. BIDDLE: I say if anything it is in the nature of faster service on dressed meat than on live stock from the Missouri River to Chicago.

Mr. KELLOGG: Packing house products outside of dressed meat does not have to be hauled at as great speed.

Mr. BIDDLE: No, sir, it is not hauled, generally speaking, as fast as live stock.

Mr. KELLOGG: And it is hauled in box cars, a good deal of it?

Mr. BIDDLE: It is hauled in so-called refrigerator cars
2289 all hauled in equipment belonging to the packers.

Mr. KELLOGG: Some of the products is hauled in box cars.

Mr. BIDDLE: Yes, sir, some of it.

Mr. KELLOGG: Fresh meat trains do not have to be hauled at any great speed, do they?

Mr. BIDDLE: It has all to be expedited. You cannot treat it as ordinary dead freight. It has to have special service.

2290 Mr. KELLOGG: Did you mean to say that refrigerator cars take three tons of ice between Kansas City and Chicago?

Mr. BIDDLE: I mean to testify that there was about that amount of ice in the car when it left the point of origin. That is more or less of a guess for me, because I have not had occasion to look into it for sometime.

Mr. KELLOGG: It hauls from two to three thousand pounds at all times?

Mr. BIDDLE: I thought there was that much put into the car at the point of origin.

Mr. KELLOGG: Your stock cars haul a great deal of material, do they not? You sand them in the winter, don't you?

Mr. BIDDLE: Yes, sir, we put in some sort of bedding.

Mr. KELLOGG: You put in some sort of bedding?

Mr. BIDDLE: Yes, sir.

Mr. KELLOGG: And it weighs a great deal?

Mr. BIDDLE: From one to two thousand pounds.

Mr. KELLOGG: As much as the ice?

Mr. BIDDLE: Not as much as the ice required at certain seasons of the year.

Mr. KELLOGG: The risks are greater, in hauling live stock than packing house products, are they not?

2291 Mr. BIDDLE: There are some elements of risk, I suppose, that are greater in transporting the live animal than the product, but so far as the actual claim that we are called upon to pay for live stock transported between the Missouri River and Chicago, barring a wreck, which may occur occasionally, there is no great disparity in favor of the product.

Commissioner PROUTY: Is your 12 cent rate a flat rate?

Mr. BIDDLE: Yes, sir, it applies not only from the Missouri River, either originating there or coming from west of there, but from all points intermediate between there and Chicago on our line as a maximum.

Commissioner PROUTY: Does the live stock shipper in Texas ship up to Kansas City and try the markets there, and if not satisfactory send it along on that 12 cent rate?

Mr. BIDDLE: No, sir, because our rates have all been re-adjusted in line with the Missouri River to Chicago. I say because our through rates from the territory where the live stock originates have been re-adjusted so that it cannot be done.

The CHAIRMAN: In point of fact, do you bring in any amount of live stock from Kansas City that you do not take in there, that goes there by other lines?

Mr. BIDDLE: There is no way of telling, Mr. Chairman,
2292 whether the live stock we bring from the Missouri River to Chicago comes in our line or some other, but I will say this, that the Atchison road for a period of twenty years has contributed anywhere from 25 to 35 per cent of the live stock business that has gone into the Missouri River from the West.

Mr. CHAIRMAN: To put the question another way. Does live stock originate at Kansas City?

Mr. BIDDLE: Well, it originates there in this way; that all stock that is shipped into Kansas City is free and anybody can take it out. It is billed out as a Kansas City shipment.

The CHAIRMAN: So, I inquire, if, in point of fact, you bring stock out of Kansas City to any considerable extent which you do not carry in there?

Mr. BIDDLE: Oh, no.

The CHAIRMAN: Why did your road, after maintaining for so

many years a 23½ cent rate on live stock from the Missouri River to Chicago reduce that rate to 12 cents?

Mr. BIDDLE: Well, as I say, Mr. Chairman, the same rate on live stock and its products has never represented what we considered a fair adjustment. We have acceded to that condition the same as other lines have, because we could not change it without making a reduction in the live stock rates. When this reduced rate was forced upon us we thought it a good idea, perhaps, to demonstrate as to whether there should be a difference between live stock
2293 and its product, and we took that opportunity to do it.

The CHAIRMAN: Did that reduction from Kansas City have the effect of reducing the through rate from points of origin to Chicago about 11½ cents?

Mr. BIDDLE: Not so much as that, because the proportion that was earned east of the river on live stock coming from west of there had not been equal to the local rate from the river. I suppose that reduced our earnings on live stock originating west of the river perhaps five or six cents per hundred pounds. I think the proportion of the rate has been 16 or 17 cents where the local was 23½ cents.

The CHAIRMAN: Since you originate very little live stock on your line east of Kansas City, the 12 cent rate is in the nature of a proportion of the through rate?

Mr. BIDDLE: No, it is not in the nature of a proportion of the through rate, because it applies on——

The CHAIRMAN: But you do not get much from Kansas City except what you carry there.

Mr. BIDDLE: It is not much in comparison with the total movement of live stock that we handle, but it is considerable.

The CHAIRMAN: As to most of this live stock that you carry, you get only your proportion of the through rate which you say is only about 16 or 17 cents.

2294 Mr. BIDDLE: Yes sir, 16 or 17 cents over that we would earn into Kansas City.

The CHAIRMAN: So the actual reduction from the revenue point of view was not from 23½ cents to 12 cents, but from 16 or 17 to 12.

Mr. BIDDLE: It would be on live stock originating this side of the Missouri River.

Mr. KELLOGG: How much do you haul this side of Kansas City into Chicago? How many car loads a year?

Mr. BIDDLE: Well, I could not tell you. I have had no occasion to look it up.

Mr. KELLOGG: Practically that 12 cent rate only affects stock originating in Illinois and Missouri and this side of Kansas City? That don't apply to shipments from the west into Kansas City, does it? I mean through Kansas City to Chicago.

Mr. BIDDLE: Certainly it does; on our live stock from all Kansas points because of reductions from the Missouri River to Chicago. Our tariffs on file show it. I just said it reduced those rates probably five or six cents a hundred pounds.

Commissioner FIFER: When you reduce your rate to Chicago did you increase your rates from the place of origin to Kansas City?

Mr. BIDDLE: No sir.

2295 Mr. KELLOGG: Did you reduce it?

Mr. BIDDLE: No sir.

Mr. KELLOGG: So that the local rate from all interior points into Kansas City is the same as before?

Mr. BIDDLE: Just exactly.

Mr. KELLOGG: Does that 12 cent rate apply to anything except that which originates this side of Kansas City?

Mr. BIDDLE: It applies to anything shipped into Kansas City and reshipped from there, and anything shipped from Kansas City unless the rate has been less than 12 cents.

Mr. KELLOGG: That is all.

The CHAIRMAN: Unless there is some further question to be asked of Mr. Biddle, he will be excused.

There being no further questions Mr. Biddle was excused.

The CHAIRMAN: We will take a recess until 2 o'clock.

2296 B. S. CUSEY, having been duly sworn as a witness on behalf of the complainant in rebuttal, resumed the stand for further direct examination by Mr. Cowan, and testified as follows:

Q. You were asked several questions the other day, which, by your answers, you either indicated or said that you could not answer except by taking the time to make up certain statements relative to those inquiries which were made of you. Have you since that time prepared those statements and are you now prepared to present the statements, figures and data relative to the inquiries which were then made and which you took the time or requested the time to make up?

A. I have in the time at my disposal, collected as much of the data called for by the questions asked at the last hearing, as I have been able to get.

I desire, however, to state that all of the data collected has been taken from the private books, papers, writings and documents belonging to Swarzschild & Sulzberger Company, a corporation, and that I have had access to such private books, papers, writings and documents only in my capacity as the agent of said corporation and its officers. I have not since last testifying had any opportunity to confer with any of the officers of said corporation and have not been authorized by them or either of them to disclose any of the

2297 contents of their books, papers or documents or any information gathered from them, and I am not authorized by said corporation or its officers to make such disclosures and am unwilling to do so and can only do it in obedience to the order of the court if the court shall order me to do it.

Q. We will ask the court to direct you to disclose whatever facts you have gathered from any information you have had access to and, therefore, I will re-state my question and ask you to answer it by the statements taken from the books of Swarzschild & Sulzberger, replying to such inquiries as were made of you in respect of the matter

of the traffic in packing-house products and live stock referred to in the various questions which were asked you.

The COURT (Addressing counsel for defendants): Is there any objection on your part?

Mr. SEVERANCE: We are very desirous of having him state everything he can.

The COURT: Let's see, this comes under that Baird case, in the Supreme Court as to the right to compel him to testify, and the immunity.

Mr. COWAN: I had not considered that matter at all. I was just trying to get at the facts as bearing upon this case. It had not occurred to me as being a question of immunity.

2298 Mr. SEVERANCE: I do not understand that the witness has stated that he has been doing anything criminal or fears that the answers will incriminate him. It is merely a matter of good taste as to whether, without direct authority, he shall testify.

Mr. BOYESEN: This witness has been asked to testify to matters not within his own knowledge. He has no knowledge of all those things that have been asked of him and in order to get the information which was called for, it becomes necessary for him, in the exercise of his privilege as a trusted employé, to go to the private sources of information of his corporation which he could not otherwise do except when compelled by legal process, and where it was competent and necessary and relevant testimony which had been demanded.

Now the witness simply shows the court that he is not acting for himself, but that the books and papers and documents and writings of the corporation are in fact called for in this case. I object to it furthermore, on the ground that it does not appear to be relevant to any issue in this case, in addition to the fact that it is calling for information concerning the private documents and papers of a corporation not a party to this proceeding in any way whatever.

2299 Mr. SEVERANCE: May I ask for whom you appear?

Mr. BOYESEN: I appear for the witness, sir.

The COURT: Well, the court thinks it is relevant. I think if counsel had been here the other day, he would agree with me, and the court under all the circumstances thinks he is required to authorize the witness to testify.

The WITNESS: I will disclose the contents of the books, papers, documents and writings referred to, so far as called for by the questions which the court may direct me to answer, in obedience to the order of the court, but I claim for myself and the corporation, the Swarzschild & Sulzberger Company and its officers each and very and all immunities provided for by the Constitution of the United States, the Statutes of the United States, and the particular immunities and privileges provided for by the statutes under which this proceeding is had.

The COURT: Proceed.

Mr. COWAN: I would like to ask the witness one question before I have my other questions answered. Do you claim the right of being excused from testifying on the ground that it would incriminate you, that the testimony would incriminate you?

Mr. BOYESEN: I will ask leave to answer on behalf of the witness that we do not claim that it would necessarily have the effect of incriminating him, and he does not refuse to answer on that
2300 ground but he refuses to disclose the facts not within his own knowledge and the contents of books and papers, in exactly the same manner as if he were subpœnaed to produce the books and papers in court and therefore he claims the immunity for the party whose books and papers they are.

The COURT: The Court will not undertake to pass on that. The question of immunity will arise when it comes. That is a question that I do not believe has ever been settled, as to whether the immunity would go to the corporation or go to the witness.

Mr. BOYSEN: Judge Seaman passed on it recently.

Mr. SEVERANCE: Judge Vanderventer passed on it in Milwaukee day before yesterday, and compelled the officers to testify.

Mr. COWAN: Under the circumstances, the witness testifying without these conditions the other day with respect to all matters which, in a general way subserved the purpose of the complainant, and so far as we are concerned, in direct examination, reserving the right of cross examination, we desire to withdraw our question to the witness.

Mr. DAWES: I submit, your Honor that counsel cannot reserve the right to cross examine his own witness.

The COURT: Do you gentlemen want to ask him any questions. (Referring to counsel for defendants.)

2301 Mr. LYNDE: I would like to have that question read.

(The pending question was then read.)

Mr. LYNDE: But, Mr. Cowan did not re-state the question. He started out by asking him a question and I would like to know what that is.

(The first question propounded to the witness at this hearing was then read.)

Mr. COWAN: Counsel for the complainant declines to ask any further questions on direct examination reserving the right to cross examine.

The COURT: Now that is withdrawn (referring to the first question propounded by Mr. Cowan.) Do you want to ask him anything?

Mr. SEVERANCE: We do.

Mr. LYNDE:

Q. Mr. Cusey, have you prepared such statements as are referred to in the questions just read to you.

A. I have.

Q. Have you them with you?

A. I have.

Q. Well, will you kindly allow counsel to see them.

Mr. BOYESEN: It is understood then that the explanation of the witness applies, gentlemen, to each and every one of your questions the same as in answer to the questions of Judge Cowan.

Mr. LYNDE: Yes.

2302 Mr. BOYESEN: Just so that will be understood.

The COURT: You claim the immunity for the corporation?

Mr. BOYESEN: Yes sir.

The COURT: You don't claim it because it will incriminate anybody but you claim that the rights of the corporation should be protected if he testifies.

Mr. BOYESEN: Yes sir.

The COURT: That will be preserved when the time comes.

Mr. SEVERANCE:

Q. Have you a list of the questions that were asked of you, that you were to look up?

A. No, I have not from the testimony given.

Mr. LYNDE:

Q. What do your statements cover?

A. The statement first asked for was a statement of the total shipments from Kansas City, of live stock.

Q. A little louder.

A. A statement of the total shipments from Kansas City, of live stock, which I have prepared for the years 1901 to 1904 inclusive.

The COURT: I did not understand what it is.

A. Shipments of live stock from Kansas City—No, this is live stock slaughtered at Kansas City in the years 1901 to 1904 inclusive.

Mr. SEVERANCE:

Q. That, is, slaughtered by Swarzschild & Sulzberger at

2303 Kansas City for those years.

A. Yes sir.

(Witness reads statement as follows:)

	Cattle.	Calves.	Sheep.	Hogs.
1901	289,368	6,640	186,265	354,615
1902	157,914	9,783	122,874	227,687
1903	158,761	5,621	153,190	245,486
1904	188,328	3,606	141,232	308,219

(The said statement is marked "Exhibit A" and is attached hereto.)

Q. What is the next statement?

A. A statement of cattle, calves, sheep and hogs received and killed by our company at Chicago for the same period.

(The witness then read said statement as follows:)

Cattle.

1901	16047
1902	180381
1903	256880
1904	227490

Calves.

1901	5
1902	22083
1903	17679
1904	13561

Sheep.

1901	10211
1902	362885
1903	340729
1904	254279

2304 Hogs.

1901	2723
1902	312625
1903	352139
1904	401813

(The above statement on cattle from 1901——

The COURT: What?

A. The above statement on cattle from 1901 is for the months of November and December, at which time we commenced operation of the new plant. Sheep were killed at about the same time, but hogs were not killed until the 26th day of December, there practically being three days' killing in that year. In reference to 1904 figures shown, you will note they are somewhat less than 1903. This is from the fact that we had a strike during the months of July, August and part of September and our killing was considerably reduced.

(The said statement is marked "Exhibit B" and is attached hereto.)

Mr. SEVERANCE:

Q. What is the next statement you have?

A. The next is a statement of cattle, calves, sheep and hogs killed at our plant at New York for the years 1901 to 1904, inclusive.

Q. Read that.

The COURT: What is the use of reading that? Let him put
2305 it in the record. What you asked him about was as to the amount of the damage.

Mr. SEVERANCE:

Q. This stock which goes to New York, does it come through Chicago from the west?

A. Not all of it.

Q. Where does the rest of it originate?

A. It comes largely from Chicago, a part from the west, but largely from Chicago.

Q. Well, it came to Chicago from the west?

A. Oh, yes, west and south.

Mr. SEVERANCE: We ought in some way to be able to show just what they are.

The COURT: Go ahead if you want to.

Mr. SEVERANCE:

Q. Have you a separate statement of the amount of live stock that you buy on the exchange here in Chicago which includes all that you slaughter here and all that you ship to New York?

A. No, I have not a separate statement but the statement just presented showing the amount killed at Chicago, together with this statement will show the total amount purchased here at Chicago.

Q. Then I understand you that you did not ship in yourself to Chicago any of this stock that was killed here or killed at New York, is that so?

A. No, that is not exactly correct. We did some, but a
2306 very slight amount.

Q. Have you a statement of that?

A. Yes, I have a statement that will cover that, I think, in a general way, quite conclusively.

Q. Well, the qestion would be the putting in of those figures then?

A. I will get to that statement later on.

Q. How long is it?

A. It is the same as those other two.

(The witness then read the statement referred to as follows:)

New York.

Cattle.

1901	137771
1902	124479
1903	136449
1904	115097

Calves.

1901	45732
1902	26932
1903	25429
1904	22120

Sheep.

1901	223155
1902	175194
1903	176376
1904	157084

(The following cattle were exported from New York.

2307

1901	39459
1902	37862
1903	48998
1904	55276

Mr. SEVERANCE:

(The statement so produced is marked "Exhibit C" and is attached hereto.)

Mr. SEVERANCE:

Q. Where were those export cattle purchased?
A. Principally on the Chicago market.
Q. Some of them on the Kansas City market?
A. Some, but a very few.
Q. What is the next statement you have?
A. The next statement is a statement of the dressing of a thousand pound steer, which dressing is as follows:

Dressing of a Thousand Pound Steer.

Meat.....	56%	or 560 lbs.	
Fats.....	10%	" 100 "	
Hide.....	7%	" 70 "	
Offal.....	3½	" 35 "	(This includes livers, hearts, tails, tripe and tongues)
Casings.....	2%	20 "	
Blood.....	3%	30 "	
Bones.....	3%	30 "	
Hoofs.....			
Horns.....			
Heads.....			
Waste.....	15½%	155 "	
Total.....		1000 lbs.	

2308 Q. That is a steer dresses out in one sort of product or another all except 155 pounds?
A. Of waste.
Q. Well, by waste you mean what it commonly means, a loss of 155 pounds in the steer?
A. Yes sir.
Q. So you save 845 pounds in one shape or another of the 1,000 pounds?
A. Yes sir.
Q. That statement was prepared at the request of Judge Cowan, was it not?
A. Yes, I think so. He also requested a statement showing the dressing of the same weight of hogs. I have taken 5 200 pound hogs which dress as follows:

(The witness then read the statement in the words and figures following.)

Dressing of Five 200-pound Hogs.

Meat.....	70%	700 lbs.	
Fats.....	7%	70 "	
Hair.....	1½%	15 "	
Offal.....	6%	50 "	(This includes snouts, cheek meat, brains, kidneys, ears, tongues, plucks and milts.)
Casings.....	4%	40 "	
Blood.....	2%	20 "	
Bones.....	1 7/10%	17 "	
Waste.....	7 7/10%	78 "	
Total.....		1000 lbs.	

(The said statement produced by the witness is marked "Exhibit D" and is attached hereto.)

Q. So that out of 5 hogs weighing 200 pounds each you get 92.2% of product of one sort or another?

A. Yes sir.

2309 The COURT: There is not as much waste in a hog as there is in a steer then?

Mr. SEVERANCE: Nowhere near.

Q. These statements which you are reading now have been prepared at the request of Judge Cowan, our request simply being for a statement concerning the loss and damage, and I will ask you if you have shown them to him?

A. I simply showed them to Mr. Cowan as I ran across him in the room.

Q. Mr. Tomlinson looked them over, didn't he?

The COURT: Why not just put them in and have them attached to the record?

Mr. SEVERANCE: I just want the record to show that they asked for them and then did not use them.

Q. Mr. Tomlinson saw them, didn't he?

A. Yes sir.

Q. What is the next statement?

A. Live stock shipments from the Missouri river to Chicago and the Missouri river to New York, for the years 1902, 1903 and 1904.

Q. Just read that into the record.

A. (Reading statement referred to.)

2310 *Live Stock Shipments.*

Cars from Missouri river to Chicago 1902.....	129	
" " " " " New York 1902.....	301	
		430
Cars from Missouri river to Chicago 1903.....	428	
" " " " " New York 1903.....	480	
		908
Cars from Missouri river to Chicago 1904.....	737	
" " " " " New York 1904.....	414	
		1151
		2489

I have also appended as requested a statement showing the amount of claims collected on shipments of live stock over the western lines during the same period.

(The said statement produced by the witness showing live stock shipments is marked "Exhibit E" and attached hereto.)

Q. That is, this covers all the lines west of the Indiana and Illinois State line?
A. Yes sir.
Q. Well, read that, will you? Have you got it so you can tell which road you collected from?
A. Yes sir. Chicago & Alton total $2,380.40.
Q. Do you give the number of cars you shipped by each line upon which this collection was made?
A. Yes sir.
Q. All right, read it in. Is this the total for the four years, or each year by itself?
A. This is the total for the three years.
Q. What years are they, 1902, 1903 and 1904?
A. Yes sir.
2311 Q. You haven't them separated by years?
A. Yes sir, they are separated.
The COURT: Let him read what he has.
The WITNESS: They are not totalled, however. Claim #10073, loss and damage due to delay in transfer, $90.48 on two cars shipped July 29th, 1902.
Claim #10210, loss and damage for the same cause amounting to $526.08 on 12 cars shipped January 6th, 1903.
Claim #10,134 loss and damage due to improper loading at point of origin, $685.17 on 6 cars shipped September 11th, 1902.
Claim #10,644, Loss and damage due to delay, $108.06 on 6 cars shipped June 23rd, 1903.
Claim #10,801, on one steer trampled, $35.82, one car shipped April 2nd, 1903.
Claim #10,261, loss and damage due to delay $48.96 on two cars shipped February 17th, 1903.
Claim #10,541, loss and damage due to delay, $885.83 loss on 14 cars shipped February 17th, 1903.
The COURT: Is that all the Alton Road?
A. All on the Alton Road.

Mr. SEVERANCE:

Q. How many cars did that make altogether over the Alton?
2312 The COURT: He has not got through yet.
The WITNESS: Yes, that is all with the Alton. It makes 43 cars.

Mr. SEVERANCE:

Q. What is the total claim collected?
A. $2380.40.

Q. 40 cars, did you say?
A. 43.
Q. It is about 50 cents a car in round numbers?
A. Yes, in round numbers.
Q. Well, go on.

The COURT:

Q. Were there any other claims pending that were not settled?
A. I am unable to state that from memory.
Mr. BOYESEN: What is that?
A. I am not able to state from memory.

The COURT:

Q. What books did you get those entries from?
A. Those are from the records in our book-keeping department, our auditing department.
Q. Did you have any correspondence with representatives of the Alton Road, on that subject?
A. Of those particular claims?
Q. On any claims for damage?
A. Yes sir.
Q. Have you that correspondence?
A. I can probably locate it in my files.
2313 Q. Wouldn't that show other claims existing besides these that you have put on the books?
A. Well, all claims are entered on the books, charged on the books.

Mr. SEVERANCE:

Q. Then as I understand you, Mr. Cusey, these claims are all the claims that you made and collected?
A. That have been collected during this period.
Q. Against the Chicago & Alton railroad for the three years in question, 1902, 1903 and 1904?
A. Yes sir.
Q. On the 43 cars of live stock shipped over that line?
A. Yes sir.
Q. Or in the shipment of which that line participated?
A. Yes. We may have shipped 400 cars over that line, and probably did.

The COURT:

Q. But these are the only ones on which any damage was paid?
A. These are the only ones on which damage was paid.

Mr. SEVERANCE:

Q. Do you know how many cars you shipped over that line?
A. I do not now, I would have to check that up.
Q. You gave the total shipments you made?
A. That is the various lines, yes sir.
2314 Q. How much did that aggregate?
A. That figures, the total, 2489 cars. I might say here

that I have shown that the total claims collected on live stock shipments during the three years amounts to $2649 or an average of $1.06 per car.

Q. That is what I wanted to get at, because you testified the other day that it was about 50 cents a car.

A. I think I said $1.00 a car. That was my estimate.

Mr. LYNDE: I think that is right.

Mr. SEVERANCE:

Q. Those claims as I understood when you read them, were nearly all for delays?

A. Yes, sir.

Q. That is in failing to reach destination at the time agreed on?

A. Not for a particular market, no sir. It is for damages accruing on account of delays and because the stock were not properly cared for, that is not properly fed or sheltered, causing a large shrinkage in the beef.

Q. Were there not a few for delays in reaching the market? Still I suppose your shipments would not be to get to a market?

A. No, sir.

Q. They are bought for your own consumption?

A. Yes they are bought for our own consumption.

Q. So you would not have that kind of claims?

A. No, sir. Here are two claims against the Rock Island, No. 10864 for loss and damage due to delay, $134.50 on 6 cars
2315 shipped April 29th, 1904.

Q. That is for live stock?

A. Yes. Claim # 10208, damage due to the same cause, $135.3 on two cars shipped February 17th, 1903.

Q. Then so that will be clear in the record, these claims on these 2400 cars of cattle in the three years were all cattle bought by your firm for slaughtering in Chicago or New York and for export?

A. Yes, sir.

Q. So that they were not bought and sold again?

A. No, sir.

Q. So that it was not essential to reach any market at any special time?

A. No, sir.

Q. And therefore these claims are claims for damage to the stuff in transit?

A. Yes, sir.

2316 Mr. SEVERANCE:

Q. What is your next statement?

A. The next statement is a statement showing our total fresh meat and provision shipments from Kansas City via the Missouri Pacific, the Wabash, the C. & A., the Burlington, the Santa Fe, the Rock-Island, the St. Paul and the Great-Western.

Q. During what period?

A. For 1902 showing a total of 3985 cars.

Q. In the year 1902?

A. Yes, sir.

Q. And on the statement have you separated it by roads?

A. By roads, no, sir.

Q. Well, go ahead, what is the next thing?

A. For 1903, the number of cars shipped is 4483; for 1904 the number of cars is 5661, the total for the three years is 14,129.

Q. Now, does that include both dressed meats and packing house products?

A. Yes, sir.

Q. Go ahead.

A. The next is a statement of loss and damage claims accruing on account of wrecks and delays in transit, also inattention in the way of icing on shipments from Kansas City via the various lines named before during the same period, 1902 to 1904 inclusive, which have been collected. The C. R. I. & P. is $1334.04.

Q. On how many cars, or isn't it given in that way?

A. No.

2317 Q. Right there, before you read those figures, you read the head lines: "Damages" you say, "caused by wrecks, delays, and so forth." Do you assert any claims for delays on shipments of packing house products, or dressed meats, unless the delay has caused some injury to the contents of the car?

A. No, sir, we make no claims on account of dressed beef or provisions missing any particular market, although we have a great deal of loss on that account, but we do not file any such claims.

Q. The railroads don't pay any such claims as that to you anyway?

A. No, sir, they don't recognize them.

Q. Well, go ahead. Well, in these cases the heading was, "Damage by wrecks, delays, and so forth," I think, general in its terms?

A. Yes, sir, various causes.

Q. Various causes. Now, these claims that you index under the head, "Claims on account of delays," as I understand you then, are claims for damages that accrued to the contents of the car, that is the meat spoiling, or something of that kind?

A. Yes, sir.

Q. By reason of the trains being delayed so that they run out of ice, or something of that sort?

A. Yes, sir, not properly iced, causing the beef to become soft on account of the temperature rising. Other times the beef

2318 becomes stale, and other seasons of the year the beef becomes black so that when the beef is shown in the market there is no demand for it.

Q. And that is caused when, for some reason or other, the train is late, laid out on the road somewhere where they cannot get ice?

A. Yes, sir, or in some cases they pass icing stations without being iced.

Q. Through the negligence of the Company in some way?

A. Yes, sir.

The COURT: What was the first amount; I didn't understand it.

A. The first was claims collected from the Rock Island Road, $1334.04.

Q. That is in three years?

A. Three years, yes, sir.

Q. Go ahead.

A. The Wabash, $1,318.65.

Mr. SEVERANCE:

Q. In all the cases you are giving the aggregate of the three years, are you?

A. Yes, sir.

Q. Go ahead.

A. C. N. & St. P., $540.14. The C. & A. $20,597.75. In this statement there is one claim on 16 cars of dressed beef which was wrecked in transit that amounted to $11,907.80, almost totally destroyed.

Q. What was the date of that?

A. That was August 19, 1902.

Q. Go ahead, that is on the Alton Road?

2319 A. Yes, sir. The Chicago Great Western, $1,971.88; the Santa Fe, $1,290.64; total, $27,047.09.

Mr. DAWES: Did you get the C. B. & Q.

Mr. JEFFERY: Or the Missouri Pacific?

A. There are no C. B. & Q. or Missouri Pacific in this statement. I was going to say that when I appeared before, I made an estimate of what these losses would be from my own books and also from advices received monthly from my Kansas City office of claims collected there. These advices did not show the car numbers, nor dates shipped, but simply the amounts, and my office so far has not forwarded to me that data which I have requested, so that I am unable to give the details covering about $7,000 of claims collected by the Kansas City office for the same period of three years.

Mr. SEVERANCE: That is, you are not able to state what the claims were for?

A. They are all for the same purposes, but I cannot tell what cars the damage occurred to.

The COURT: Damages of $7,000 more in addition to this $20,000 on the Alton?

A. No; against all the roads.

Mr. SEVERANCE:

Q. Well, Mr. Cusey, have you here a statement showing
2320 the causes of the claims, that is to say, distributions between wrecks and other damages?

A. Yes, sir, I have a statement showing each claim number and each car number and the date that the car was shipped, and the amount of the claim against each car.

Q. Have you totaled those in any way?

A. Yes, sir.

Q. What is the total from wrecks out of this lot you have read?

A. I have not separated them, they are not segregated *them*.

Q. That is what I am asking for.
The COURT: Where did you get this statement from?
A. They are from our books.

Mr. SEVERANCE:

Q. What is that total collection from all roads?
A. From all roads for the three years, and to be added to that is the $7,000 on which I have not the details.
The COURT: How much does that make your total then, for three years?
A. $34,047.09.
Q. How much for live stock?
A. $26,049.93.

Mr. SEVERANCE:

Q. I understood that was on 2400 cars; this is on how many thousand, how many thousand cars did you ship?
A. This is on 14,129 cars. It averages $2.41 per car.
Q. Well, now, in addition to this one large wreck on the
2321 Alton, where you say you had a number of cars destroyed, making the claim some eleven thousand dollars?
A. Yes, sir.
Q. Were there any other wrecks of considerable size included in this list?
A. Yes, sir, we had a number.
Q. Can you refer to them there?
A. No, sir, I cannot.
Q. Were there wrecks on other lines aside from the Alton?
A. I cannot recall from memory just now.
Q. Well, have you access to the data which would show that?
A. I am not positive. A great deal of our records at Kansas City were destroyed by the flood two years ago.
Q. Didn't I understand you to say a moment ago, Mr. Cusey, that on this statement you did have a list of claims paid on account of wrecks as distinguished from other causes?
A. Yes, sir, I have that right here but they are not segregated.
Q. I understand, but by turning to this list then, you can show those that come from wrecks, can't you?
A. Yes, sir. Those are all the statements I believe, that I have been asked to prepare.
Q. You have filed there that list, that better be identified in some way, you didn't read it, the long list here.

The COURT: Let that be marked as a proper exhibit to his testimony.
2322 Mr. SEVERANCE: The one he did not read I was going to mark.
The COURT: Let me see the one he did not read.
Mr. SEVERANCE: It is the itemized list of claims that were paid.

The WITNESS: Here are the totals of the same things (referring to other statements heretofore testified about.)

The COURT: Now, does that state the truth there, or is that simply your claim, in order to get money out of the railroad company?

A. No, sir, that is *bona fide* loss and damage in every case, actual loss and damage.

(The document produced by the witness and just referred to by Mr. Severance, and shown to the Court, was marked "Cusey, No. 1," and filed as a part of the evidence in this case.)

The COURT: Will you produce the correspondence between you and the Alton Road?

A. I can, part of it, yes, sir.

The COURT: Will you produce it here to-morrow morning if the Court is in session.

A. Yes, sir.

2323 Examination by Mr. DAWES:

Q. Mr. Cusey, you made no statement of claims presented against the Burlington road there on account of damage to the dressed product?

A. No sir, no statement of claims collected.

Q. Or presented either?

A. No sir.

Q. I have here a statement showing the amount of claims made by the firm of Schwartzschild & Sulzberger on account of damages to dressed beef and packing house products from the 1st of January, 1903, to the 1st of October, 1905, on products shipped from Missouri River points to Chicago?

A. Yes sir.

Q. Which shows the amount claimed by Schwartzschild & Sulzberger to be $2969.41, have you any reason to doubt the substantial accuracy of that statement?

A. No. I have no manner of knowing whether it would be that or twice that sum.

Q. Which were all declined except $145 and some odd cents, being the total amount you have collected in three years, nearly three years, from the Chicago, Burlington & Quincy Railroad Company on account of the damages of which you are talking?

A. Yes sir.

Q. Have you any reason to doubt the accuracy of that?

A. No, I have not.

2324 Q. Our records show that during that period you shipped 1359 cars of the dressed product, which would make an average of claims paid to you during that whole period of less than 10 cents a car. Do you doubt the accuracy of that conclusion? Here is a statement, if you will glance your eye over it, a claim you will see, No. 2 for $492.83, which is marked there as "paid," which should, as I am informed, go out because it was business west to Denver. Perhaps you may recollect the particular claim.

A. I have not included any such business.

Q. No, so that that was put in there to show all of the claims paid but should not be in because it is not pertinent to this inquiry;

deduct that and I think you will find what I said to be correct, and I will ask you if that coincides with your information?

A. I cannot testify positively until I have received this information from the Kansas City office giving the detail, of course.

Q. Will you be good enough to check that over?

A. Yes, sir.

Q. In the event you do not get that, are you able to give a judgment sufficiently accurate for present purposes to say whether you believe that to be a substantially accurate statement or not?

A. I can say to-morrow.

Q. Very well Mr. Cusey, remembering the explanation I
2325 make about that being a paid claim, $492, to go west of Denver, and not proper to be introduced here.

A. Yes, sir.

Examination by Mr. SEVERANCE:

Q. Now Mr. Cusey, could you, without any great difficulty, give us information as to the number of cars of stock that you shipped, I mean, of packing house products, strike out stock—packing house products and dressed meat that you shipped by the various lines, separately?

A. I could but that would entail a great deal of labor to get that up.

Q. You shipped a greater part of your product over the Alton, didn't you?

A. Yes sir.

Q. The shipments by the other roads were comparatively small?

A. Yes sir, except the Great Western.

The COURT: The road you patronized depends on the amount of claims they paid you?

A. No sir.

Q. The Alton paid you the most, didn't it?

A. No sir.

Q. They paid the most claims, that is true, isn't it?

A. Yes sir, they have paid those claims. I would like to state here that some three years ago when I took charge of the
2326 Traffic Department that I was instructed by our Company to work as close with the Alton as possible, because of the fact that some of our officials are very close friends of the officials of the Chicago & Alton Railroad, or rather the owners of the Chicago & Alton Railroad. That is one reason why traffic has remained on their rails; also to the fact that they have been giving very good service during that period except at times.

Mr. SEVERANCE:

Q. Mr. Cusey I notice in your list of claims paid by the Chicago Great Western Road that there were paid you $107.08 on the 2nd day of March, 1904, and $79.60 on the 30th day of January, 1904.

A. Those are the dates the cars moved.

Q. Making a total of about $186.68; and in my statement from the Great Western books, the payments in 1904 appear as $110.86.

That makes a difference of a few dollars, $70 or $80, something like that.

A. I think that is due to the fact that your figures show the date of collection and this shows the date the car was shipped; that will probably explain that difference.

Q. It is a small matter anyway. According to the statement furnished by the Great Western Railroad, on a total shipment of 1822 cars in 1904, they paid you $110.86 damages. Have you any reason to doubt the correctness of that statement?

2327 A. The tonnage is about right I know. As to the amount of the claim, that is something I could not say.

Q. You know it is very small in your statement here, you have only about $180, and part of it may have arisen as you say.

A. Yes sir.

Q. So you would not have any reason to doubt that statement of the railroad company's of $110.86 as the amount they paid you on account of 1904 shipments?

A. Yes sir, I think that is correct.

Q. You did not divert any traffic to the Great Western Road by reason of any large claims paid you, did you?

A. No sir.

Q. Now, those are all the statements you made up Mr. Cusey?

A. Yes, sir.

Q. Either in obedience to the request of counsel for the complainant, Mr. Cowan or for any of the counsel for defendants?

A. Yes sir.

Q. You have done your best have you, to comply with the requests made when you were on the stand the other day?

A. I have.

The COURT: Does any one else want to examine this witness?

Mr. LYNDE: Just a moment your Honor. I will ask one question your Honor, of the witness; and I will state to the Court that I put this question, not for the purpose of unnecessarily humili-

2328 ating the witness.

Q. Isn't it a fact Mr. Cusey, that very recently you pleaded guilty in this court to the charge of joining with others in a conspiracy to extort money from railroad companies in the shape of rebates, by presenting false and fictitious claims for damages, in substance?

Mr. BOYESEN: I desire to object to that question if the Court please, as not tending to impeach the witness in any way whatever, and it is a matter of affirmative evidence, it appears of record. The mere fact that the witness has been found guilty or pleaded guilty of having accepted a rebate would not impeach him in any way, and therefore, is not competent cross examination, or relevant to any fact to which the witness has testified.

The COURT: It is competent to show, I think by the witness himself, that he has been convicted of a crime, and that *is* this question I think, attempting to show that. The objection is overruled.

Mr. BOYESEN: I except to the ruling of the Court.

Mr. COWAN: I doubt if that is admissible at this point. I decline to ask these questions, and these gentlemen for the defense have made him their witness for that purpose, and they are not in the attitude of offering impeaching testimony of any character—they have made him their witness for the purpose of producing these statements.

2329 Mr. SEVERANCE: We have not made him our witness at all. This is cross examination.

The COURT: I have instructed the witness to answer. Answer the question.

A. It is a fact that I pled guilty to conspiring with others for the solicitation of rebates.

Mr. LYNDE: That is all I care to ask the witness.

The COURT: Is there anything else?

Mr. COWAN: Now, Mr. Cusey, explain the circumstances of it and who of these defendants were the parties who paid the rebates?

Mr. LYNDE: That is objected to your Honor.

Mr. COWAN: I say when a witness has been interrogated with respect to a matter of that sort, he has a right to explain it.

The COURT: I don't suppose the witness wants to. I will sustain the objection to your question. Of course, if the witness wants to explain anything, he has the right to do that under the instruction of his counsel. Do you want to add anything to what you said on that subject, Mr. Cusey?

The WITNESS: No, sir.

Mr. COWAN: Then I will ask him the further question, if any one of these defendants have been paying rebates on the shipments of dressed meats or packing house products?

Mr. SEVERANCE: So far as I am concerned, I have no ob-

2330 jection to that question as to my road.

Mr. DAWES: I hope he will answer it.

Mr. COWAN: Let it go.

Mr. SEVERANCE: I thought you would withdraw it when you found out we didn't object to it.

Mr. COWAN:

Q. Mr. Cusey, refer to your exhibit please, which shows the amount that the animal dresses out, which shows the amount of weights, and state what amount of each in point of weight is shipped as dressed meat or the packing house product. To explain what I mean, you stated that a thousand pound steer would dress out 560 pounds of meat. Now, then, how much weight of that would be embraced in the shipment; in other words, how much would it shrink up to the time it is shipped, loaded into the cars for shipment?

A. It would shrink from that weight between 3 and 4 per cent.

Q. And how much would that be, if you have the figures?

A. About 540 pounds.

Q. Now, then, take up each of the other items and state what the weight would be that is shipped.

The COURT: Now wait a minute Mr. Cowan; is there any dispute about that? Haven't you proved all you want about that in the record already?

Mr. COWAN: There might be some contention about it,
2331 your Honor, he has stated how much it would dress out. Now, what an animal dresses out, isn't the amount that is shipped, that is the material point.

The COURT: That will be shown by the evidence already in.

Mr. COWAN: For example, he has got 30 pounds of blood. I desire to ask the witness how much is really shipped in the form of that product.

The COURT: Suppose you do miss a drop or two of blood, or a pound or two, or five or ten, what is the use of wasting time about it?

Mr. COWAN: It makes this difference, if they ship 7½ pounds instead of 30, they miss the difference between 7½ and 30.

The COURT: It doesn't make any difference.

Mr. COWAN: Let the record show that I offer to prove by Mr. Cusey substantially the same facts in reference to the amount that is actually shipped as testified by Mr. Baker.

The COURT: All right.

Mr. COWAN:

Q. How much damage claims against the Great Western for the year 1903 and the year 1905 did you have, you stated what it was for 1904 there?

A. I gave the total for three years.

The COURT: He gave 1902, 1903 and 1904, the way I understand it.

2332 A. Yes sir, three years, that applies on all roads.

The COURT:

Q. And he hasn't any for 1905, I suppose, you haven't any records?

A. They are not included.

Mr. COWAN:

Q. Do you recall what the damage claims paid——

Mr. SEVERANCE: Pardon me just a moment, I think I was in error when I asked this question about a little discrepancy. This statement is from June 30, 1904, to June 30, 1904 that I had, and therefore it covered a period subsequent to the payment of the $180 in 1904, shown by the witness. It is in the record, I introduced it. I thought they overlapped, but I see they do not because the two claims on meat in 1904 in that statement were marked in March and January, and this statement does not begin until the 30th of June, 1904, and runs down to the 30th of June this year.

Mr. COWAN: I wanted to ask a question about this year in reference to the statement he asked him about.

Mr. SEVERANCE: Yes, that is all right.

Mr. COWAN:

Q. Is it not a fact that in the year 1905, previous to June 30th, there was presented and collected a claim against the Chicago Great Western Railroad by your company of about $1700?

A. During 1905?

Q. Yes.

A. Not that I recall.

2333 Q. The amounts of these claims do not run regular against a particular road per year, do they?

A. Oh, no, no.

Q. The total amount you have stated covers a period of three years?

A. Yes sir.

Q. Are you able to state whether or not, leaving out the wreck on the Alton of $11,000, that cost them about $11,000, that that fairly represents the average risk in the business?

Mr. DAWES: The Alton payments or what?

Mr. COWAN: The total.

The WITNESS: The records speak for themselves in that respect.

Q. Well, from your experience, what, in your experience, will be the amount of loss and damage incident to the shipment of dressed meat and packing house products in the manner in which it is done per car, continued for a period of five or six years?

Mr. SEVERANCE: If the Court please, that would be purely speculative because it comes through a matter of wrecks.

Mr. COWAN: It is speculative in a sense, but he is experienced in the business.

The COURT: The objection is sustained.

Mr. COWAN:

Q. Are any of the claims which are embraced against the Alton Road for other than legitimate damages that accrued, or

2334 rather that occurred to the contents of the cars?

A. No sir, they are actual loss and damage only.

Q. And how as to the rest of the roads?

A. It is the same, it applies to all roads.

Mr. COWAN: That is all.

Mr. SEVERANCE: That is all Mr. Cusey, as far as I am concerned.

Mr. BOYESEN: Do I understand from you gentlemen that Mr. Cusey is excused?

The COURT: If counsel do not want him.

Mr. SEVERANCE: He is excused as far as I am concerned.

Mr. DAWES: I understood he was to bring certain figures to-morrow.

The COURT: The Court asked him to bring certain letters and documents, I don't want them if counsel don't want them. If it is in the interest of anybody, it is in the interest of the railroads to show these claims are not genuine. If you don't want to undertake to show that, I do not care to.

Mr. SEVERANCE: We do not intend to pay any that are not genuine so far as our road is concerned.

Mr. JEFFERY: He testified as to the Missouri Pacific that he couldn't get any money out of them, they didn't pay any claims to him, just or unjust.

2334*a* CUSEY EXHIBIT A.

S. & S. Company—Kansas City Plant.

Live Stock Slaughtered 1901 to 1904, Inclusive.

	Cattle.	Calves.	Sheep.	Hogs.
1901.....	289,368	6,640	186,265	354,615
1902.....	157,914	9,783	122,874	227,687
1903.....	158,761	5,621	153,190	245,486
1904.....	188,328	3,606	141,232	308,219

2334*b* CUSEY EXHIBIT B.

Chicago.

Cattle, calves, sheep, hogs killed as below:

Cattle

1901.....	16047
1902.....	180381
1903.....	256880
1904.....	227490

Calves

1901.....	5
1902.....	22083
1903.....	17679
1904.....	13561

Sheep

1901.....	10211
1902.....	362885
1903.....	340729
1904.....	254279

Hogs

1901.....	2723
1902.....	312625
1903.....	352139
1904.....	401813

The above statement on cattle from 1901 is for the months of November and December, at which time we commenced operation of the new Plant.

Sheep were killed at about the same time, but Hogs were not killed until the 26th day of December, there practically being three days' killing in that year.

In reference to the 1904 figures shown, you will note they are somewhat less than 1903. This is from the fact that we had a strike during the months of July, August and part of September, and our killing was considerably reduced.

2334c CUSEY EXHIBIT C.

New York.

Cattle, calves, sheep, hogs killed as below:

Cattle

1901	137771
1902	124479
1903	136449
1904	115097

Calves

1901	45732
1902	26932
1903	25429
1904	22120

Sheep

1901	223155
1902	175194
1903	176376
1904	157084

Following cattle were exported from New York:

1901	39459
1902	37862
1903	48998
1904	55276

2334*d* CUSEY EXHIBIT D.

Dressing of a Thousand Pound Steer.

Meat	56%	or 560 lbs.	
Fats	10%	" 100 "	
Hide	7%	" 70 "	
Offal	3½%	or 35 lbs.	(This includes livers, hearts, tails, tripe & tongues.)
Casings	2%	" 20 "	
Blood	3%	" 30 "	
Bones, Hoofs, Horns, Heads	3%	" 30 "	
Waste	15½%	" 155 "	
Total		1000 lbs.	

Dressing of Five 200 Pound Hogs.

Meat	70%	700 lbs.	
Fats	7%	70	
Hair	1½%	15	
Offal	6%	60	(This includes snouts, cheek meat, brains, kidneys, ears, tongue, plucks and milts.)
Casings	4%	40	
Blood	2%	20	
Bones	1 7/15 %	17	
Waste	7 8/15 %	78	
Total		1000 lbs.	

2334*e* CUSEY EXHIBIT E.

Live Stock Shipments.

Cars from Mo. River to Chicago	1902	129	
" " Mo. River " New York	1902	301	
			430
Cars from Mo. River to Chicago	1903	428	
" " Mo. River " New York	1903	480	
			908
Cars from Mo. River to Chicago	1904	737	
" " Mo. River " New York	1904	414	
			1151
			2489

Total live stock claims collected on Chipments during above period is 2649.93.

This averages $1.06+ per car.

2334*f* Road—Chicago & Alton.—Live Stock.

Number.	Cause.	Am't paid.	Car number.	Date.
			60572	
10073	Delay	90.48	60280	7/29/02
10210	"	526.08	12 cars	1/6/03
10134	Improper load'g.....	685.17	6 cars	9/11/02
10644	Delay	108.06	6 cars	6/23/03
	1 trampled			
10801	Delay	35.82	298	4/2/03
10261	Delay	48.96	1101	2/17/03
10541	"	885.83	11326	2/17/03
		2380.40	14 cars	

Cusey Ex. —.

2334*g* Road—Rock Island.—Cattle.

Number.	Cause.	Am't paid.	Car No.	Date.
10864	Delay	134.50	6 cars	4/29/04
10208	"	135.03	2 "	2/17/03
		269.53		

Cusey Ex. —.

2334*h* 1902.

	Dr. Bf.	P. H. P.
March	250	48
April	226	32
May	221	23
June	266	36
July	353	28
August	343	18
September	323	24
October	352	57
November	310	44
December	393	51
	3037	361
	361	
	3398	
January	299	
F'b'y	288	
	3985	

Cusey Ex. —.

2334*i* 1903.

	Dr. Bf.	P. H. P.
January	326	55
February	275	72
March	300	74
April	348	55
May	396	47
June	46	4
July	251	87
August	296	80
September	339	64
October	384	78
November	379	70
December	376	81
	3716	767
	767	
	4483	

Cusey Ex. —.

2334*j* 1904.

	Dr. Bf.	P. H. P.
January	330	54
February	408	55
March	393	82
April	366	74
May	490	58
June	442	67
July	179	47
August	361	86
September	428	81
October	454	111
November	437	110
December	455	93
	4743	918
	918	
	5651	

Total 3 years 14129.

Cusey Ex. —.

2334*k*

CUSEY #1.

C. & A.

Dressed Beef.

Number.	Cause.	Am't paid.	Car number.	Date.
10135	Wreck	511.63	1632	10/30/02
10107	"	614.80	396	9/29/02
10088	Delay	249.37	#194	8/8/02
10080	Delay	333.68	48	6/30/02
10137	Wreck	213.94	1550	10/30/02
10379	Delay	97.83	1485	2/25/03
10504	"	81.96	104	7/2/02
10803	"	56.45	1449	9/23/03
10806	"	54.54	333	7/7/03
10808	Improper Ice	24.84	135	9/21/03
10264	Delay	19.72	1647	1/16/03
10430	"	84.86	1650	1/14/03
10427	"	57.71	1486	7/8/03
10349	"	29.75	611	1/20/03
10275	"	149.99	839	3/6/03
10451	"	43.10	1411	3/6/03
10095	"	91.11	1446	8/5/02
10090	"	457.14	82	7/18/02
10234	"	61.28	1490	8/18/02
10405	"	108.15	382	8/16/02
10406	"	44.15	397	6/16/03
10407	"	39.24	248	8/16/03
10408	"	126.72	94	7/30/03
10634	"	42.07	1477	2/5/03
10680	"	139.60	635	7/7/02
10736	"	78.41	253	8/28/03
10802	Error W/B	88.07	1406	9/21/03
10804	Delay	310.60	348	4/25/03
10809	"	51.78	155	9/8/03
10811	"	49.61	1749	9/11/03
10812	"	148.49	25	9/26/03
10813	"	28.49	1501	1/7/04
10814	"	82.63	1624	11/17/03
10045	"	46.47	1806	6/18/02
10046	"	76.15	89	6/18/02
10066	"	132.44	386	7/2/02

Cusey Ex. —.

2334*l* C. & A. No. 2.

Dressed Beef.

Number.	Cause.	Am't paid.	Car number.	Date.
10075	Delay	219.51	1429	7/31/02
10077	"	221.82	1568	6/30/02
10079	"	177.00	822	7/24/02
10089	"	209.53	851	7/10/02
10110	"	130.22	154	7/21/02
10126	"	98.47	1683	7/12/02
10091	Improper Ice	190.94	205	7/21/02
10206	"	114.15	21189	1/17/03
10233	Delay	45.46	266	11/11/02
10377	"	241.90	808	7/4/03
10401	"	213.16	18	3/12/03
10439	"	158.47	1402	7/7/03
10465	Error W/B	50.07	1429	3/4/03
10480	Delay	68.12	329	12/27/02
10492	Improper Ice	20.48	256	8/16/03
10494	Delay	40.29	848	1/23/03
10583	"	170.29	1429	9/12/03
10585	"	289.00	209	3/13/03
10586	"	199.94	1586	3/13/03
10631	"	196.98	54	1/7/03
10805	"	106.46	56	9/2/03
10807	Improper Ice	125.67	1401	9/26/03
10810	"	201.15	125	9/25/03
11079	Delay	197.01	1820	9/23/04
11080	"	259.20	1493	9/23/04
10087	Wreck	11907.80	16 cars	8/19/02
		20591.75		

Cusey Ex. —.

2334*m* Rock Island.

Dressed Beef.

Number.	Cause.	Am't paid.	Car number.	Date.
10484	Delay	180.06	25055	1/27/03
10486		186.58	15989	1/28/03
10516		153.76	11097	1/23/03
10533		165.37	16043	1/22/03
10298		126.40	265212	1/29/03
10956		277.78	1626	3/3/04
10348		71.84	9017	2/25/03
10536		55.59	265277	1/29/03
10513		116.66	15960	1/29/03
		1384.04		

Cusey Ex. —.

2334*n* Road. Wabash R. R. Dressed Beef.

Number.	Cause.	Am't paid.	Car No.	Date.
10835	Wreck	482.88	1620	6/4/04
10450	Delay	138.76	7159 Art	3/5/03
10779	"	152.23	9027	8/14/03
10476	"	262.45	4047	2/26/03
11120	"	282.33	9293	3/10/04
		1318.65		

Cusey Ex. —.

2334*o* Road. C., M. & St. P. Dressed Beef.

Number.	Cause.	Am't paid.	Car. No.	Date.
10662	Wreck—Shortage	16.63	NYDL-13567	1/29/03
10336	Rough handling	168.38	2800 } CMSP 29994 }	2/23/03
10097	Wreck	211.83	1623	8/14/02
10902	Delay	143.29	29872	3/2/03
		540.13		

Cusey Ex. —.

2334*p* Road. C. G. W. Ry. Dressed Beef.

Number.	Cause.	Am't paid.	Car No.	Date.
10537	Delay	88.92	1459	1/27/03
10498		170.79	637	3/4/03
10534		167.85	1500	1/30/03
10538		167.05	98	2/2/03
10514		119.69	300	1/31/03
10515		153.01	400	1/30/03
10300		306.48	13883MDT	3/6/03
10908		107.08	286	3/2/04
10478		191.94	1478	1/29/03
10376		313.64	13088	3/10/03
10535		105.83	133	1/28/03
10970		79.60	1787	1/30/04
		1971.88		

Cusey Ex. —.

2334q Road. A., T. & S. F. Dressed Beef.

Number.	Cause.	Am't paid.	Car No.	Date.
10018	Delay	69.23	8	2/25/02
10027		120.09	1490	2/27/02
10022		61.47	825	"
10019		199.96	1508	3/11/02
10171	Wreck	178.78	1901 } 652 }	12/23/02
10328	Delay	661.11	1434	6/13/03
		1390.64		

Cusey Ex. —.

2334r Statement of loss and damage claims accruing on account of wrecks and delays in transit, also inattention in the way of icing on shipments from Kansas City via various lines as shown below during 1902-03-04:

C. R. I. & P.	$1334.04
Wabash	1318.65
C. M. & St. P.	540.13
C. & A.	20591.75
C. G. W.	1971.88
A. T. & S. F.	1290.84
Total	$27047.09

Also add to the above $7000.00 covering claims collected at Kansas City on which we have not received advice showing car numbers and the amount of claim against each car, as well as dates cars were shipped.

Cusey Ex. —.

2335 T. W. TOMLINSON, called as a witness in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. State your full name.
A. T. W. Tomlinson, residence, Denver, Colorado.
Q. What is your business?
A. I am Secretary of the American Stock Growers Association, an association composed of growers, raisers and shippers of live stock. Our membership comprises stockmen located at various parts of the West.
Q. Including the State of Iowa?
A. Including the State of Iowa, Missouri, Illinois, Kansas, Nebraska, Montana, Texas, Colorado, Utah.
Q. Mr. Tomlinson, will you state your experience in the railroad traffic business in connection with railroad rates, particularly with

respect to the rates and traffic in live stock, and the products of live stock, giving the detail of it, without further question?

A. I have been connected with railroads substantially all of my life since I was seventeen years old. I was first stenographer to the General Counsel of the Gulf, Colorado & Santa Fe Road at Galveston, Texas. After leaving there I was stenographer to a Mr.
2336 Rainier who was Chief Inspector for the Joint Rate Committee. Later on I was Secretary to Mr. G. R. Blanchard, the Chairman of the Central Traffic Association, which is the Association organized by all Eastern lines and operating between the Mississippi River and the Western termini of the trunk lines north of the Ohio River. It had jurisdiction in Central Freight Association territory. I was also Mr. Blanchard's Chief Clerk at the time I left his employ. I was then connected as Secretary of the company and as Superintendent of a road projected westwardly from Sioux City, Iowa. It was built about 150 miles. I was in the Operating Department of that company as Superintendent.

Mr. DAWES: Give the name of the road.

A. It was known as the Pacific Short Line. It is now known as the Sioux City & Northern, a branch of the Great Northern. Then I became connected with the Santa Fe Railroad as an ordinary clerk, and then as tariff clerk, and later as Chief Clerk in the General Freight Department. Later on I was Chief Clerk in the General Agent's office.

In 1897 I became Railway Representative, or rather Traffic Manager of the Chicago Live Stock Exchange, located at the Union Stock Yards. In that position it was a part of my duty to be thoroughly familiar with all rates on live stock, and on its product, and with the relation of all rates as well on other commodities. It also
2337 became necessary for me in that position to be thoroughly familiar with the movement of live stock traffic and with the movement of the product and to keep, of course, a file of tariffs pertaining to both commodities; to keep also necessary statistics as to the movement of live stock traffic; to obtain the reports of the various markets, the statistical information published by the Government, the rate schedules of the various railroads; of the different Commissions, and in fact everything pertaining to the acquirement of knowledge bearing on the relation or the reasonable- of the rates charged on live stock.

I left the employ of the Exchange some two years and a half ago, and was for about two years General Agent of the Chicago Junction Railway, and while in their employ it was also my duty, and I kept in touch with the situation, as to the rates and statistics and everything bearing on the question of live stock movements and the rates both on it and its product.

I keep to-day perhaps, the most elaborate files of tariffs on live stock extant in this country. I have the most elaborate statistical information regarding the reports of the railroads and other data published by the Government or by the State Commissions.
2338 Q. From your experiences, just detailed, I will ask you to state whether you are familiar with all of the matters pertaining to the inquiries which are being prosecuted in this case?

A. Yes, sir, I am.

Q. Mr. Tomlinson, have you prepared or procured statements which show the rates, and the relative rates, the volume of the traffic at the various points, the comparative rates and comparative traffic movements in live stock and its product, and statements which also pertain to operation and cost of operation, earnings, gross earnings, net earnings and other matters pertaining to the rates, relative rates and the volume of business and the transportation service and its cost, on live stock and its products?

A. Yes, sir, I have.

Q. In connection with your work as representative of the Chicago Live Stock Exchange I will ask you whether or not you prepared the evidence and conducted or assisted in conducting the hearing before the Inter-state Commerce Commission of this case?

A. I did.

Q. State in your opinion what ought to be the relative rates between live stock and the product of live stock, between the Missouri river and Chicago and from intermediate points, on the live stock, as well as the product, wherever that is moved, to Chicago?

2339 Mr. SEVERANCE: I object to that question.

The COURT: Isn't it better to get at the facts, state the facts, the result of those facts, and his conclusion will naturally follow?

Mr. COWAN: It might be better to do that, but I think if anybody is competent to express an opinion in regard to it Mr. Tomlinson is, and I think it is a matter of expert knowledge and that an opinion is in the nature of a shorthand rendering of the facts. When he expresses his opinion I intend to ask him in respect to the facts.

The COURT: All the other witnesses gave their reasons and concluded by stating what they thought about it.

Mr. COWAN: That has been done by witnesses for the complainant, I admit, but if I mistake not, in the examination of all the witnesses for the railways they expressed their opinion.

The COURT: They did not state a conclusion until they gave some facts. Objection sustained.

Mr. COWAN:

Q. Mr. Tomlinson, state what rates on live stock and its product would place the shipper of the live stock and the shipper of the product of the live stock on a commercial equality in the markets of Chicago and the other points where they come in competition.

2340 Mr. DAWES: I submit that is the same question

The COURT: Yes, I guess so, but the shortest way is to let him answer.

A. As between cattle, for example, and the product of cattle known as fresh beef, the product rate should be about 175 per cent. of the cattle rate to place the shipper of cattle on an equality with the shipper of beef. The question of the relation of the rates on cattle and fresh beef has been arbitrated several times, and at the time I was secretary to Mr. Blanchard, I, as a stenographer, took certain arbitration proceedings which were held in 1887. Previous

thereto, in 1883, the question of the relation of rates on beef, on cattle and fresh beef had been arbitrated by Honorable Thomas M. Cooley and by Mr. Albert Fink. That arbitration was conducted and concluded in 1883. The conclusion of Mr. Cooley was——

Mr. DAWES: If your Honor please, I submit that this must be matter of documentary record, and if it be competent at all—I have not got to the point of saying about that—it should be introduced as a conclusion showing exactly what was submitted to the arbitration and what the conclusion of those gentlemen was thereon, not the conclusion of this gentleman.

The COURT: I think so. The evidence should be put in and it can be argued afterwards.

2341 The WITNESS: I stated that simply as one of the reasons on which I base my opinion.

The COURT: State the facts.

Mr. SEVERANCE: The question is answered, as I understand it.

The COURT: Go ahead and give the reasons for it. That is what I want to hear, the reasons. The conclusion does not amount to anything unless you state facts.

The WITNESS: In giving the reasons I will take a sample shipments, say from Chicago to New York——

Mr. SEVERANCE: I object to that on the ground that that territory is not the territory under consideration here.

The COURT: Take it the other way.

The WITNESS: I will take it the other way. It makes no difference at all. To put the cattle shipper on a parity, that is supposing they bought—the shipper at Kansas City bought at the Kansas City market, to ship his cattle on to Chicago to be slaughtered here as against the packer at Kansas City who purchased his cattle there with the expectation and who did slaughter them there and shipped the product on, the live stock shipper would naturally have the disadvantage of a shrink and of hauling a greater amount of waste material than would the packer at Kansas City. There would

2342 also be expenses incurred in transporting the cattle from Kansas City to Chicago—outside of the freight rate, I mean, and those considerations, the condensation of the product down to a certain fixed percentage of the live weight, together with the shrinkage and the incidental expenses would make it necessary to equalize those advantages or disadvantages would make it necessary to charge on the fresh meat product, about 175 per cent. of the rate on cattle.

The COURT: That is in order to make them equal here in the Chicago market?

The WITNESS: In order to put them both on a commercial parity, and I might say further, to equalize the natural advantages. By that I mean the shrink—not exactly the shrink, the loss in weight which the packer at Kansas City is enabled to benefit from by reason of not shipping the same amount of weight, that and the shrink in transit, I assume are natural advantages.

The COURT: Isn't Kansas City entitled to that? Do the railroads do anything to balance that up?

The WITNESS: I grant it; I say they are entitled to those natural advantages. The question as I understood, that was asked me, was to put them on a commercial parity, what would be the relation of those two rates.

2343 Mr. COWAN:

Q. If the purchaser of the live stock at Kansas City, or the owner, as to that matter, and the slaughterer of the live stock at Kansas City must each seek the same outlet and compete with each other in the sale of their products at Chicago or at some point east of Chicago, will the one have an advantage over the other unless the rate of freight is made upon the basis which you have named or substantially that basis?

Mr. SEVERANCE: I object to that, because the witness hasn't shown himself qualified to testify as to the matter of slaughter at Kansas City, how it may differ with Chicago or the expenses and all that sort of thing.

The COURT: What do you know about that?

The WITNESS: I am very familiar——

The COURT: Do you know anything about slaughtering or butchering?

The WITNESS: I have never slaughtered a steer. I have made very careful, close inquiry into the methods of slaughtering at all the markets.

The COURT: You may answer.

A. In the question asked me, for both of them to be on an equality it would be necessary for the rate on the product to be 175 per
2344 cent. on the cattle, that is as applied to fresh beef. Any different rate would prevent—for example, if the rates were the same, the shipper could not operate. He might occasionally operate; there would be enough exceptions to prove the rule, but on the basis of the same rate on both commodities the advantages would lie very largely in favor of the party slaughtering at the point of origin, for example.

The COURT: Why is that?

The WITNESS: Why is that true?

The COURT: For the reasons you gave before?

The WITNESS: For the reasons, I gave before, yes, sir.

Mr. COWAN:

Q. Mr. Tomlinson, have you the reports of the various Stock Yard's Companies showing the receipts and shipments at these stock yards?

A. Yes, sir, I have them.

Q. Do these reports correctly represent the traffic into and out of the various stock yards' Companies?

A. Yes, sir, they do. They are the official reports of the Stock Yards' Companies, at the various points, Chicago, Kansas City,

South Omaha, Sioux City and South St. Paul. I have those annual reports in the shape of a little pamphlet. The Stock Yards' Company at St. Louis does not publish an annual report, but a little loose sheet which I do not happen to have, neither does the Stock Yards' Company at St. Joe publish an annual report except in the shape of a little loose sheet which I do not happen to have. The books
2345 show the actual receipts by roads for the periods indicated, and they show it by months and by days. They also show the shipments and the slaughter, and they all have a table showing their total receipts since the inception of the market, in fact they are a complete history of the receipts and shipments of live stock at the various market centers I have mentioned. They are regarded official in every respect.

Mr. COWAN: Please file the reports of exhibits in the following order: Union Stock Yards of Chicago, Exhibit 1; Kansas City Exhibit 2, Omaha Exhibit 3, Sioux City Exhibit 4, and St. Paul Exhibit 5. (Said documents so marked.)

Mr. RANSOM: Those are all for one year, Mr. Tomlinson?

The WITNESS: Yes, sir, 1904.

Mr. RANSOM: All of them?

The WITNESS: Yes, sir, all of them.

Mr. COWAN:

Q. To what other source, Mr. Tomlinson, do you resort to ascertain statistical information with respect to the slaughter and sale of live animals, or their product?

A. One well recognized authority is the Cincinnati Price Curent.

Q. Have you that?

2346 A. I have that. It is an annual publication and contains receipts and shipments at all the markets and shows the packing of hogs, for example, during the winter and summer season and contains also, many other points that do not themselves publish any data as to receipts and shipments. In fact it is a comprehensive digest of all the statistical information obtainable as receipts and shipments and slaughter of live stock.

2347 Q. Is that a reliable publication?

A. It is considered one of the most reliable publications in the country.

Q. I would like you to file that as Exhibit 6 for the year——

The WITNESS: 1905. There is also published a document issued by the Treasury Department, which contains substantially the same information, in perhaps a little more extensive shape.

Mr. RANSOM: 1905 or 1904?

The WITNESS: 1904.

Mr. DAWS: 1905?

The WITNESS: Yes, sir, includes the statistics up to March 1.

Mr. COWAN: March 1, 1905?

The WITNESS: Yes, sir.

Q. It extends up to March 1, 1905?

A. It extends up to March 1, 1905, when the winter packing season ends.

Q. Have you prepared a statistical statement showing the receipts at the various markets for a period of ten years?

A. Yes, sir; I have.

Q. I wish you would file that as Exhibit Number 7 and explain what it is.

2348 (The document referred to was thereupon marked "Tomlinson Exhibit 7")

The WITNESS: This Exhibit is a statement showing the receipts of live stock at various western points, including Chicago, for the past ten years, I have grouped them in 5-year periods, that is taking the receipts for years, 1895, 1896, 1897, 1898 and 1899, and averaged the receipts and compared them with receipts for the five years commencing 1900 and ending in 1904. By this means, taking five years, you are able to arrive at what fairly represents the condition as to receipts of live stock at these various markets. One year would not be a fair comparison, for the very obvious reason there might be a shortage of live stock in the territory tributary to that market, and it is only by taking a five year period that you can arrive as somewhere near what is the approximate growth or increase of the business at any one point. I have compared this information for Chicago, Kansas City, South Omaha, Sioux City, South St. Paul, St. Joseph, Ottumwa and Cedar Rapids. They are compiled from the documents now in evidence, and have shown the percentage of increase, if there be an increase, for the latter 5-year period over the former 5-year period.

Mr. COWAN: Is it a fact or not that that document shows an increase in particular markets?

A. It does.

2348*a* TOMLINSON EXHIBIT No 7.

Statement showing receipts of Live Stock at Union Stock Yards, Chicago, for the ten-year period ending December 31, 1904; also showing the yearly average for the first five years of said period, also the yearly average for the second five years of said period, and showing further the percentage of increase or decrease.

Years.	Cattle.	Calves.	Hogs	Sheep.	Horses.
1895.....	2588558	168740	7885283	3406739	113193
1896.....	2600476	138337	7659472	3590655	105978
1897.....	2554924	122976	8363724	3606640	111601
1898.....	2480897	132733	8817114	3589439	118754
1899.....	2514446	136676	8177870	3682832	111611
Total....	12739301	699462	40903463	17876305	561137
Average..	2547860	139892	8180693	3575261	112227
1900.....	2729046	136310	8109064	3548885	99010
1901.....	3031396	181824	8290494	4044095	109353
1902.....	2941559	251747	7895238	4515716	102100
1903.....	3432486	271743	7325923	4582760	100603
1904.....	3259185	267499	7238746	4504630	105949
Total....	15393672	1109123	38859465	21196086	517015
Average..	3078734	221825	7771893	4239217	103403
Inc. p. c.	20.8	58.5		18.6	
Dec. p. c.			4.1		7.8

Above figures are compiled from the 39th Annual Report of the Union Stock Yards and Transit Company for the year ending December 31, 1904, page 45.

2348*b* Statement showing receipts of Live Stock at Kansas City Stock Yards for the ten-year period ending December 31, 1904; showing also the average yearly receipts for the first five years of said period, and also the average yearly receipts for the second five years of said period, and showing also the percentage of increase or decrease.

Year.	Cattle.	Calves.	Hogs.	Sheep.	Horses and mules.	Cars.
1895...	1613454	76198	2457697	864713	52607	103368
1896...	1714532	100166	2605575	993126	57847	113594
1897...	1817526	104436	3350796	1134236	37006	123047
1898...	1757964	88269	3672909	980303	17483	121426
1899...	1912019	105465	2959073	953241	33775	116479
Total..	8815495	474534	15046050	4925619	198718	577914
Aver...	1763099	94907	3009210	985124	39743	115583
1900...	1969718	113077	3094139	860449	103308	128892
1901...	2000165	126410	3716404	980078	96657	134958
1902...	2082541	196625	2279337	1154084	76844	117730
1903...	1953371	183741	1969381	1151730	67274	113807
1904...	1996610	166861	2227170	1004099	67562	116628
Total..10002405		786714	13286431	5150440	411645	612015
Aver...	2000481	157341	2657296	1030088	82339	122403
Inc.p.c.	13.47	65.78		4.61	107	5
Dec. p.c.			11.6			

Above figures are taken from the 34th Annual Report of the Kansas City Stock Yards for the year ending December 31, 1904, page 4.

2348c Statement showing receipts of Live Stock at Union Stock Yards, South Omaha, for the 10-year period ending December 31, 1904; showing the average for the first 5 years of said period, also the average for the second 5 years of said period, and showing also the percentage of increase of the second period over the first.

Years.	Cattle.	Hogs.	Sheep.	Horses and mules.
1895	586103	1186726	204870	7077
1896	586578	1216370	358005	9347
1897	810949	1610981	627160	6572
1898	812244	2101387	1085136	10392
1899	837563	2216482	1086319	34255
Total	3633437	8331946	3361490	67643
Average	726687	1666389	672298	13528
1900	828204	2200926	1276775	59645
1901	818003	2414053	1314841	36391
1902	1010815	2247428	1742539	42079
1903	1071177	2231067	1863763	52829
1904	944192	2299627	1754365	46845
Total	4672391	11393100	7952283	237789
Average	934478	2278620	1590456	47558
Inc. p. c.	28.6	36.7	136.57	25.6

Figures taken from the 21st Annual Report of the Union Stock Yards Company of Omaha, Neb., for the year 1904, page 42.

2348*d* Statement of receipts of Live Stock at the Sioux City Stock Yards for the ten-year period ending December 31, 1904, showing the average for the first five years of said period and the average yearly receipts for the second five years of said period, and the percentage of increase of the second period over the first.

Years.	Cattle.	Hogs.	Sheep.	Horses and mules.
1895	110278	341056	14336	419
1896	142238	279451	10425	146
1897	294161	353290	9699	201
1898	300937	474238	20861	1079
1899	348109	568306	36081	8109
Total	1195723	2016341	91402	9954
Average	239144	403268	18280	1991
1900	300437	833141	61342	30668
1901	307529	959964	66930	18364
1902	399128	1007762	61275	19151
1903	372506	1007900	41774	12044
1904	326657	1113177	28464	4185
Total	1706257	4921944	259785	84412
Average	341251	984389	51957	16882
Inc. p. c.	42.7	135.1	184.2	747.9

Above figures are taken from the Annual Report of the Sioux City Stock Yards Company for the year 1904, page 19.

2348*e* Receipts of Live Stock at South St. Paul for the 10-year period 1895 to 1904, inclusive, showing the average for the first 5 years of this period and the average for the second 5 years, and showing also the percentage of increase or decrease of the second 5-year period over the first 5-year period. All figures taken from Annual Report of the St. Paul Union Stock Yards Company for the calendar year of 1904, page 8.

Year.	Cattle.	Calves.	Hogs.	Sheep.	Horses.	Cars.
1895.....	87426	4481	361449	173674	125	9801
1896.....	91049	5730	310012	198890	75	9169
1897.....	170854	27114	239852	314642	252	11204
1898.....	170424	42320	333352	429365	1431	13857
1899.....	165813	51132	364854	382035	5745	14119
Total.....	685566	130777	1609519	1498606	7628	58150
Average....	137113	26155	321903	299721	1525	11630
1900.....	170675	44095	494960	485770	26760	17185
1901.....	149161	33911	609480	330689	15120	16439
1902.....	258615	39812	659479	600859	8162	22582
1903.....	252088	42503	750671	872900	7822	24623
1904.....	344158	36803	872329	769751	6429	28835
Total.....1174697		197124	3386919	3059969	64293	109664
Average.... 234939		39424	677383	611993	12858	21932
Inc. p. c.... 71.3		51	110.4	104.2	87	88.5

S. St. Paul.

2348*f* Comparison of yearly packing of Hogs at South St. Paul for the 10 years ending March 1, 1905, showing the yearly average for the first 5 years of said period, compared with the average for the second 5 years of said 10-year period, and showing the percentage of increase of the second 5 years over the first 5 years.

1895-6	318035
1896-7	251463
1897-8	173110
1898-9	354485
1899-00	394093
Total	1491186
Average	298237
1900-1	514385
1901-2	658591
1902-3	715237
1903-4	810988
1904-5	884187
Total	3583388
Average	716677
Increase, per cent	140

Figures as to hog packing taken from Cincinnati Price Current Statistical Annual for 1905.

2348*g* Statement showing total yearly packing at Ottumwa, Iowa, for the 10-year period ending March 1, 1905; showing also the average for the first 5 years compared with the average for the second 5 years, and showing also the percentage of increase of the second period over the first.

1895-6	335053
1896-7	505709
1897-8	627049
1898-9	702173
1899-00	688939
Total	2858923
Average	571784
1900-1	653785
1901-2	610002
1902-3	441680
1903-4	486991
1904-5	669342
Total	2861800
Average	572360
Increase p. c	1

Above figures taken from Cincinnati Price Current Statistical Annual for 1905, page 10.

Statement showing total yearly packing at Cedar Rapids, Iowa, for the 10-year period ending March 1, 1905; showing also the average for the first 5 years compared with the average for the second 5 years, and showing also the percentage of increase of the second period over the first:

1895-6	347904
1896-7	435819
1897-8	457792
1898-9	483625
1899-00	427637
Total	2152777
Average	430555
1900-1	496308
1901-2	496790
1902-3	391524
1903-4	501789
1904-5	495121
Total	2381532
Average	476306
Increase p. c	11.9

Above figures taken from Cincinnati Price Current Statistical Annual for 1905, page 10.

(Endorsed:) Filed Oct. 14, 1905, Marshall E. Sampsell, Clerk.

2349 Q. Will you explain at this point, Mr. Tomlinson, what is deducible with respect to the increase or decrease at the markets from those figures, as briefly as you can.

A. This shows the growth or expansion of the markets on the Missouri River and interior Iowa points, and South St. Paul.

Mr. SEVERANCE: Does that include Chicago, also?

The WITNESS: Yes, sir; includes them all. Take South Omaha for the five years ending December 31, 1904, the percentage of increase compared with the five years preceding 1900, was on cattle—this is all receipts—28.6 per cent.; hogs 36.7 per cent.; sheep 136.57 per cent.; and horses and mules 25.6 per cent. I will read Chicago first, that you may have in mind the relative increase.

The COURT: Have they all increased?

The WITNESS: Chicago decreased in hogs and decreased in horses.

Mr. RANSOM: In five years?

The WITNESS: Yes, in five years. Chicago increased 20.8 in cattle; 58.5 in calves; decreased 4.1 in hogs, increased 16.6 in sheep. Kansas City shows an increase of 13.47 per cent. cattle.

Mr. SEVERANCE: Less than Chicago?

The WITNESS: Yes, an increase of 65.78 in calves, a de-
2350 crease of 11.6 in hogs, an increase of 4.61 in sheep and 107 per cent. in horses and mules, and a general increase of 5 per cent. in cars.

Mr. SEVERANCE: It decreased more in hogs than at Chicago?

The WITNESS: Yes, sir, and in——

Mr. SEVERANCE: And increased less than cattle?

The WITNESS: Yes, that is right.

The COURT: Cattle rather than hogs.

The WITNESS: I might explain there that that is largely attributable to the fact that the St. Joe market came in there at that time and it will be perfectly plain when I read the St. Joe figures how that arises, and I will read them now—I will get them in half a minute. I will finish by reading South St. Paul—Sioux City increased, cattle, 42 per cent., hogs 135 per cent., sheep 184 per cent., and horses and mules 749 per cent. South St. Paul increased 713 per cent. in cattle, 51 per cent. in calves, 110 per cent. in hogs, 104 per cent. in sheep, 87 per cent. in cattle, and 88.5 per cent. in cars.

Mr. DAWES: So we will understand it, the increase which you say was in cars, do you include horses and mules?

The WITNESS: They happened to include them in there, but I did not segregate them.

2351 Mr. DAWES: When you say increase of so many cars in this market, does that include increase of horses and mules?

The WITNESS: In South St. Paul?

Mr. DAWES: Any market.

The WITNESS: Yes, where it says so.

Mr. DAWES: I am not considering what is mules and sheep; I want to call your attention to that; have you them all segregated?

The WITNESS: I was afraid if I left it out there would be the same criticism if I put it in, and it reflects the condition of the market

here, because it is shown in the annual report that they are all in there. I simply put them in. They can be easily noted——

Mr. COWAN: Mr. Tomlinson, let me ask you if it is not a fact that these cattle reports do not show the total number of cars on each stock but the total number of head and shows the total number of cars of all stock.

The WITNESS: That is why I told Mr. Dawes I couldn't seggregate them. Here is a comparison of the yearly packing of hogs at South St. Paul, ten years ending March 1, 1905, showing for these periods an increase over the first five years of 140 per cent.

Mr. SEVERANCE: Mr. Tomlinson, you know don't you, that
2352 the Yards were not established there until 1887, or it was, rather, a new proposition.

The WITNESS: No, I beg your pardon. Will you let me have those exhibits?

Mr. SEVERANCE: 1888, according to the annual report you have introduced here.

The WITNESS: I am talking about the St. Paul market. In 1889 and 1890 St. Paul packed 299,000 hogs, in 1890 she packed 335,000; in 1901 276,000. That includes from 1890 to 1905, that is fifteen years they have been packing hogs up there. I can't go back any further than that.

Mr. SEVERANCE: I don't ask you to. I just called your attention to the fact that the Stock Yards were not established until 1888, so that in 1895, when your figures begin they were rather a young industry there.

The WITNESS: Well, I will accept the correction. It shows, however, the increase in hogs since 1895 to 1904. St. Joe is a much newer market than over St. Paul, and it shows a more marvelous increase. If you will permit me I will get the statement.

Adjourned until 10 A. M., Friday, October 6, 1905.

2353 FRIDAY, *October* 6, 1905—10 o'clock a. m.

Court met pursuant to adjournment.
Counsel present same as before.

Whereupon T. W. TOMLINSON, resumed the stand for further direct examination by Mr. Cowan:

Q. At the adjournment, you were introducing in evidence an exhibit showing the comparative receipts and slaughtering, I believe, of live stock, at the several markets which you named, that is, the Missouri river markets, St. Louis Chicago and St. Paul. You were stating what the increased were and the percentages of increase, and you retired to get a statement relative to St. Joseph, and the court adjourned at that point. You were about to make some explanation in regard to the establishment of the St. Joseph market. If you recollect the point that was in your mind, please proceed and make such explanation as you then were beginning.

A. The St. Joseph statement shows that the past five years compared with the preceding five years of that ten year period, the re-

ceipts of cattle increased, 274 per cent. Calves 710 per cent.;
2354 hogs 167.2 per cent., sheep 552 per cent. and the total number of cars of live stock 219.34 per cent.

The St. Joe market, while it has been a market for a great many years, commenced to increase its receipts along in the latter part of 1897. For example, in 1895, it had 49,000 cattle, in 1898 it had 225,000, and in 1904, 554,000. On hogs, in 1895, it had a quarter of a million, and last year they had over a million and a half.

The St. Joe Market, the large increase in its receipts, dates, as I said from 1897, and the increase in receipts since then at that point has also been reflected measurably in the decrease in the receipts at Kansas City.

Take all the markets, that is, Kansas City, St. Joe, Omaha, Sioux City and South St. Paul, the increase in the receipts of hogs for the past five years, the annual increase, amounts to 2,303,090 head. During the same period the annual decrease at Chicago has been 401,800 head.

There has not been the same percentage of increase in the receipts of cattle as of hogs. The purpose of these statements——

Mr. SEVERANCE: I object to counsel making an argument. He should make statements of fact and not forget that he is a witness and not acting as counsel in the case. He should just state
2355 the facts and not state the purposes. That is for Mr. Cowan to do.

The WITNESS: The statements show that the Missouri river markets, South St. Paul, have increased their receipts and the slaughter has increased relatively much greater than at Chicago. This is true, also, of the interior Iowa packing points.

Mr. DAWES: Do you mean in the last five years?

A. Yes, and that is also true if you go back ten years or fifteen years. In other words, the markets in the west have grown much faster than has Chicago. Chicago has not got as many receipts now as she had in 1891. That is, their maximum receipts of cars in 1890 and 1891, and she has never reached the high water period of those two years since then.

Mr. COWAN:

Q. Explain the cause of the increase and decrease in the live stock movement and slaughter shown in your exhibits under discussion.

A. One of the causes undoubtedly is the increase in the packing facilities at these other markets. Another cause is the adjustment of the freight rates. Which one is the greater, it is very difficult to say. Both undoubtedly contribute to the increase.

Q. In the application of the freight rates from Missouri
2356 river points to Chicago, what have you ascertained, if anything, relative to whether shipments are made actually upon the 23½ cent rate from the Missouri river to Chicago?

A. From my investigation I am satisfied that there are no shipments being made upon the 23½ cent rate from Missouri river

points to Chicago. The same is also true of St. Paul. There is no shipment made from that market that pays either the 25 cent rate on cattle or the 27 rate on hogs. They are simply basing rates.

Mr. SEVERANCE:

Q. What is that?
A. They are simply basing rates.

Mr. BAXTER:

Q. Will you explain what you mean by the term "basing rates"?
A. Well, that is the basis that obtains from intermediate territory. It is a rate which covers a wide extent of territory and is the basis for that territory.

The COURT:

Q. You mean that no rate, in no case, is 25 cents from St. Paul, or 23½ cents from the Missouri river?
A. I never heard of any.
Q. Or from intermediate points, this side of there?
A. Oh, from intermediate points it is paid, yes, sir. I am speaking entirely of the river market.

Mr. SEVERANCE: You mean that the stuff is moved on the
2357 proportionate?

A. Yes, or the balance of the rate.

Mr. DAWES:

Q. Nothing originates there at this point?
A. What say?
Q. Very little originates there?
A. Yes, there is some live stock originates both at Kansas City and Omaha and St. Joe.

The COURT:

Q. Don't that pay the local rate, or does that come through on the balance?
A. What I meant to say was, some originates there because it is driven in there.
Q. What does that pay?
A. Well, if it came on, it would pay the 23½ cent rate; but it does not come on by reason of the freight rate adjustment. It is more profitable to sell there than it would be to attempt to come on. Of course there might be some of this traffic which would come on, and it might pay that rate, but I doubt if there is any instance of it.

Mr. COWAN:

Q. It is a mere nominal amount?
A. Yes, sir, purely nominal.
Q. If any moves upon it?
A. If any moves upon it.

Q. Just refer to the report at Kansas City and Omaha, and call attention at such points to the amounts shown to be driven in.

A. At South Omaha during the year 1904 there was driven
2358 in 12,604 head of cattle, 34,474 head of hogs, and 44,334 head of sheep.

At Kansas City, for the year 1904, there was driven into the yards 15,371 head of cattle, 3,505 head of hogs, 38,081—no, 3,505 head of calves, 38,081 head of hogs, and 15,129 head of sheep.

Q. Now, Mr. Tomlinson, I desire to ask—Oh, you were not through, you were turning for the other?

A. Yes. At Sioux City there was driven in during 1904, 9,558 head of cattle, and 13,053 head of hogs; 2,127 head of sheep; at South St. Paul——

Mr. RANSOM: Will you let me have that large exhibit? I want to follow you as you give those figures. I think that is just the same.

The WITNESS: At South St. Paul there was driven in 8,107 head of cattle, 591 calves, 8,871 hogs, 2,740 sheep.

Mr. COWAN:

Q. Now, Mr. Tomlinson, have you examined the tariff to ascertain what application is made of the proportional rate (published within the last year, as I understand it) on live stock coming to Chicago, which originates west of the Missouri river? What I mean by that is, does that apply to the stock driven in, and apply to stock originating on other lines of railroad?

A. It would not apply to stock driven in. The tariff
2359 publishing this 18½ cent rate, the freight tariff of the Western Trunk Lines Association, No. 201, reads as follows.

Q. Give the page.

A. Page 16, item No. 86: "Cattle or hogs, carloads, and sheep in double-decked cars, originating on connecting lines, to Mississippi river points, 13½; to Peoria and Pekin, 18½; to Chicago, Kankakee and Milwaukee, 20 cents."

Q. Now, is that the proportional rate which the witnesses have been testifying about?

A. That is the proportional rate, yes, sir; proportional in this way: it applies on traffic from connecting lines destined to Chicago. It is applied as a local rate by the Santa Fe road from Kansas City and intermediate points.

There is also another proportional rate of 18½ cents on cattle and hogs which applies on traffic received from connecting lines at the Missouri river, for example, destined to points east of Chicago.

There is no proportional rate on live stock received from connecting lines at South St. Paul. I mean by that, that there is not the same kind of proportional rate made from South St. Paul as there is from the Missouri river; neither is there any proportional rate from any of these interior Iowa points, nor is there one from Sioux City.

2360 Q. Explain the difference between what you have just mentioned as a proportional rate and what has several times

in this case been denominated a proportional rate by the questions and by some witnesses, which applies on a shipment, for example, from North Dakota through St. Paul to Chicago, if it tries the market at St. Paul and moves on?

A. Traffic coming from North or South Dakota via St. Paul moves on a through rate.

Q. To where?

A. To Chicago, if it is coming to Chicago. The balance of the rate, that is, the difference between the rate to St. Paul and the rate to Chicago, is called the balance of the rate.

That might vary from 12 or 13 cents up to as high as 17 or 18 or 20 cents. I would say that the average difference would be around 15 cents or 15½ cents.

There is no proportional, that is, no flat even proportional rate; it is the balance of the rate and it varies very much, depending almost entirely on the point of origin. The rates, in that sense, are a great deal different than they are, for example, from Texas.

Now, the rate on cattle from Texas or Oklahoma and Indian Territory points to Chicago is uniformly 16¼ cents higher than to Kansas City. Take the Colorado common points, the rate on
2361 cattle is uniformly 16 cents higher than to Kansas City, and on sheep it is 17 cents.

They have a uniform difference, but so far as Kansas stations are concerned, Nebraska, Wyoming, Idaho, North and South Dakota and Montana, there is no even difference. It is purely arbitrary and depends upon the point of origin of the stock.

Q. What you have said as to the balance of the rate via Kansas City applies via Omaha likewise?

A. Yes, sir.

Q. That is, in shipments from Colorado?

A. Yes.

Q. But that would not apply in shipments from Texas?

A. No. Omaha takes a little different basis of rates than Texas and Kansas City does.

Q. On what is the Texas rate based, is that on St. Louis or Kansas City?

A. That is very difficult to say. The Chicago rate is based on St. Louis.

Q. The additional Chicago rate?

A. Yes, sir.

Q. Is the difference between Chicago and St. Louis uniform from Texas and Indiana and Oklahoma Territory points?

A. Almost, not entirely.

Q. What is that?

A. Well, 11¼ and 10¼ cents.

Q. Do you recollect whether that is the amount of the Illinois distance tariff from St. Louis to Chicago?

A. No, the Illinois distance tariff from St. Louis to Chicago is higher than that.

2362 Q. Do you know whether anything moves on that tariff from St. Louis to Chicago?

A. On the Illinois distance tariff?

Q. Yes.

A. I would not think so. I doubt if there is ever a shipment that moves from St. Louis to Chicago on the Illinois distance tariff, that is, on live stock.

Q. They manage in some way to ship it on a lower rate?

A. Yes, all the live stock that comes into St. Louis, except perhaps a few thousand head, move in there on some kind of a rate, and the balance of the rate would be very much less than the Illinois distance tariff. In some cases it might be as low as 10 cents.

Q. What is the volume of the fresh meat and packing house product tonnage, east bound, out of Missouri river, and to what sources of information did you apply to ascertain the fact?

A. The most authentic data on the volume or tonnage of live stock and its product east bound from the Missouri river, is found in the statements filed by Mr. J. V. Mahoney, showing the actual tonnage. That, however, does not include all the traffic, because there might be a great deal moved to the southwest which is not included in that statement.

Using that statement and the annual report of these various
2363 markets, showing the slaughtering and the receipts, it is deducable, in my opinion, that 75 per cent. of the total product of the Missouri river markets moves east bound across the Mississippi river, for consumption in the east or for export.

That is not true of South St. Paul, because the bulk of their product is consumed in that territory west thereof; but, as regards the Missouri river markets, I am satisfied that 75 per cent. of the total output goes east, for consumption or export.

Q. Have you, as thoroughly as statistical information could possibly afford an opportunity to do so, made an investigation with a view of ascertaining the facts which you have just testified to?

A. Yes, I have. It is a very difficult matter to make an absolute mathematical calculation on it, but I am satisfied that that figure is within one or two per cent. of what the actual movement is.

Q. How many cars of live stock does it take to make the average car of fresh meat packing house product?

A. Well, if you are figuring on the basis, say, of the minimum of 22,000 pounds in a carload of cattle, and the minimum on fresh meat of 20,000 pounds, and the cattle dress an average of about 55 per cent., and only the dressed carcass is shipped, you can readily
see that it takes almost two carloads of cattle to make a car-
2364 load of fresh meat.

The total product, merchantable product, of cattle, in weight represents, according to the best obtainable information, about 67 per cent. of the gross weight of the animal. On sheep it is less than that, and on hogs it closely approximates 78 to 80 per cent.

The Missouri river markets slaughter more cattle and sheep than they do of hogs, and that is also true at South St. Paul. Therefore, in arriving at any calculation as to the amount of the product, or the weight of the product, compared with the live animal, you must take into consideration the fact that they slaughter more pounds of

animals which dress out less than the hogs. In other words, they slaughter more cattle and sheep than they do hogs.

Taking all these factors into consideration, I estimate that about 70 per cent. of the total gross weight of the animals, as weighed in at the river markets, is shipped in the shape of product, or the product is produced and the product then represents 70 per cent. of the gross live weight of the animals. That is, excluding the hoofs and the horns and the fertilizer.

Q. Why do you exclude the hoofs, horns and fertilizer?

A. Well, in the first place it is very doubtful whether they are shipped, at least eastwardly, and they are made into so many
2365 other different articles of less weight, that it is almost impossible to make a close approximation of what they actually represent. The fertilizer is not shipped east.

Q. That is, you mean not shipped east via Chicago?

A. Yes, sir.

Mr. RANSOM:

Q. You don't exclude the hide?

A. Oh, no.

Mr. COWAN:

Q. Where is the fertilizer market of this country?

A. Well, I don't think I would be a very good authority on that.

Q. Now, what is the comparative number of the cars of fresh meat and packing house product that is shipped via Chicago—Strike that out, Mr. Reporter. Assuming that the car of products which you have mentioned, and the weights you have stated, shipped to Chicago, about what number of carloads does one carload of fresh meat and packing house product represent? I mean, how many cars of live stock?

Mr. SEVERANCE: Why, he just stated that.

The WITNESS: Substantially, two.

Mr. SEVERANCE: He said 70 per cent. would be shipped.

Mr. COWAN: I am asking now about the carloads.

Mr. SEVERANCE: He said a carload of live stock weighs
2366 heavier than a carload of dressed meat.

Mr. COWAN: No, no, he did not. He was speaking of the minimum weights shown in the tariff, not what they weighed. He was speaking of the minimum weights.

Q. What I want to get at is, what information you have ascertained to show the relative number of carloads of live stock represented in a carload of packing product or dressed meat?

A. I would say two.

Mr. SEVERANCE: I think he should give it in pounds, instead of giving a general statement that way.

The COURT: Well, let him give it both ways.

Mr. SEVERANCE: Well, if he gives it both ways, that is all right.

The WITNESS: I was saying, in a general way, that two carloads

of live stock represented one car of fresh meat or one car of packing house product.

Mr. COWAN:

Q. Now, state, Mr. Tomlinson,——

Mr. SEVERANCE: Wait a minute. The Court said he might give it in pounds, too.

The WITNESS: Well, that is almost impossible, unless you know just what the average carload of fresh meat and packing house product is, and the average weight of a carload of live stock.

2367 Mr. SEVERANCE: I cannot hear anything you say.

The WITNESS: I say that is almost impossible, unless you know exactly the average weight of a carload of fresh meat and packing house product, and the actual average weight of a carload of cattle.

Mr. SEVERANCE: Then your opinion is not based on figures. All right.

The WITNESS: It is based on approximate figures.

Mr. COWAN: I don't think that remark of counsel's is justified, either.

The WITNESS: It is based on approximate figures.

The COURT: Go ahead. What is the next question?

The WITNESS: On the basis of 70 per cent. of the weight, it is easy enough to see what a carload of live stock would represent in the shape of product.

Mr. COWAN:

Q. Can you state what is the difference in the prices paid at these different markets on the Missouri river, and the prices paid at Chicago, for live stock?

A. There is no uniform difference. Chicago is always higher than the river markets or South Omaha, or the interior Iowa points. At the interior Iowa points they pay, usually, a fixed arbitrary price on the Chicago price.

That is not so generally the case at the Missouri river, but the prices average considerably more in Chicago and so also do

2368 the prices at St. Paul. There is no absolute fixed difference.

Q. What fixes the price, are you able to say?

A. Oh, the natural laws of supply and demand.

The COURT:

Q. You don't believe it is the monopolies, then?

A. Why, I imagine there are conditions under which the price can be controlled, but I doubt if in the present situation it would be possible to long manipulate the prices, because they are largely dependent upon the export demand. For example, Chicago——

Mr. DAWES: Would it be possible for you to sit back further? We cannot hear anything here.

The WITNESS: I started to say that there are over 500,000 head of export steers purchased on the Chicago market. They are pur-

chased largely by independent buyers, exporters, and that has an influence on the course of the prices at this market.

Mr. COWAN:

Q. Are there other independent buyers, than the export buyers?

A. Yes, there are a number of buyers for interior slaughtering points in the east; Pittsburg buyers are on the market, and Buffalo buyers, buyers for New England points and southeastern points, Cleveland and Detroit.

Q. Now, as to other classes of cattle than those which are
2369 bought for export, and other classes of cattle than those which are bought to be shipped to these interior points, is there any condition whereby any particular individual, firm or corporation, in your judgment, may fix in a measure, partially or wholly, the prices which are paid at Chicago and at the Missouri river markets?

A. Oh, they might fix them in part, but I would not say wholly.

Q. Are the same principal buyers for slaughtering at Missouri river, and for slaughtering at Chicago, engaged in business at both places?

A. The same buyers or slaughterers that are represented at the Missouri river markets and South St. Paul, are also represented at Chicago, but there are a large number of buyers at Chicago that are not represented at the river markets or at these interior Iowa points. Take Cedar Rapids, for example: they have only got one buyer and that is the packer. At South St. Paul it is confined almost to one or two buyers, except, possibly, some feeder buyers there, but so far as the slaughtering is concerned, they are confined practically to one buyer.

Q. To what extent are the live stock which come to the Missouri river from the west thereof and south, shipped on to Chicago? Have you any statement explanatory of the amount of the traffic of that character?

2370 A. There is a comparatively small amount of live stock originating west of the Missouri river which comes on to the Chicago market.

Mr. RANSOM:

Q. How is that?

A. I say there is a comparatively small amount. In previous years—ten years ago—Chicago got as high as 500,000 head of cattle from Texas. Today she gets scarcely 75,000 head.

I have here a statement showing the receipts of stock at the Union Stock Yards at Chicago for five years commencing with 1900, and extending down to December 31, 1904. It shows the receipts in cars.

There were shipped into the Chicago market from Colorado, during 1904, 1194 cars of live stock. From Indian Territory they shipped 48 cars of live stock. From Kansas 3010 cars of live stock; from Nebraska, 6064; from Oklahoma Territory, 186 cars; Texas, 3466; Utah, 183; Wyoming 1769. There was forwarded through

from the other markets, forwarded through the other markets, 6,190 cars.

Q. What does that show for the previous period, you said you had it for some previous period?

A. The five years shown on this statement show comparatively little difference between the receipts now and what they were then. The large decrease dates from the establishment and the
2371 increase in the slaughtering facilities at the Missouri river markets. In other words, there has been practically little change in the receipts of live stock from points west of the Missouri river into Chicago, during this five year period.

The COURT:

Q. Do you think a change in this rate would make any difference?

A. Not entirely, your Honor. The change in the rate is purely nominal. It is well understood that the rate now prevailing——

Mr. SEVERANCE: Will you kindly turn around again?

The WITNESS: The rate prevailing previous to the time this 18½ cent rate was put into effect, was the same as the 18½ cent rate, or less. In other words, traffic moved then at not any more than it is moving today.

The COURT:

Q. You mean there were rebates?

A. Yes.

Mr. DAWES:

Q. You know that, I suppose?

A. Well, Mr. Stickney's circular letter, in evidence in this case, and which will be read, states that the prevailing rate for about ten or fifteen years, was 16 1/10 cents. I presume his information is from authentic data. It is generally so understood, that the rate never has been any more than 18½ cents, and frequently a little less.

2372 The COURT:

Q. Then, instead of lowering the rates, they have raised the freight rates?

A. That is according to Mr. Stickney's circular letter.

Q. That is the claim?

A. That is the claim.

Mr. SEVERANCE: That is your testimony, too.

A. That the rates are higher today on these products?

Q. Yes.

A. No, sir.

Q. I thought you said just a moment ago——

A. My statement entirely referred to the Missouri river. Take South St. Paul, the rates are lower today than they ever have been, and I doubt whether, in face of the reduction, they were made as low now, in fact, today.

The COURT:

Q. You mean the balance of the rate?

A. No, I am talking about the fresh meat and packing house product rate. From Cedar Rapids, 13½ cent rate on fresh meat and packing house products, I am satisfied never was as low by any method of rebating or otherwise, as that rate.

Mr. DAWES: They don't kill any cattle at Cedar Rapids, do they?

A. Very few.

Mr. SEVERANCE: Cattle for local consumption.

Mr. COWAN:

Q. I wish you would explain in connection——

The COURT:

Q. Do you claim that they have, in fact, raised the rates
2373 on dressed meat?

A. No, sir.

Q. You say Stickney says so?

A. Yes, sir.

Q. Do you believe it?

A. My opinion is that the prevailing rate from the Missouri river today is about the same as it has been for a great many years, and that the prevailing rate from South St. Paul is perhaps a little less than the rate has been for a good many years, and that the published rate from Cedar Rapids will average less than the charge collected for the same service some years ago.

Mr. COWAN:

Q. Now, when you use the expression "prevailing rate" you mean——

A. I mean the published rate.

Q. You mean the amount of revenue that is actually received and not the published rate?

A. Yes, sir.

Q. And during the time of this lower actual charge, the published rate, however, was 23½ cents, was it not?

A. Yes, sir.

Q. And from St. Paul what was the published rate?

A. The published rate from St. Paul, south bound, on fresh meat, previous to the change, was 20 cents, and on packing house product, 18½.

Q. Was that actually collected, or some smaller amount?

A. I doubt if it was actually collected.

Mr. LYNDE:

Q. You don't know anything about it, Mr. Tomlinson, do
2374 you?

A. Well, I know something, yes.

Mr. SEVERANCE: I think the witness should state what he knows, and not his doubts. We all have "our doots."

The COURT: It is easy to be suspicious.

The WITNESS: The question was asked me and I gave my opinion about it.

The COURT: They want you to give your reasons. You gave a very good reason in the other case.

Mr. COWAN:

Q. What do you base that on with reference to St. Paul?

A. The fact that the packers always did get something off from the rate.

Mr. LYNDE:

Q. That is suspicion, isn't it?

Mr. SEVERANCE:

Q. You mean they did, prior to the time these rates were put in?

A. Yes.

Q. You don't mean that they do now?

A. Oh, no. No, I think the rates are very rigidly maintained now.

Mr. COWAN:

Q. Now, in connection with the statement with Mr. Kenyon, please show the amount, the relative amount, of shipments from these various places, briefly, but sufficiently to illustrate the point, into the Missouri river, as compared with the Chicago market,

2375 from the west and south of the Missouri river.

A. Take the State of Kansas, according to Mr. Kenyon's exhibit for the year 1904, Kansas City received 1,271,542 head of cattle. During that same year Chicago received from Kansas 2,779 cars of cattle, which on the basis of 20 head per car, would amount to about 56,000 head. The comparison then would be that Chicago received 56,000 head from Kansas, while Kansas City received 1,271,000.

On hogs, during the year 1904, there were shipped into Kansas, City from the State of Kansas, 1,343,396 head of hogs. During that same period Chicago received from Kansas 51 cars of hogs; and, at the average of 70 per car, it would be about 3,500.

Kansas also shipped into St. Joseph, 131,046 head of cattle, into Omaha, 5,814: into Sioux City, 1,308; into St. Louis, 66,484.

Take Nebraska, during the year 1904, Omaha received from Nebraska 590,061 head of cattle. During the same period Chicago received from Nebraska, 4,473 cars of cattle, and on the basis of 20 head to the car, it would be approximately, 90,000 head of cattle that Chicago received from Nebraska, against 590,000, which South Omaha received.

Nebraska also furnished to Kansas City 50,000 head, to St. Joseph, 150,000 head, and to Sioux City, 23,000 head.

2376 On hogs, Nebraska contributed to the Omaha market, 1,599,909 head of hogs. During the same period there were shipped to Chicago from Nebraska, 317 cars of Hogs, or approximately, 21,000 head of hogs into Chicago from Nebraska territory.

During the same year Nebraska contributed to Kansas City, 61,761 head, to St. Joseph, 276,288 head, and to Sioux City 216,268 head.

Q. What other facts are shown by those exhibits that you have in your hand that are necessary to explain?

A. Take the State of South Dakota, which is in a part of the range country. During the year 1904, Omaha received from South Dakota 45,000 head of cattle, Sioux City, 129,000; St. Paul, 14,000, approximately.

During the same period, Chicago received 10,899 cars of cattle from South Dakota, which, on the basis of 20 head to the car, would be, approximately, 220,000 head of cattle from South Dakota.

Take Montana——

Mr. DAWES:

Q. How many did you say were shipped into Omaha from South Dakota? Will the reporter read that?

(The portion of the answer referred to was then read.)

The WITNESS: Take Montana during the year 1904, Kansas City received 144 head of cattle from Montana; Omaha 11,246
2377 head; St. Joseph, 24 head; Sioux City 721 head; St. Paul, 75,668 head.

During the same year Chicago received from Montana 5,649 cars, which, on a basis of 20 to the car, would amount to, 133,000 head.

The statement shows that the only territory west of the Missouri river which ships stock into Chicago in any large volume, is the Montana territory, South Dakota territory and Idaho.

The other states, Kansas, Nebraska, Colorado, Indian and Oklahoma territories and Texas, relatively, shop only a very small proportion to Chicago. There are many reasons for this, notably the rate situation.

Q. Explain how the rate situation affects it. Why is it that so many are shipped from South Dakota to Chicago, whereas, from Nebraska and Colorado they are not shipped to Chicago?

A. The difference in the rates from the range country in South Dakota, the Belle Forche country, for example, to Chicago, compared with the Missouri river (and this also applies as well to a portion of Wyoming), is 12 cents per hundred pounds.

In other words, a man can ship to Chicago by paying only 12 cents over the Omaha rate. That is on cattle, and there is
2378 nothing but cattle raised up in that particular range territory; some few sheep.

In Montana, the average difference between the rate to St. Paul and Chicago ranges from 13 to 15 cents.

Mr. SEVERANCE:

Q. And below 13 cents in some cases?

A. Yes; I am giving approximate ranges. In Colorado the difference is 16 cents on cattle, and 17 cents on sheep.

Mr. COWAN:

Q. What part of Colorado?

A. That is the Colorado common points.

Q. You had better explain what part of Colorado that applies to, the eastern half, Denver, Pueblo, and east of there?

A. That covers Denver, Pueblo, Colorado Springs, Trinidad, and certain intermediate points between those stations, running up also into Cheyenne, Wyoming, and covers about half of the intermediate territory between those Colorado common points and the eastern line of the State of Colorado.

From Colorado points, that is, not eastern Colorado, they are adjusted differently, ranging from 16 cents to 19 cents on cattle, and a trifle more on sheep.

In some parts of western Colorado the difference is very much less than that. Texas, the difference is 16¼ cents between the Missouri river, Kansas City and St. Joseph and Chicago, and approxi-
2379 mately 11¼ cents between St. Louis and Chicago.

Kansas will average, on cattle, close around 18 cents, from 17 to 20 cents, the difference between the rate to Missouri river and to Chicago, and Nebraska will average about the same; Wyoming the same, and Idaho substantially the same, except from one district, known as the "Spencer District," where the difference between the Missouri river and Chicago is only 7½ cents, and a large number of sheep from that particular district come to Chicago by reason of that adjustment.

Mr. SEVERANCE:

Q. That is from what point?

A. Spencer, Idaho.

Q. Seven and a half cents above the St. Paul rate?

A. Above the Missouri river rate.

Mr. COWAN:

Q. Belle Fourche is the largest single cattle shipping point there is in the range country in the northwest, is it not?

A. Yes, sir.

Q. That is on the Northwestern road out near its terminus?

A. Yes.

Q. And shipments from there to the Missouri river would move about 636 miles to Omaha?

A. Approximately, yes.

Q. And to Chicago, something around 500 miles further?

A. Yes.

Q. They come to Chicago, however, at 17 cents more, only
2380 than they go to the Missouri river?

A. Yes.

Mr. LYNDE:

Q. What is the total rate?

A. Forty-eight cents.

Q. Forty-eight?

Mr. COWAN: The Omaha rate is 36?

A. Yes, sir.

Q. So that you account for these shipments to Chicago rather than to the Missouri river, on the basis of the rate adjustment and the prices paid?

A. Entirely so,—almost entirely. The 12-cent rate, of the balance of the rate, almost equalizes the 18½ or 20-cent rate on the product, that is, it puts them on a commercial equality.

Q. That is, it puts them on a commercial equality?

A. Yes.

Q. Where?

A. At the market of slaughtering or the market of consumption, at Chicago, for example.

Q. The live stock can be forwarded on from Omaha as cheaply as carcass by the live stock shipper, who can do it at 12 cents, as the packer can send it on the 18½ or 20-cent rate, is that your idea?

A. Yes, sir, that is right.

Q. Is there any other factor which would direct the movement of live stock to Chicago from South Dakota, which would not also be equally potent in the movement from Colorado common points to Chicago?

A. No, sir.

2381 Q. What is the distance from Belle Fourche to Chicago, via Omaha?

A. 1150 miles.

Q. What is it from Denver, via Omaha to Chicago?

The COURT: What is what?

Mr. COWAN: From Denver, via Omaha?

A. 1080 miles, around 1100 miles, approximately.

Q. The rate from Denver is what?

Mr. JEFFRIES:

Q. 1028 miles would be better, wouldn't it?

A. That is the short line mileage of the Burlington; yes, I will accept that.

Mr. COWAN:

Q. The rate from Denver to Chicago is what?

A. Forty-nine cents.

Q. And to Omaha?

A. Thirty-three cents.

Q. Now, in the case of the Montana districts where the cattle are principally shipped from, say, the vicinity of Billings, is it as near from Billings to Kansas City or Omaha as it is from Billings to Chicago, or nearer?

2382 A. Billings is at the junction of the B. & M. and Northern Pacific, is it not?

Mr. SEVERANCE: Yes.

Mr. COWAN:

Q. But practically nothing goes to Omaha from there?

A. Very little, they got 11,246 head.

Q. From the entire State of Montana?

A. The entire State of Montana to Omaha.

Mr. LYNDE: The natural movement is to St. Paul—they reach Chicago by way of St. Paul, isn't that the natural course over the Northern Pacific to St. Paul?

A. Not any more so than by the B. & M.

Mr. COWAN:

Q. Now, I will ask you Mr. Tomlinson, whether there is a large district of country on the Burlington southeast of Billings, two or three hundred miles, from which there is a great number of cattle shipped?

A. Yes, sir, that is also in the range territory.

Q. Both in the States of Montana and Wyoming?

A. Yes, sir.

Q. How do you account for the fact that those cattle come more to Chicago than they do to the Missouri River?

Mr. DAWES: I object your Honor, to the assumption, I
2383 don't think that is the fact. I would like to have the gentleman ask him if they do.

The COURT: Find out whether it is true or not.

The WITNESS: I was going to straighten that out.

Mr. COWAN:

Q. He had already read the total amount from Montana to Omaha, is the reason I assume that.

Mr. LYNDE: I think it was omitted, I have got a note that he didn't name it.

Mr. COWAN: It was not purposely omitted by me.

Mr. LYNDE: You didn't name it.

The COURT: State the facts.

The WITNESS: Now, take Wyoming: According to Mr. Kenyon's exhibit which I have compared and am satisfied is correct, the receipts of cattle from Wyoming at Omaha amount to 95,318 head; at Kansas City, 2,303 head; at St. Joseph, 3,523 head; at Sioux City, 433 head. The receipts of cattle at Chicago from Wyoming during the same year amounted to 1260 cars which, at an average of 20 head per car would be 25,200 head.

Mr. COWAN:

Q. Now, state the rate from the Wyoming points.

Mr. SEVERANCE: Will you be kind enough to state the totals of those so we can carry them in mind.

A. That would be as follows:

Wyoming to Chicago, 25,200 head,

2384

Wyoming to Chicago	25,200 head
To Kansas City	2,303 head
To Omaha	95,318 head
To St. Joseph	3,523 head
To Sioux City	433 head

Mr. SEVERANCE: About 100,000?
A. Approximately.

Mr. COWAN:

Q. Now, state the rate adjustment from Wyoming to the Missouri River compared to Chicago.
A. Certain parts of the B. & M. are based—are adjusted on the basis of a difference of 12 cents. Take the Union Pacific and parts of the Northwestern—in Eastern Wyoming, the difference will range about 6 cents.
Mr. SEVERANCE: Six cents?
A. Sixteen cents, I should say. Other parts of Wyoming will average close to 18½ or 19 cents.

Mr. COWAN:

Q. Take Cheyenne as an example, what is the rate from Cheyenne by the Union Pacific to Omaha?
A. Twenty-nine cents.
Q. What is it to Chicago?
A. Forty-eight cents.
Q. Forty-nine, I think, the same as the Denver rate.
Mr. LYNDE: Mr. Tomlinson, where does this 16-cent rate come from?
2385 The WITNESS: You are correct Mr. Cowan, it is 49 cents.
Mr. LYNDE: This 16-cent rate, what portion of Wyoming does that prevail from?
A. It prevails on points north of Cheyenne, not including Cheyenne by the way, and prevails, I think, from most stations on the Northwestern line.
Q. It is 12 cents on all those, the Bellefourche rate.
A. Take your Casper line.
Q. It is 12 cents there?
A. Is that 12 cents?
Q. I think you will find you are mistaken.
The COURT: What is the difference between Cheyenne and Omaha to Chicago?
A. Nineteen and twenty cents.
Q. Twenty cents difference?
A. Yes, sir.

Mr. COWAN:

Q. Now, that part of Wyoming west of Cheyenne on the Union Pacific line, what is the difference and how is it made up?
A. The rates in to Omaha and Kansas City from stations on the Union Pacific west of Cheyenne are stated in dollars and cents per car on cattle, and the rates to Chicago are stated in cents per hundred pounds. Reducing the dollars and cents in the car rates to cents per hundred pounds, the average difference would be somewhere around 18½ to 19 cents. By that I do not mean that those are the extremes. It may run as low as 15 cents, and as high as 21 cents, the average is about 18½ or 19 cents.

2386 Q. Now, take a shipment for example from Laramie, the dollars per car rate, if it stopped at Omaha, it is sold on the rate of so much per car, is it not?

A. Yes, sir.

Q. But if it goes on to Chicago, the freight is paid on the basis of the 48 cents from Laramie, is it, or 49, whatever it is?

A. I don't remember the Laramie rate.

Q. But whatever the rate is?

A. Whatever the rate is, it is cents per hundred pounds.

Q. How does the change from dollars per car to cents per hundred pounds from that district affect the difference or increase in the rate?

A. Where live stock is shipped in dollars and cents per car, it has been the custom of the shipper to load a great deal more in the car than where the rates are made in cents per hundred pounds. For example, take Denver: The rates from many Colorado points in to Denver and from some Wyoming points in to Denver are made in dollars and cents per car, and the average weight of cattle in a 36 foot car in to Denver will be about 27 to 28 thousand pounds, and the shipper would undoubtedly load somewhere near that weight on shipments in to Omaha from Wyoming or Colorado for example. Coming in to Chicago, the rates are stated in cents per hundred pounds, at the established minimum, which is 24,000 pounds from parts of Wyoming.

Q. Now, if a car load weighs more than the minimum?

2387 A. If the car weighs more than the minimum of course, he pays at the actual weight; therefore, as between shipments made to Chicago and South Omaha, the difference is really relatively much more than the figure I have named for that reason.

Q. Of the total shipments from the State of Wyoming, what portion of the State has the dollars per car rate to the Missouri River, and what portion has the cents per hundred pounds to the Missouri River?

A. According to my best recollection, only the stations west of Cheyenne on the Union Pacific, including the Oregon Short Line. The B. & M. rates on cattle and the Northwestern rates on cattle *and the Northwestern rates on cattle,* I believe are all stated in cents per hundred pounds; and to Chicago they are all stated in cents per hundred pounds, the difference being from those U. P. stations and Oregon Short Line stations named. They are stated to the Missouri River points in dollars per car.

Q. Is it a fact or not that the largest proportion of the cattle shipments from the State of Wyoming move to the Missouri River on the dollars per car basis?

A. Yes, sir. I——

Q. And what proportion?

Mr. SEVERANCE: Just a moment, let him finish the answer.

Mr. COWAN: If you were going to say something else, go ahead.

2388 Mr. SEVERANCE: May be not, I thought he looked as though he was going to talk.

The WITNESS: I would like to correct that answer. I am inclined to think there is very little difference.

Mr. COWAN:

Q. Are you able to state what portion of the State of Wyoming would ship on a difference of 12 cents, assuming it to be correct as stated by Mr. Lynde that the 12 cents differential is applicable on the Northwestern Road?

A. What proportion of the shipments?

Q. Yes, sir.

A. That would be a most difficult question to answer accurately, and I prefer not to give an opinion on it. It might vary.

Q. Mr. Tomlinson, have you prepared statements relative to the movements of live stock from the East to the Missouri River?

A. Yes, sir.

Q. Please file as an exhibit, the papers you have just been referring to, the statistical table.

A. Yes, sir, I will.

(The document referred to was filed as a part of the testimony of said witness, and marked "Exhibit No. —.")

2388a *Statement Showing Yearly Receipts at Kansas City of Live Stock Originating East of Missouri River.*

Year.	Number of head from east of Missouri river.					
	Cattle.	Calves.	Hogs.	Sheep.	H. & M.	Cars.
1896	125,623	8,117	410,869	59,455	7,646	12,236
1897	157,894	14,885	546,508	64,718	6,250	15,567
1898	228,244	9,475	615,485	72,884	2,351	18,316
1899	185,049	7,914	412,172	80,891	5,768	13,872
1900	230,975	15,442	435,388	88,752	27,205	17,413
1901	305,237	15,024	642,854	107,533	26,885	22,515
1902	176,319	6,147	551,714	110,826	22,396	15,791
1903	169,677	4,727	368,809	90,772	15,581	14,097
1904	220,790	8,061	454,063	116,826	16,263	17,280

Statement Showing Yearly Receipts at South Omaha of Live Stock Originating East of Missouri River.

Year.	Number of head from east of Missouri river.				
	Cattle.	Hogs.	Sheep.	H. & M.	Cars.
1896	41,158	119,322	8,727	220	3,843
1897	75,559	200,939	21,151	150	6,494
1898	70,655	294,986	13,110	297	7,690
1899	95,831	348,473	60,978	543	9,529
1900	92,126	461,016	32,443	851	11,140
1901	138,716	803,978	66,321	3,056	18,115
1902	137,428	873,677	55,007	2,348	18,620
1903	161,754	928,414	56,399	7,199	20,794
1904	114,263	675,101	42,727	2,467	15,015

*Statement Showing Yearly Receipts at South St. Joseph of Live Stock Originating East of Missouri River.**

Year.	Number of head from east of Missouri river.					
	Cattle.	Calves.	Hogs.	Sheep.	H. & M.	Cars.
1897	26,636	541	198,819	3,276	589	3,774
1898	102,300	3,303	447,546	29,261	3,318	11,260
1899	117,058	3,122	441,470	24,909	1,380	11,993
1900	135,152	2,364	581,684	31,159	2,030	15,037
1901	183,303	4,670	905,522	57,972	5,418	21,668
1902	186,851	6,103	931,685	76,003	8,792	21,536
1903	200,943	8,106	831,362	86,737	8,462	21,627
1904	180,493	10,256	735,731	60,704	9,649	18,651

*Receipts at South St. Joseph via A., T. & S. Ry. not included in receipts east of Missouri River.

2388*b* *Grand Summary,*

Showing total receipts of live stock at Kansas City, South Omaha, and South St. Joseph from points east of Missouri river during years indicated. Receipts at South St. Joseph via A., T. & S. F. Ry. from points east of Missouri river are not included in the receipts from east of Missouri river.

Year.	Receipts from east of Missouri river.				
	Cattle & calves.	Hogs.	Sheep.	H. & M.	Cars.
1897	265,515	941,266	89,145	6,989	25,835
1898	413,977	1,358,017	115,255	5,966	37,266
1899	408,974	1,202,115	166,778	7,691	35,394
1900	476,059	1,478,088	152,354	30,086	43,657
1901	646,950	2,352,354	231,826	35,359	62,298
1902	512,848	1,517,076	241,836	33,536	55,387
1903	545,207	2,128,585	233,908	31,242	56,518
1904	533,863	1,864,895	120,257	28,379	50,946

Mr. COWAN: Mr. Tomlinson informs me that he will have a copy prepared and filed. He wants to keep this original.

Mr. SEVERANCE: Have you got more than one?

The WITNESS: I will see that a copy is put in the record,
2389 and that you are furnished one.

I want to make an explanation in regard to this statement so that it may go in the record.

Mr. DAWES: What is that now, Mr. Tomlinson, that you have in your hand, read the caption.

A. This is a statement of the receipts of live stock by cars at the Union Stock Yards, Chicago, for the years 1900 to 1905 inclusive, by months and totals for the year.

Mr. BAXTER: Does it also show by States?

A. Yes, sir; showing the States of origin and showing the amount forwarded from other markets.

It is not in head, and there is no way of obtaining the information as to the exact number of head contained in these cars. Of course, we know the average, but not the actual number. There are no statistics kept out at the Stock Yards showing the actual number of head received from each State. The statistics are kept as to the number of cars.

Mr. BAXTER: Well, now, in order to ascertain the number of head, you have been multiplying by twenty to the car, haven't you?

A. That is what I have been using, yes sir.

Q. Well, we can do that.

A. Yes, sir.

Mr. COWAN:

Q. Twenty and seventy, seventy for hogs and twenty for
2390 cattle?

A. Yes sir, 70 for hogs and 20 for cattle.

Mr. BAXTER: That is a key to your statement?

A. Yes, sir

Q. Would you mind to prevent confusion, making a memorandum on there showing that in order to ascertain the number of head, multiply by 20 for cattle and 70 for hogs?

A. I will do so.

Q. It would help us very much.

A. While I have this statement before me, I wish to further say that the State of Iowa shipped into Chicago for the year 1904,

50,440 cars of cattle,
41,677 cars of hogs,
3,412 cars of sheep,
2,297 cars of horses,

A total of.... 97,826 cars.

During 1900, Iowa contributed	.....	117,789 cars,
During 1901,	.....	109,504 cars,
During 1902,	.....	96,704 cars,
During 1903,	.....	119,896 cars,
During 1904,	.....	19,826 cars.

Mr. SEVERANCE: That is the time of the strike?

A. Yes, sir.

Mr. BAXTER: The cars you were just reading off then include horses and all other kinds of stock?

A. Yes, sir.

2391 Q. Will you be kind enough to give us the number of cars of cattle, and number of cars of hogs for each of those years shipped to Chicago from Iowa?

A. Do you wish me to read it into the record?

Q. Yes sir, if you please, just at that point.

A. In 1900..... 55,910 cars of cattle,
55,632 cars of hogs,
4,356 cars of sheep.

Q. I don't care about the sheep.

Mr. DAWES: Can't you leave out horses and sheep in both those computations, because I think they confuse us.

A. Yes sir, I will.

Mr. SEVERANCE: Just put in cattle and hogs.

A.

In 1901..... 50,314 cars of cattle,
51,397 cars of hogs,
In 1902..... 46,533 cars of cattle,
43,632 cars of hogs,
In 1903..... 66,341 cars of cattle,
47,571 cars of hogs,
In 1904..... 50,440 cars of cattle,
41,677 cars of hogs.

Mr. SEVERANCE: Which market is that?

A. That is at Chicago from Iowa.

Mr. RANSOM:

Q. How much was it in 1905?

A. I haven't got the figures for 1905.

2392 Q. You haven't got the figures for the first seven months of 1905?

A. No sir.

Q. Then you do not supply Mr. Kenyon's statement with that fact as to the first seven months, the origin of stock coming in to Chicago during the first seven months of 1905, you don't supply that with your statement?

A. I will supply Mr. Kenyon with the information.

Q. I thought it was in that statement.

Mr. COWAN: No.

The WITNESS: No, sir.

Mr. COWAN: He said it was not in that statement, the first seven months of 1905.

Mr. BAXTER: Can you get that information by telephone, or otherwise, so as to put it in to the record here?

A. For 1905?

Q. Yes, cattle and hogs from Iowa received here at Chicago up to this date?

A. The only way I can obtain the information is from the statistician of the Union Stock Yards & Transit Company. They may not have that written up yet for the seven months. If they have got it, I can get it.

Mr. SEVERANCE: They can write it up between now and next Wednesday, can't they?

A. I should think so, yes sir.

Mr. COWAN: They can if they will.

2393 Mr. DAWES: They got you this, they might be willing to get you the other.

Mr. COWAN: No, they didn't, most of it was written up by him and he brought it down to date.

The WITNESS: This is my private statement.

Mr. SEVERANCE: If you would tell them you would subpœnae one of their men in here with that information, I think that would induce them to make it up.

Mr. COWAN: We can get it in a few days.

Mr. RANSOM: When Mr. Kenyon testified, he said they would not furnish that information, Mr. Tomlinson volunteered the statement that he would furnish that information and we dropped it there and did not subpœnae anybody for that reason.

Mr. SEVERANCE: It may not appear as you want it (Addressing Mr. Cowan).

Mr. COWAN: There is nothing to controvert about it, there is no objection to our getting it if we can get it.

Q. Now, Mr. Tomlinson, answer the other questions I asked you relative to the movement of live stock from easterly in to the Missouri River, from Iowa and Missouri and other points.

A. The combined annual receipts of live stock at Kansas City, South Omaha and South St. Joseph, from points east of the

2394 Missouri River during the years 1897 to 1904 inclusive, as follows:

During 1897, 25,835 cars,
1898, 37,266 cars,
1899, 35,394 cars,
1900, 43,657 cars,
1901, 62,298 cars,
1902, 55,387 cars,
1903, 56,518 cars,
1904, 50,946 cars.

This does not include receipts into South Omaha from points on the A. T. & S. F. Railway east of the Missouri River, nor does it include any live stock driven in to these three markets, from points east of the Missouri River; neither does it include receipts at Sioux City from points east of the Missouri River.

Q. Will you please file that statement as an exhibit to your testimony?

A. Yes, sir.

(The document referred to by the witness was filed as a part of his testimony, marked "Tomlinson Exhibit No. 8.")

Mr. DAWES:

Q. You have not stated Sioux City—you said South St. Joe.

A. It includes the receipts at Kansas City, South Omaha and South St. Joseph. It does not include Sioux City because

2395 I did not have accurate enough information or data on which to make the statement up. The statement is com-

piled from the official records of the stock yard companies at these points, and the Sioux City record does not show any segregation of receipts from points east and west of the Missouri River. Including Sioux City there probably should be added to these figures——

Mr. SEVERANCE: Now, is this mere speculation on your part? You say you have no figures on which to base it?

A. It is an opinion based on my general knowledge.

Mr. SEVERANCE: It must be a mere guess.

The COURT: You didn't think enough of your opinion to put it in the statement, so I guess you need not give it.

A. The statement is compiled from the actual figures. I was giving an estimate on Sioux City. I can give Mr. Kenyon's figures on Sioux City, which perhaps, may be——

Mr. SEVERANCE: They are already in, there is no use spending time on that.

The COURT: Yes, they are in.

Mr. COWAN: Just read that for the purpose of the record at this point.

Mr. SEVERANCE: It is already a part of the record.

Mr. COWAN: It would be consecutively for the whole markets if he now states it, what is Mr. Kenyon's statement?

The COURT: For Sioux City only, go ahead.

2396 A. Sioux City received from the State of Iowa during 1904, 58,410 head of cattle, and 386,035 head of hogs.

Mr. RANSOM: That is all we want.

Mr. COWAN:

Q. If you haven't already done so, state why these cattle from the various points southwest of the Missouri River in the States and Territories which you have mentioned, States of Colorado and Wyoming, do not move to Chicago but stop at the Missouri River.

Mr. SEVERANCE: Your Honor, he has given the rates and I don't think his opinion is proper.

The COURT: Let him give his opinion, he has studied this matter a great deal.

A. Largely on account of the adjustment of rates on live stock and its product.

The COURT: Well, how much of it?

A. It will be impossible to say, to give any mathematical percentage of the effect of the adustment of those freight rates. Undoubtedly, the enlargement of the packing facilities at the Missouri River market have something to do with it, as well as the adjustment of freight rates. Perhaps the enlargement of the facilities at the Missouri River might be dependent upon the freight rate. You cannot ascribe the result to any one particular cause, but among the causes——

2397 The COURT: Are there better packing houses and better facilities at Kansas City, St. Joe and Omaha than they have further north?

A. Have they any better facilities?

Q. Yes, at St. Joe, Kansas City and Omaha, they are three pretty good points right there near together.

A. Yes, sir.

Q. Wouldn't that account a good deal for the cattle coming there from the southwest?

A. Certainly, nearness of the market has something to do with the drawing of the stock to those markets.

Q. And the facilities, will not that account for the fact that cattle come from the southwest and do not come from the northwest to those points, rather than the rates?

A. The natural route from the southwest is to those markets; well, it would be perfectly natural for cattle to move from the southwest to Kansas City, St. Louis, or St. Joe for example, but owing to the location of the railroads serving the northwest, it is not natural for live stock to go in to Kansas City from Montana for example.

Mr. COWAN:

Q. How is it at Omaha?

A. The territory served by the B. & M., it is natural for the Montana stuff to go in to South Omaha because the B. & M. operates through South Omaha, coming on its way to Chicago from Montana.

2398 Mr. SEVERANCE: That don't enable Montana to get to Omaha, the B. & M. reaches Montana at Billings, and there is a large amount of stock country east of Billings that naturally comes to St. Paul?

A. Yes, sir.

Q. Doesn't the matter of shrinkage have a good deal to do with the stuff stopping at these points?

A. No doubt it does have a great deal to do with it, the shrinkage, the less expense of marketing—in other words, it is expensive for a shipper—the incidental expenses of him coming on further, have a little to do with the thing; but the freight rate adjustment, that is, the rate on which the packer can move his stuff for example, from the Missouri River as compare- with what the live stock man will have to pay through on the balance of the rate, or proportional rate is such that he is almost compelled to stop at, and sell to the packer at that point, unless the rate on live stock is approximately around 11 to 12 cents. Wherever it is more than that——

Mr. RANSOM: What is the rate from Billings to the Missouri River?

A. I think it is 36 cents.

Q. And what is it to Chicago?

A. Forty-eight.

Q. Forty-eight. And coming from Billings, the live stock man would not need to go to South Omaha at all, the through
2399 freight goes through Plattsmouth, 20 miles south of South Omaha?

A. If it is billed through, it would not go there unless he wanted it to.

Q. That is where the bridge is, Plattsmouth, about 20 miles below South Omaha?
A. Yes sir.

Mr. COWAN:

Q. I think all that will come on cross examination.
Mr. RANSOM: I know, but I wanted to ask it while he was here on that point.

Mr. COWAN:

Q. At this point I would like you to state whether in your opinion there is an advantage in the rate adjustment, and explain as nearly as you can the amount of the advantage to the shipper of the dressed meat and state whether in your opinion it is reasonable or not.
Mr. SEVERANCE: Now, if the Court please, he has been all over that except the last thing, which is his opinion on the reasonableness of it.
Mr. COWAN: The gentleman asserts that I have been all over one thing and another, and when the record is produced the thing isn't there, and then they say in argument to the Court, why didn't you testify to it.
The COURT: I would suggest that you divide the question, drop off that first part and get at that later.

2400 Mr. COWAN:

Q. State whether or not the rate adjustment gives an advantage to the shipper of the dressed meat product and packing house product?
A. Yes sir.
Q. What is that advantage?

Mr. DAWES: He said 175 per cent., that is his testimony

A. The advantage would be represented by the difference between 100 and 175 per cent.

Mr. COWAN:

Q. Why?
Mr. DAWES: I submit, your Honor, he has been all over it and explained it once and given in detail the reason, have you not Mr. Tomlinson?
A. Not at all points or in all aspects.
The COURT: Let him answer.
A. In other words, for the shipper of live stock to be afforded the benefit of a world-wide competition, his rates so far as compared with the rates on the product should be on the basis of, the product 175 per cent. and the live stock 100 per cent. That would put them both on a commercial parity. Take for example, a concrete example such as Cedar Rapids. The rate on packing house product from Cedar Rapids to Chicago is 13½ cents. That is also the rate on fresh meat. The rate on cattle from Cedar Rapids to Chicago is 21 cents,

and on hogs, 18½ cents. A shipper of live stock located
2401 at Cedar Rapids, is, by reason of this present adjustment almost forced to sell his stock to the slaughterer at that point, because the slaughterer can market the product so much less relatively than the shipper can ship the live stock for example, to Chicago. There may be an advantage, a seeming advantage to the shipper or the locality, by reason of this product rate, but it is an advantage which the shipper is not able to enjoy because he does not slaughter his own stock, and he can secure a part of the advantage only through the medium of the packer at that point. That is true also of, or applies as well to the Missouri River markets and South St. Paul, all these interior Iowa points, and to points in Kansas or Nebraska where the rates on the product are also less than on the live stock.

Q. Have you got a statement in your hand there which shows the relative difference. I see you had something in your hand.

A. Yes sir, I have a statement showing the rates on live stock to Chicago, Illinois, from Ottumwa, Des Moines, Marshalltown, Cedar Rapids, Boone, Iowa Falls, Oskaloosa and Mason City; also the rates on packing house products and fresh meats and the proportional rate on packing house products from those points to the Mississippi River.

Q. Please file that statement as an exhibit to your testimony.

2402 (The document referred to was filed as a part of the testimony of the witness, marked "Tomlinson Exhibit No. 10.")

2401a Ex. 10.

To Chicago, Ill., From—	Cattle.	Hogs.	Packing house products.	Fresh meats.	Proportional on P. H. P.
Ottumwa..... Ia.	22	21	16	18	5
Des Moines ..... "	22	23.5	18.5	18.5	7
Marshalltown.... "	22	21	16	16	5
Cedar Rapids.... "	21	18.5	13.5	13.5	4
Boone..... "	23	23.5	....	....	7
Iowa Falls..... "	..	....	....	..	7
Oskaloosa.. ..... "	22	21	....	....	5
Mason City..... "	..	....	...	...	7

Tomilson Ex. #10.
C. P. D.

A. I also have a statement showing the comparative rates on live stock and its product from certain Kansas and Nebraska points to Chicago. For example, take Fremont, Nebraska: The rate on cattle to Chicago is 30½ cents; hogs, 30 cents, and the rate on fresh meat is 23 cents, and on packing house products, 21½ cents.

Mr. DAWES:

Q. Is there any product shipped from any of those places, does any originate there?

A. Yes, some little.

Q. How much, which one?

Mr. SEVERANCE: Is there anything from Fremont to Chicago?
A. I could not state positively.
Q. You know there is not?
Mr. DAWES: There is not very much of it?
A. Not a great deal.
Mr. RANSOM: Mr. Tomlinson, will you explain the advantage that a packer has over the live stock man on a shipment from Billings to Chicago through Plattsmouth.
A. I think the 12-cent difference in the rate between the Missouri River and Chicago about equalizes the advantages, not quite. If the difference was about 11 cents, it would about equalize the advantage of the 18½-cent rate.

2403 Mr. SEVERANCE:

Q. You don't take into account the shrinkage in making that estimate?
A. Yes sir.
The COURT: In order to get the business then the Chicago packer has got to pay 7 or 8 cents more a pound than the people at the Missouri River point?
Mr. DAWES: Per hundred pounds?
The COURT: Yes, per hundred pounds, at the Missouri River points?
A. Yes sir, relatively.
The COURT: How much do they pay, what is the market difference generally.
A. Let me correctly understand your previous question.
Q. Well, there is a difference between the 11 or 12 cents and 18 or 18½ cents, of seven or eight cents?
A. Yes sir.
Q. Now, if they pay that 7 or 8 cents, the Chicago people pay that 7 or 8 cents, would that get the business, would they get the live stock business, if they paid 7 or 8 cents more than they are paying now, or more than the Kansas City people and the Omaha people pay?
A. I may be a little dense, your Honor, but I do not quite catch the point. The difference between the Omaha market and Chicago on Montana stuff might range 25 to 30 cents, perhaps more, perhaps a little less.
2404 Q. The ordinary difference is 25 or 30 cents, is it?
A. Yes sir.
Q. Well, if they paid this 7 or 8 cents more could they get the business, would the people ship from Montana clear through here?
A. Well, the bulk of the Montana stuff does come in to Chicago.
Q. Well, take some other place.
A. The difference between the rate from Billings to Chicago over the Missouri River, would be 12 cents. Now, I claim that somewhere between 11 and 12 cents equalizes the difference between—equalizes the 18½ or 20 cent rate on the product.
Q. Well, if the people here in Chicago at the Stock Yards paid

7 or 8 cents more for Kansas Stock, would they get that Kansas business instead of having the rate cut down, could they get the cattle by paying 7 or 8 cents more?

A. They would get a larger percentage of it, yes sir.

Mr. SEVERANCE: But you say it would be 25 cents more.

A. They would get a larger percentage.

The COURT: Go ahead.

Mr. COWAN:

Q. You may file those two statements as exhibits.

Mr. DAWES: I object to the filing of the statement as incompetent and not tending to throw light on the issues, the state-
2405 ment which makes a comparison between the live stock rate and the packing house rate from certain points like Fremont there, when it appears there is no packing house there.

Mr. RANSOM: Fremont, Nebraska?

Mr. DAWES: Yes.

Mr. RANSOM: There is no packing house there.

Mr. DAWES: There isn't at any of these.

The COURT: Let him file what he wants to.

Mr. COWAN: What have you got the rate for, you have got the rate published.

Mr. DAWES: To induce them to start them.

The COURT: Ask him a question Mr. Cowan.

(The statement above referred to by the witness was filed as a part of his testimony, marked "Tomlinson Exhibit No. —.")

Mr. COWAN:

Q. Have you got a statement of the rates from interior Iowa points and a map which shows the zone of the 23½-cent rate?

A. Yes sir.

Q. Just explain what that map shows, Mr. Tomlinson.

A. This is a map of the State of Iowa, published by Rand & McNally, supposed to be an official map. The blue pencil marks represent the distances east of the Missouri River that the 23½-cent rate on hogs applies.

2406 Mr. DAWES: The perpendicular blue marks. The circles have reference to some other matter.

The WITNESS: The rate on hogs of 23½ cents applies from all stations west of Chariton, Iowa, through to Omaha on the B. & M. and the 23½ cent rate on cattle applies from all stations west of and including Creston, Iowa, on the B. & M. On the C. M. & St. P. the eastern part of the 23½ cent zone is Madrid, Iowa, on hogs and Perry, Iowa on cattle. On the Northwestern the eastern point in the zone on hogs is Boone, and on cattle, Ogden. The 23½ cent zone on cattle applies to the following distances east of Omaha:

Via the Illinois Central..... 175 miles
Via the Rock Island..... 100 miles
Via the C. M. & St. P..... 116 miles
Via the C. & N. W..... 140 miles
Via the C. B. & Q..... 107 miles

An average of 126 miles.

Mr. SEVERANCE: What about the Great Western. You don't give the Great Western.

A. I didn't give the Great Western.

Q. No; how far east does it apply?

A. I will look it up. I did not purposely omit it, I simply didn't include it.

Q. I would like to have it in with the rest. Can't you turn to something there that will show it?

2407 A. I haven't the tariff before me of the Great Western; no, sir.

The COURT: Well, you can add that later.

A. On hogs, the 23½ cent rate applies:

By the Illinois Central..... 184 miles east of Omaha,
By the C. R. I. & P..... 164 miles,
By the C. M. & St. P..... 150 miles,
By the C. & N. W..... 152 miles,
By the C. B. & Q..... 166 miles,

An average of 163 miles.

This shows that substantially from half the State of Iowa, the 23½ cent rate on cattle and hogs to Chicago applies. Up around Sioux City and north thereof, the rates will average higher. The rate on cattle from Sioux City is 25 cents, and on hogs, 23½ cents, and in northwestern Iowa the rate will average higher than the 23½ cent basis. But on all this strictly intermediate territory in western and southwestern Iowa, or half way across the State, the zone, the 23½ cent rate applies in that zone.

So far as St. Paul is concerned, the rate of 25 cents on cattle, and 27 cents on hogs does not apply to as great a distance, from as large a zone as the 23½ cent rate applies from. In other words when you get 50 or 60 miles away from South St. Paul, the rates commence to decrease.

2408 Mr. COWAN:

Q. You have some blue pencil circular marks on that map, which please explain briefly.

A. The blue pencil circular marks are drawn with Ottumwa, Cedar Rapids and Marshalltown as centers and they show how far under the Iowa Distance Tariff the 10 cent rate on hogs would apply in to those markets.

Mr. DAWES:

Q. Well, what is the radius, it is the same radius to all stations, isn't it?

A. Yes, about 75 miles each way. The entire radius would be 150 miles.

Mr. SEVERANCE: That is the diameter?

A. Yes sir, the diameter.

Q. The radius would be half of that?

A. Yes sir, pardon me.

(The statement referred to by the witness as accompanied by a map, was marked "Tomlinson Exhibit No. 9, C. P. D." and the map referred to was marked, "Tomlinson Map-Exhibit No. 9, C. P. D." and both were filed as part of the testimony herein.)

Mr. COWAN:

Q. Have you a comparison of the rates to St. Paul, and from the same district to Chicago?

A. Yes, sir, I have a comparison of the actual class rates and the rates on live stock between St. Paul and Chicago, compared with the sched-

The 23½ cent rate on cattle and hogs and the 25 cent rate on sheep to Chicago applies generally from the western half of Iowa and Missouri; the exact extent of territory east of Omaha, for example, from which these blanket rates apply is:

Roads.	Distance in miles east of Omaha from which rate applies.		
	On cattle.	On hogs.	On sheep.
Via Illinois Central R. R.	175	184	161
Via C. R. I. & P. R. R.	100	164	100
Via C. M. & St. P. Ry.	116	150	120
Via C. & N. W. Ry.	140	152	152
Via C. B. & Q. R. R.	107	166	129
Average distance	126	163	136

These groups do not apply as far east of Kansas City as east of Omaha, nor do the St. Paul rates of 25 cents on cattle and 27 cents on hogs and sheep apply as far south or east of St. Paul as in the case of Omaha.

Via the Chicago Great Western Railway the 23½ cent rate applies on cattle 139 miles and on hogs 244 miles, and the 25 cent rate on sheep applies 183 miles, east of Kansas City.

In the territory south of St. Paul, via the Chicago Great Western, the 25 cent rate on cattle applies 58 miles, the 27 cent rate on hogs 36 miles and the 27 cent rate on sheep 62 miles south of St. Paul.

2409 ule of the Illinois & Iowa Commission for the same distance.

Mr. SEVERANCE: I object to that as immaterial.

Mr. DAWES: I object to that.

The COURT: What is the objection?

Mr. SEVERANCE: The objection is, there is no such controversy in this case, and it does not make any difference whether the rates up there compare with the Illinois and Iowa Distance tariffs or not, the conditions are entirely dissimilar up there, and there is no basis for comparison.

Mr. DAWES: They are both State rates, and we are investigating interstate rates.

The COURT: Let them go in.

Mr. SEVERANCE: They go in subject to our objection as incompetent and immaterial.

The WITNESS: The statement shows that on the class rates, that is the merchandise classes, the first four classes and the car load classes, in all being 10 classes, the rates very closely approximate each other. That is on first class, from Chicago to St. Paul, it is 50 cents. The Illinois Distance rates for 400 miles would be 60.16 cents. Under the Iowa distance tariff for 400 miles, it would be 61 cents. Take Class A——

Mr. DAWES: What do we care about those? Pardon me again your Honor, the difference in classes?

2410 Mr. SEVERANCE: These are in the wrong direction.

The WITNESS: If you will wait until I get through, I think you will see the pertinence in the comparison.

The COURT: All right, go ahead.

A. Class A between Chicago and St. Paul, the published rate is 25 cents; the Illinois Distance Rate for 400 miles, would be 24.81 cents; the Iowa Distance rates for 400 miles, would be 27.5. On cattle the rate between Chicago and St. Paul, the published rate is 25 cents; the Illinois Distance rates for 400 miles is 16.5 cents; the Iowa Distance rate for 400 miles is 22.89 cents. On hogs the rate between Chicago and St. Paul is 27 cents; the Illinois Distance rate for 400 miles is 20 cents; and the Iowa Distance rate for 400 miles is 21 cents.

This shows that while the rates between Chicago and St. Paul for similar distances closely approximate the rates in the Iowa and Illinois classification on all the classes, yet they are vastly dissimilar on live stock in that the rates from St. Paul are very much higher than the rates for similar distances shown in the Iowa and Illinois schedule of rates.

Mr. SEVERANCE: Discriminate? I don't see what you mean by that in that connection.

Mr. COWAN: I didn't understand he used the word "discriminate."

Mr. DAWES: Your Honor will remember that the Supreme

2411 Court has held expressly in the case of Smith against Ames that for the purpose of determining what an interstate rate should be, you cannot compare it with a State rate. Now, these com-

parisons are just exactly the comparisons which are inhibited by that decision, and it does not seem to me that we ought to incumber the record with it.

The COURT: I think we will let it stay in and all of this will come up on argument. Is there anything else, Mr. Cowan?

Mr. COWAN: File that as an exhibit, Mr. Tomlinson.

A. Yes sir.

(The statement referred to by the witness was filed as part of his testimony, marked "Tomlinson, Exhibit No. 12, C. P. D.")

2410*a* Below is a comparison of the actual class and live stock rates between St. Paul and Chicago with the schedules of the Illinois and Iowa Commissioners for 400 miles.

Between—	Merchandise. (Class.)				Carloads. (Class.)							
	1st.	2nd.	3rd.	4th.	5th.	A.	B.	C.	D.	E.	Ctl.	Hgs.
Chicago & St. Paul.....	60	50	40	25	20	25	20	17	14	13	25	27
Illinois distance rates for 400 miles.....	60.16	49.82	39.48	31.02	20.12	24.81	18.10	15.37	12.55	11.30	16.5	20
Iowa distance rates for 400 miles.....	61	45	35	30	25	27.5	22.5	20	17.5	16	22.89	21

Tomlinson Ex. #12, C. P. D.

Q. What other rate comparisons have you Mr. Tomlinson?

A. I have a statement showing the rates on cattle, car loads to Chicago, Illinois, from stations on the Illinois Central Railroad in Iowa, compared with rates on cattle for similar distances as follows:

Mr. SEVERANCE: Similar distances, where?

A. Similar distances, as follows. I will explain that.

Mr. SEVERANCE: But state where so we can make objection.

Mr. COWAN: That is what he is going to do, as follows, then go on to state what it is.

A. The rates on cattle to Chicago from Illinois Central
2412 *Central* stations in Illinois.

The COURT: Go ahead, you can object—I will assume you have objected to it.

Mr. SEVERANCE: Then this goes in under the assumption that we have objected to it as incompetent and immaterial.

The COURT: Yes.

The WITNESS: Schedule of rates of the Railroad Commission of Iowa on cattle for the same distances; schedule of rates of the Illi-

nois Commission for the same distances, and agreed rates on cattle applicable in Central Freight Association territory. But this shows for example, the rate, take from Dyersville, Iowa, on the Illinois Central, 212 miles from Chicago. The rate on cattle is 18 cents. From Edgewood, Illinois, 214 miles from Chicago, the rate is 12.6 cents. The schedule rate of the Railroad Commission of Iowa for the same distance would be 16.47 cents, and the schedule of the Illinois Commission would be 12.6 cents; and the agreed rates applicable in Central Freight Association territory is 13 cents.

Mr. SEVERANCE: There is no need of reading them all, if he has got fifty of them, there is no need of reading them.

A. I was just reading one to give you a fair sample.

Also on this sheet is a statement of the rates on hogs to Chicago from Illinois Central stations in Iowa compared with the
2413 rates from Illinois in to Chicago on the Illinois Central and with the schedule rates of the Illinois and Iowa Commission and agreed rates in Central Freight Association territory. I will take Ackley. The rate in here is 23 cents. For a similar distance out in Illinois, it is 18.4 cents. The schedule of the Iowa Commission for the same distance would be 19.13 cents, and under the Illinois Commission, it would be 18.4 cents; and the agreed rate for Central Freight Association territory would be 15 cents.

This takes the line of the Illinois Central Railroad from Dubuque running directly west to Sioux City and the comparison is, with the main line of the Illinois Central Railroad running south from Chicago. The rates published by the Illinois Central Railroad in Illinois are practically the schedule of the Railroad & Warehouse Commission.

The COURT: We will take a recess until two o'clock.

Whereupon a recess was taken until 2:00 o'clock p. m. of the same day Friday, October 6, 1905.

2414 FRIDAY, *October* 6, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon T. W. TOMLINSON, resumed the stand, for further Direct Examination by Mr. Cowan, and testified as follows:

Q. Mr. Tomlinson, has your attention been called to a correction with respect to the rate from Cheyenne to Omaha?

A. I stated this morning that the rate from Cheyenne, Wyoming, to Omaha, was 29 cents, and 49 cents to Chicago. I desire to correct that statement by stating that the rate to Chicago is 48 cents, instead of 49 cents, making a difference between the two rates of 19 cents, instead of 20 cents, as I stated this morning.

Q. You assume that from what Mr. Crosby has said to you, that 48 cents is correct?

A. Yes, sir.

Q. Well, whatever the tariff shows, of course, would be right. When you were introducing and explaining statistical data with respect to the comparison of rates on the Illinois Central railroad, I will ask you whether you have similar comparisons for the
2415 Chicago & Northwestern and the Chicago Great Western, and also whether you have sundry comparisons of rates from points east of the Missouri river to Chicago?

A. Yes, I have.

Q. Now, just please introduce each one of the exhibits that you have, with as short an explanation as you can give, but which will yet indicate somewhat of what the exhibit shows.

A. This is a statement of the rates on cattle in carloads to Chicago, Illinois, from stations on the Northwestern railway in Iowa, and from stations on that line and the Chicago, St. Paul, Minneapolis & Omaha Railway, in Wisconsin and Minnesota, with the distance to Chicago shown, compared with rates on cattle for similar distances, the compared rates being schedule rates of the Railroad Commission of Iowa, and the Railroad Commission of Illinois, the rates applicable in Central Traffic Association territory, the rates on cattle to Omaha, from Kansas and Colorado points on the C. R. I. & P. and the rates on cattle to Kansas City from Kansas and Colorado points on the Union Pacific.

Mr. DAWES: Now, if your Honor please, if your Honor has given due consideration to the objection which was made this morning to this testimony, I have nothing further to say; but it seems to me that it is so far outside of the progress of this investigation,
2416 and so far inadmissible, that I feel it my duty to again call your Honor's attention to the character of the comparison. In the first place, he is introducing exhibits and endeavoring to make a comparison between these voluntary rates made by the Railroad companies, and the Illinois Distance Tariff. I called your Honor's attention this morning to the fact that the Supreme court has held in the case of Smith *versus* Ames, that there can be no

comparison between a State rate and an Interstate rate, and I think counsel for the complainant will admit that.

Mr. COWAN: I don't admit that. I admit that the Supreme court said that they could not take into consideration the earnings from the state rates and interstate rates in order to determine the reasonableness of a rate.

The COURT: The question in this case is a question of reasonableness.

Mr. DAWES: They held this; that, in order to determine whether a fair profit was made, there should be no comparison between—well, you remember that.

The COURT: Yes, I understand that.

Mr. DAWES: That is the point I want to urge right now. In order to make these comparisons effective, he must assume, and your Honor must assume, that the Illinois Distance Tariff is a tariff of reasonable rates. Now, our statute does not make that so.
2417 It makes them *prima facie* evidence of their reasonableness, and that alone.

Each rate stands, therefore, not only upon the suggestion of the Commission itself, but upon its merits. Now, your Honor will force us, if this comparison is introduced, to discuss the reasonable character of every rate referred to; that is, if we deem it advisable so to do and to take your Honor's time for that purpose. Then we will have to discuss the reasonable character of the rates which he takes as a basis of comparison.

It seems to me that it is leading your Honor into a realm which ought not to be invaded by this discussion. What light can your Honor obtain from this comparison, unless your Honor assumes that the Illinois Distance Tariff is a tariff of reasonable rates? We are not obliged to admit that in this or any other tribunal.

The COURT: There will be no harm in letting it go in, the same as a great many other matters have gone in.

Mr. SEVERANCE: Will your Honor wait until we can call your attention to that decision?

The COURT: I have read that.

Mr. DAWES: I do not wish to take any further time.

The COURT: I am not passing upon the competency of this evidence. Let it go into the record and these gentlemen may want to use it for something. I have not held it to be competent.
2418 Mr. DAWES: I don't think they ought to have the right to use it.

Mr. SEVERANCE: They cannot use it, it is incompetent.

The COURT: Well, put it in the record.

Mr. COWAN: Please file that statement as a part of your evidence.

Mr. LYNDE:

Q. Have you a copy of that?

A. No, sir. Do you wish me to make any comment on this?

The COURT: He just said to file it.

Mr. COWAN:

Q. Have you a further comparison of rates of the Chicago Great Western?

A. I have a further comparison of rates on hogs from stations on the Chicago & Northwestern Railway in Iowa and in Wisconsin and Minnesota, compared with the schedules that I have referred to, and compared, also with the rates of the Missouri Pacific Railway from Kansas and Colorado points to Kansas City.

I have also a comparison of rates on cattle in carloads to Chicago, Illinois, from stations on the Chicago Great Western Railway, compared with the rates of the Commissions I have referred to, and the agreed rates in the Central Freight Association territory; also with the rates of the Northern Pacific Railway to St. Paul, and the Atchison, Topeka & Santa Fe Railway to Kansas City.

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2419 I have also a statement of rates on hogs to Chicago, Illinois, from stations on the Chicago Great Western, compared with the schedules already referred to and with the agreed rates in Central Freight Association territory.

Mr. SEVERANCE: I desire to object to that, as incompetent and immaterial.

The COURT: Let them go in the same as the others.

Mr. DAWES:

Q. May I ask what you mean by agreed rates?

A. Rates published as applicable in the Central Freight Association territory.

Q. Well, do you think you should use the word "agreed"?

A. Well, it is probably unnecessary to use the word agreed, but they are the rates prevailing in that territory, according to the distance schedule issued by all the interested lines. In some cases the rates in the Central Rate Association territory are less than those agreed rates.

These agreed rates apply as a maximum, and it is a sort of a distance tariff authorized in the Central Freight Association territory, but applied as a maximum. It is, however, closely conformed to.

I have also a statement of the rates on hogs to St. Paul from stations on the Chicago Great Western Railway in Minnesota and Iowa, compared with rates on hogs to Chicago from equally
2420 distant points in Illinois, Iowa and Minnesota.

Mr. SEVERANCE: I object to that, specifically, on the ground that it already appears that the rates on the Chicago Great Western in the state of Minnesota, to St. Paul, were not made by the Railroad Company, but were made under the direction of the State Railroad & Warehouse Commission of that state, and therefore they can form no basis for a comparison whatever.

The COURT: Let it go in, subject to the objection.

The WITNESS: A statement of rates on cattle to South St. Paul from stations on the Chicago Great Western in Minnesota and Iowa, compared with rates on cattle to Chicago from equally distant points in Illinois, Iowa and Minnesota.

Mr. SEVERANCE: The same objection, it is incompetent, irrelevant and immaterial.

The COURT: It is the same kind of a document as the last one, and it may go in subject to objection.

The WITNESS: A statement of rates from various points in the territory east of the Missouri river, said points being located in Iowa and Missouri, and from some Minnesota and Wisconsin points, all rates being to Chicago, and showing the various changes in the rates since 1888 down to the present time.

2421 This statement shows that from the Iowa and Missouri points shown there has been no change in those rates in the past fifteen years, except that the rate on hogs from western Missouri

and Iowa points was advanced December 1st, 1894, from 22 cents to 23½ cents.

Mr. COWAN:

Q. Have you made any further comparison of rates that you have not given?

A. No, sir.

Mr. SEVERANCE:

Q. Are these rates still in force? You say they were in force January 1, 1903. Are they still in force?

A. Yes.

Q. These are all existing rates?

A. Yes. There might be a change here and there, but I did not detect any, and I checked the statement.

Mr. COWAN:

Q. Have you any statement relative to the shipments of dressed meat, the increase or decrease in the proportionate amount of dressed meat shipped from the Missouri river to Chicago or via the Chicago gate-way?

A. No, sir, I have no statement showing the increase or decrease, the increase or decrease in fresh meat shipments from those western points, except the statement published in the "Monthly Summary of Commerce and Finance of the United States," published
2422 by the department of Commerce and Labor, at page 229, which shows that the receipts at Chicago for the year 1903 of beef, canned meats, cured meats, dressed beef, dressed hogs, hides, lard and pork, amounted to 287,906,854 pounds. For 1904 the receipts were 348,376,515. For 1905 the receipts were 524,291,349 pounds.

Q. Shipped from where to where?

A. Those were receipts at Chicago, from all points.

Q. Now, from what points does Chicago receive such shipments?

A. From all western packing points.

Q. You say you have no further data prepared with respect to the matter of rates?

A. No, sir.

Q. Have you any further data prepared with respect to the matters pertaining to the volume and direction of the traffic?

A. Do you refer particularly to live stock?

Q. Live stock, or the packing house products and dressed meat?

A. Well, the direction of the bulk of fresh meat and packing house product manufactured on the Missouri river, and that manufactured in interior Iowa, is east bound across the Mississippi river. I have stated that I think substantially 75 per cent. of it went east bound.

The movement of live stock is generally east bound with the exception of the movement west bound into Missouri river points, and the movement north bound or perhaps west bound into St.

Paul or interior Iowa points. The general direction and
2423 the natural movement, according to my opinion, would be east bound for live stock, because the point of consumption is in the east.

Q. And the production in the west?

A. Yes.

Q. How is it in regard to the movement of traffic into Chicago, in any movement east bound into Chicago?

A. The movement of live stock east bound—West bound into Chicago?

Q. West bound, I mean.

A. From Eastern states that is very slight. Probably it would not exceed over two per cent. of the total receipts, whereas the movement west bound into the Missouri river markets, for example, Kansas City, St. Joseph and South Omaha, would approximate for the past five or six years, from 25 to 30 per cent. of the total receipts at those markets, varying, of course, according to the year.

Q. How is the rate adjustment on live stock, packing house products and dressed meats from Chicago east bound?

A. The rate on cattle from Chicago to New York is 28 cents, on fresh meats 45 cents. The rate on hogs is 30 cents, and the rate on packing house products 30 cents, and on cured meats in bulk, 35 cents. Substantially the same differences obtain to all other eastern points, as they are generally based on New York.

Q. Well, now, take the rates on live stock from points 50 or 75 miles east of Chicago. Are those rates the same to New
2424 York and Pittsburg and Buffalo, or do the rates scale down as you go eastward?

A. The rates in the territory east of Chicago are adjusted upon a scale so that if you go 50 miles east of Chicago, the rate to New York is less than from Chicago to New York. The rates from, say, Indianapolis territory to New York is 96 per cent. of the rates from Chicago.

All the territory in the Central Freight Association, all the points in the Central Freight Association, (which is the territory in Indiana, Ohio and Michigan), are adjusted on a percentage scale and the rates generally increase with distance.

Mr. Dawes:

Q. Let me ask you right there, where do the Indiana and Ohio cattle, if there are any, go?

The Court:

Q. And Michigan?

A. There are very few cattle from Michigan that come into the Chicago market.

Mr. Dawes:

Q. Can you tell what those 2 per cent. that you spoke of, what that amounts to in numbers, with reference to the whole product of those states?

A. No, I could not say.

Q. Have you any figures on Indiana and Iowa, or can you give us a rough idea, generally speaking, of the number of cattle raised there, and hogs, I don't mean Iowa but Indiana and Ohio?

2425 It is given in the Price Current, that is the Government report of the number of live stock in each state. Of course that is a government estimate and accepted by some as correct, while others do not.

Q. Is the movement of cattle from those states east, to packing houses in the east, New York or Boston?

A. Yes.

Q. Or west to Chicago?

A. Nearly always east.

Q. Well, why?

A. Well, because the rate adjustment at Chicago is such that the shipper can with better—not with better advantage, but he has the option of shipping eastwardly, or coming in here on a parity, about a parity.

Q. Is there any difference between the situation east of here in those states, and in this 23½ cent belt?

A. Yes, there is a very material difference.

Q. Well, I would like to know what that is.

A. The rate east of Chicago is 41 cents on fresh meat, as against 28 cents on the cattle. Now, these rates closely approximate a commercial parity, whereas, in the Missouri river territory, the rates, for example, from the Missouri river are 18½ and 20, while from east of the Missouri river they are generally 23½ on cattle and the same on hogs.

Q. East of here, in Ohio, the rates are very much less

2426 on cattle to New York?

A. Yes, sir.

Q. How much is it from Chicago—from there back to Chicago, from those points westward?

A. Their rates are adjusted on the Central Freight Association scale, and—well, take the rate from Chicago to Indianapolis, it is about 10 or 11 cents.

Q. What is it from Indianapolis to Chicago?

A. About the same. By reason of the adjustment east of Chicago, and by reason of the fact that the packer on his product would have to pay a much higher rate to market the product in the east, therefore, he is not in the position of paying relatively as much for the live stock as would the man in Buffalo or New York.

Assume that the rate from an Indiana point was 26 cents to New York, and 11 cents in here. The shipper of live stock could ship his live stock to New York for 26 cents. If he came in here he would pay 11 cents and 45 cents on the product. Now, the difference between the 28 cents and the 45 cents measurably approximates the difference in shrinkage and other expenses.

Mr. SEVERANCE: You say the Indianapolis rate to New York is 96 per cent. of the Chicago rate?

A. Yes, sir.

Q. That would discriminate against the packer in Indianapolis, then, in favor of Chicago?

2427 A. How do you mean?

Q. You have been giving us Distance Tariff tables here figured on those distances, and it would discriminate very largely against Indianapolis in favor of Chicago, if they would have to pay 96 per cent. of the rate, isn't that so?

A. I don't think so, no, sir.

Q. You don't think there can be a discrimination in favor of Chicago in any way, do you?

A. Yes, I do.

Q. What part of the distance from New York is the distance from Indianapolis to Chicago?

A. Very little difference between Chicago and Indianapolis. Via the Pennsylvania lines I should say that it was possibly 100 miles—no, it is 180 miles less than from Chicago.

Q. About one-fifth of the distance, 20 per cent. of the distance, but the difference in the tariff is 4 per cent.?

A. Yes. Still, you take a direct line operating from Indianapolis compared with the direct lines to Chicago, the difference would be—the Air Line difference—the difference would not be as great as is represented, by 177 miles.

Mr. LYNDE:

Q. What does this 2 per cent. of the total receipts amount to in numbers?

A. I said two to three per cent., about 6,000 cars, in my estimation. I am referring to live stock strictly east of Chicago,

2428 not the stuff, for example, on the C. & E. I., a north and south line running in there.

Q. That comes from Indiana, Ohio and Michigan?

A. Eastern Indiana, Ohio or Michigan.

Mr. COWAN: Are you all through, gentlemen? I would like to get through with Mr. Tomlinson as quick as I can, but desire to accommodate you with all the questions you want.

Q. What was the method used to establish the relative rates on live stock and packing house products from Chicago and other Central Traffic Association territory to the markets in the east, New York, Boston, Pittsburg, Buffalo and other points?

Mr. SEVERANCE: That is objected to, unless it appears that he made the rate.

The COURT: I would like to hear that question. Will you read it, Mr. Reporter?

(The question was then read.)

The COURT: Used by whom?

Mr. COWAN: I mean by the people who did it, who put in the rate. Nobody else could do it except the railroads, that I know of. By some sort of method it must have been done and they must have done it.

The COURT:

Q. Do you know the method used?

A. I know the basis they desired to establish, and which
2429 they did establish, yes, sir.

Q. How do you know that?

A. From the fact that I was with the Central Traffic Association at the time they arbitrated this question of the relation of these rates on live stock and its product.

Mr. SEVERANCE: Well, then,——

The COURT: Does that apply to rates now in existence?

Mr. COWAN: Yes.

The COURT:

Q. Do you know how those rates were established, of your own knowledge? Not what anybody told you?

Mr. COWAN:

Q. The same rates have been in force for a great many years, haven't they?

A. Yes, the 45 cent rate on cattle, with a few exceptions.

Q. You mean on fresh meat?

A. On fresh meat. The rates have been in effect for a large number of years.

The COURT: Well, how do you think that is helpful, Mr. Cowan?

Mr. COWAN: I am just showing that it was the concensus of the judgment of the railroads who established those rates.

Mr. SEVERANCE: They are not these defendants.

Mr. COWAN: No matter whether they are these defendants
2430 or not. You cannot determine what is a reasonable rate or what a reasonable relation of rates is, except by comparison. There is not a railroad writer, there is not a writer on railroad economics, in the whole country that has not laid that down as being a fact.

Every witness who has testified before the Interstate Commerce Commission testified to that, and Mr. Stickney's evidence is here, which I will read, in which he states that he knows of no method except by comparison, to determine what a reasonable rate is.

Now, what comparison? Comparison with similar rates established for the same character of traffic in other parts of the country as well as in the same locality. A comparison with rates on other commodities. There is absolutely no limit to the comparison. There may be some limit to the similitude but otherwise there is none.

Out of Chicago to the east, on this large volume of traffic, taking in a part, indeed, of the same lines that are here, probably the Illinois Central,—but whether it takes in that road or not is immaterial, but, to establish that is a matter of information. It is a matter that tends to determine whether that relation ought to exist or not.

The longer that has remained established, the more probable it is that it is the correct relation of rates to establish commercially.

2431 How are you ever to determine what a reasonable rate is, or what a reasonable relation of rates is, except you take into consideration just such circumstances?

The COURT: The Supreme court has determined the rule as to reasonable rates, what that means.

Mr. COWAN: When you make an examination of that decision and read it closely, you will find that it is very far from being determined, if the Court will permit me to make the remark. I undertake to say that the most reliable method you could get to determine what a rate ought to be, is by comparison with other rates. Get as nearly similar circumstances as you can, in order to determine what a reasonable rate is, you must resort to comparison, for there is no standard of reasonableness and no standard of relative reasonableness anywhere established by any court or any statute or anywhere, that has ever been established by any traffic association or any railroad itself, or any combination of railroads.

That being so, I offer in evidence the fact that there has been established for a great many years a certain relation of rates between here and New York on these commodities where they move in large volume. Then I propose to show the method by which that was determined, how it was arrived at, for the purpose of showing that that ought to be the fair commercial relations of those rates in

2432 order to put parties who deal in the product of live stock, and in the live stock, on a commercial parity in the markets of consumption.

Mr. SEVERANCE: It pains me very much to read anything from the Supreme court of the United States that in any way differs from my learned friend's view of the law, but I would like to read a few lines from this decision: "The question is asked, are not the people of Nebraska entitled to as cheap rates as the people of Iowa? Of course, relatively they are. That is, the roads may not discriminate against the people of any one state, but they are not necessarily bound to give absolutely the same rates to the people of all the states, for the kind and amount of business and the cost thereof are factors which determine largely the question of rates, and these vary in the several states. The volume of business in one state may be greater per mile, while the cost of construction and of maintenance is less; hence, to enforce the same rates in both states might result in great injustice in one, while it would only be reasonable and fair in another. Comparisons, therefore, between the rates of two states, are of little value, unless all the elements that enter into the problem are presented. It may be true, as testified by some of the witnesses, that the existing local rates in Nebraska are 40 per cent. higher than similar rates in the state of Iowa. But it is also true

2433 that the mileage earnings in Iowa are greater than in Nebraska. In Iowa there are 230 people to each mile of railroad, while in Nebraska there are but 190; and, as a general rule, the more people there are the more business there is. Hence a mere difference between the rates in two states is of comparatively little significance." (64 Fed. 165.) In these views we concur, and it is

unnecessary to add anything to what was said by the circuit court on this point."

Now, has counsel offered to lay any foundation to this? Has he offered any testimony in that regard? Don't your Honor know, as a matter of fact, that there could not be a comparison between the rates which are in effect from the Missouri river and which are proper to be charged, and the rates along these great trunk lines from here to New York City? The products of the two parts of the country are different; the volume of traffic is different; the cost of the line is different.

Everything in the world that enters into this, the question of the cost of the service, and everything else, differs, one from the other. Before such testimony is admissible every element must be shown, as the Supreme court says. Now, if your Honor please, that is the view of the Supreme court.

2434 The COURT: The question here is a different one than in that case, because it is a question of discrimination.

Mr. COWAN: A question of the relative rates.

The COURT: If you go into this, they would have a right to prove that it was not true. I think that that would raise a false issue and therefore I sustain the objection.

Mr. COWAN: That is to say that the—what is the Court's ruling?

The COURT: Objection sustained.

Mr. COWAN: Now, what part of the testimony does that exclude? Does it exclude the fact that the relation of these rates——

The COURT: It sustains the objection to this question. That is what it excludes.

Mr. COWAN: In other words, your Honor excludes the evidence as to the manner in which the rate was established? That was what my question was.

The COURT: I simply sustain the objection to the question. You can figure that out and find out what that amounts to.

Mr. COWAN: That was my understanding of the question.

Q. What are the proper factors by which to determine the proper relation of rates between the two commodities, dressed meat and packing house products on the one hand, and live stock on the

2435 other.

Mr. SEVERANCE: The same objection would apply to that.

The COURT: He is an expert. You gentlemen, on your side have had your witnesses give their notion of how to fix a rate, and he has a right to give his.

Mr. SEVERANCE: I object to it, as incompetent.

The COURT: Certainly, we will take them all for what they are worth. The objection is overruled. Read the question, Mr. Reporter.

(The pending question was then read.)

A. The value of the service and the cost of performing it. In the value of the service comes in, of course, the question of the relative value of the commodities. The value of the service is the larger factor to be considered.

Mr. COWAN:

Q. You have explained this morning in your testimony matters pertaining to the placing of the shipper of the live stock and the product on a relative commercial parity. To what extent should that operate as a factor, and why?

Mr. DAWES: I think that, your Honor, is a question of law, what sort of parity should exist between persons and localities. It is a matter for the judgment of the Court after hearing the facts in the case.

The COURT: I have permitted him to answer the last question. Now, is there anything else that you want to add to that, if so,
2436 go ahead.

Mr. SEVERANCE: What is the ruling on this question?

The COURT: Well, I will sustain the objection, but I will let him finish his answer to the other question.

Mr. SEVERANCE: I thought he had.

The WITNESS: In the value of the service, of course, is comprehended the relation of the rates so that a shipper of live stock can take advantage of the widest competition.

Unless rates are adjusted so that a live stock shipper is able to take advantage of this widest competition, he is, in reality, at the mercy of the near by point and the slaughterers at that point.

To put the matter more explicity, I will refer once more to the Cedar Rapids situation. An owner of live stock who might want to ship from Cedar Rapids to Chicago, would have to pay on cattle, 21 cents. The packer there, if he slaughtered the cattle—bought and slaughtered the cattle—could market his product at Chicago at 13½ cents. The product would be 70 per cent. of the live weight of the animal.

Under this adjustment, if the owner of the live stock was to conserve his best interests, and if conditions were ideal, he would be compelled to sell to that Cedar Rapids man, simply because
2437 the Cedar Rapids man, by reason of the advantage of the freight rate, could afford to pay him more than he could get by shipping, for example, on to Chicago or Milwaukee.

The shipper does not have that advantage, because he does not himself slaughter the stock. There is an advantage to the slaughterer and the live stock man cannot avail of that except through the medium of the slaughterer, and the slaughterer generally pays him just enough to secure his traffic.

The result is that the live stock man, instead of having the benefit of a wide competition, has only a restricted market. That applies with equal force to all other markets west of Chicago.

Mr. DAWES:

Q. You selected Cedar Rapids. They don't slaughter any cattle at Cedar Rapids, do they?

A. Some few, a little. I selected that as representative of my proposition.

Q. If the slaughterer has such an advantage, why don't they slaughter them there?

A. I presume Mr. Sinclaire could answer that better than I can. The situation is there, and the advantage is present. It is waiting for some one to avail himself of it.

Q. And it is an obvious advantage, as you have described it?

A. Undoubtedly it is an obvious advantage.

2438 Q. But they do not consider it sufficient to avail themselves of it?

A. Well, apply the comparison to hogs. I selected cattle——

Q. I just wanted to ask you why that advantage was not availed of, if it was so obvious.

Mr. SEVERANCE: If he is going to talk about Cedar Rapids, he had better talk about some point outside of that from which they ship cattle.

The COURT:

Q. Is there anything in the relation between live stock and the product thereof that should require that they should be alike, in addition to what you have stated?

In other words, is there anything in the suggestion of Governor Fifer in his opinion, that there seems to be some mysterious relation there that requires that the rates should be the same?

A. I think they ought not to be the same. I think the rates on the product ought to be much higher than on the live stock.

Mr. SEVERANCE: Nobody agrees with the Commission.

The COURT:

Q. What is there in the relation that requires that they want to be higher than the other?

A. Simply in order to afford the live stock man the benefit of the widest competition.

2439 Q. That would come under the head of discrimination, necessarily, why does it?

A. Why does it come under the head of discrimination?

Q. Yes, simply because one is raw material and the other is finished product?

A. Because they are both competitive in the markets of final consumption, and if they are competitive, rates should ideally be so adjusted that the shipper of live stock could avail himself of that competition.

If they are so adjusted with the rates on the product as they are today, between the Missouri river and Chicago, so that they are less than on the live article, he has not the competition to which he is entitled, but he is restricted to the market nearest to him.

Q. What competition is he entitled to?

A. He is entitled to the competition arising from the consumptive demand.

Q. The shipper would have all the rates very low, then, and that

would give him more competition, but what is he entitled to without discrimination?

A. He is entitled—based on the cost of the service—he is certainly entitled to that, to have the rates—if the rates were made on the cost of the service.

Mr. SEVERANCE: I cannot hear a word you say.

The WITNESS: Based on the cost of the service, if rates
2440 were so made, he would be entitled, he would be entitled to a less rate on the live stock than on the product.

But that is a minor factor in the entire consideration of rates, the most important factor being the value of the service, and in that I include the factor of giving him as wide a competition for his products as is possible, and he can only have that competition by putting him on a commercial parity with the man who slaughters his product and that commercial parity is represented in the difference between, say the rates on live stock at 100 per cent. and the rates on beef, 175 per cent. thereof.

Mr. COWAN:

Q. Now, if the rate between here and New York, Buffalo and Pittsburg, was adjusted so that it was lower on the dressed meat and packing house product, or as low as it is on the live stock, would the live stock be shipped at all?

Mr. SEVERANCE: I object to that, as immaterial.

The COURT: Let him answer.

A. It is doubtful whether there would be any live stock shipped east of Chicago, from Chicago to Eastern markets, and certainly not in the present volume, if the rates on the product were less than on the live stock.

Mr. COWAN:

Q. Why?

A. The advantage would be so patent that no live stock
2441 shipper could operate.

Put it in this way: Take cattle, for example, they dress 70 per cent. That is, the product would be 70 per cent. of the live weight of the cattle. Seventy per cent. of a 1,000 pound steer would be 700 pounds. If one could ship 700 pounds at 28 cents, while the live stock man had to pay 28 cents on a thousand pounds in addition to the shrinkage, and so forth, it would be very plain that he could not operate.

As it is now, Chicago ships east bound, approximately 40 per cent.—it does not ship east bound—but ships 40 per cent. of her cattle either for feeders or as fat cattle ready for consumption. Of that 40 per cent. probably 200,000 are feeders; the balance are fat cattle ready for slaughter.

If rates were adjusted east of Chicago so that the rate on the product was less than on the live article, it would practically wipe out the shipment of cattle east bound for slaughter. There might be a few shipped for export, but they would move under a great dis-

advantage compared with the packer at Chicago. In that way, if rates were adjusted east of Chicago as they are west of Chicago, the shipper in here would not have the benefit of the export buyers or of the independent eastern buyers, because the advantage which would accrue to the local packer would be so much that no shipper
2442 could operate against it. That is true also on hogs.

Explaining further, Chicago ships a much larger percentage of hogs east bound than any other market, and, also, a much larger percentage of her fat cattle. She is able to do that simply and solely because of the adjustment of these freight rates.

Kansas City ships a large number of cattle and so does Omaha, but the bulk of them are as feeders, while Chicago is not a large feeder market.

Chicago received last year, to be exact, 3,259,185 head of cattle. She shipped 1,326,332 head of cattle. Of that percentage, probably,—of the shipments, probably not to exceed 200,000 to 250,000 head were feeders. The balance were fat cattle ready for slaughter.

Mr. LYNDE:

Q. Is that distributed at all in their report? Is there anything to show that there was that quantity of feeders shipped out?

A. It is not shown in the book.

Q. Where did you get that information?

A. It is published by the Drovers' Journal out at the Yards, and generally known by those who are in touch with the situation, that that is about the number.

Mr. LYNDE: I was looking for it, but I did not find it.

Mr. COWAN:

Q. Does the rate adjustment relatively between packing
2443 house products on the one hand and live stock on the other, which gives a lower rate to the packing house and the dressed meat, tend to monopolize the business in the hands of the slaughterer who ships the product?

Mr. SEVERANCE: I object to that as asking for a mere conclusion.

The COURT: Let him answer.

The WITNESS: May I answer?

The COURT: Yes.

A. It certainly does localize and monopolize the business.

Mr. DAWES:

Q. What business, the cattle or the beef business?

A. The slaughtering business at any particular point where these conditions may exist.

I wanted to say further on the shipments east of Chicago——

Mr. SEVERANCE: I object to the witness doing anything but answering questions. I think it is fair that he should answer questions.

Mr. DAWES: Ask him a question right there.

The WITNESS: I had not quite finished with my answer.

The COURT: If it is responsive to the question it is all right.

2444 A. It was in relation to the shipment of hogs, I had something to say about the cattle, and I wish to say that the hog shipment received last year was 7,238,746, and there was shipped, 1,626,022. This is a larger percentage, that is the shipments compared with the receipts, a much larger percentage of shipments than is true at any other market, and I ascribe that largely to the adjustment of freight rates.

Mr. DAWES:

Q. The number of buyers on the Chicago market is very large, isn't it?

A. Yes, sir.

Q. How do you say, then, that the condition of things has a tendency to monopolize the market?

A. Simply because the number of buyers on the market are there because of the freight rate adjustment permitting them to operate.

Q. They have always been there, haven't they?

A. Yes, and the rates have always been adjusted here at Chicago on that basis.

Q. They have been in Chicago, which you have said is the greatest market for competition in the country?

A. Yes.

Q. The conditions of competition have not varied very much in the last ten years, have they, in the Chicago market?

A. Not materially.

2445 Q. Then where do you find the evidence of this tendency towards monopoly that you spoke of, if there is this general competition in this market?

A. I say the presence of these buyers, to my mind, must have—the presence of this great number of buyers at Chicago, is accounted for by reason of the fact that the freight rate adjustment east of Chicago is such that the buyer can operate against the packer. That is not true at the other markets.

Q. Can operate against the packer?

A. Yes.

Q. That is, he operates right against this monopoly which you say he creates?

A. You misunderstood the question of Mr. Cowan which I answered. It was that where the rate on the product was less than on the live stock, it tended to monopolize the business at the point where that rate prevailed.

The COURT:

Q. At Missouri river points or at Chicago?

A. At Missouri river points, where the rate on the product outbound prevails. There are not as many buyers at the Missouri river markets, and for that very reason, that they could not operate against the local packer.

Q. Your idea is to get into Chicago where there is more competition?

A. I think they can operate in Chicago, simply because of the freight rate adjustment, yes, sir.

2446 Mr. DAWES:

Q. So you think this monop-ly you have described is just a monop-ly on the Missouri river and not in Chicago, is that right?

The COURT: State what you meant by the answer you gave to Mr. Cowan, is that what you meant?

A. No, I don't wish to be so understood.

Q. Well, what did you mean? I don't quite understand that?

A. I said, in reply to Mr. Cowan's question (or I wish at least to be so understood), that where the rates on the product from any packing center are less than on the live stock, that it tends to monopolize the business of dealing in live stock to the packers at that particular point.

Q. Puts it in the hands of the packers rather than the buyers?

A. Yes, sir.

Mr. SEVERANCE:

Q. Isn't Kansas City the biggest feeder market?

A. Feeders are not slaughtered.

Q. Isn't that so?

A. Kansas City is the biggest feeder market, yes.

Q. Aren't there export buyers at all the Missouri river points?

A. Very few.

Q. Aren't there export buyers at all the Missouri river points?

A. I doubt if you can find very many.

Q. Just answer yes or no, if there are not, you can say
2447 so.

A. The question is hardly susceptible of such an answer. It is rather a difficult question.

Mr. SEVERANCE: Of course it is a very difficult question, so I see, especially so to an expert.

Mr. COWAN: I do not think that those remarks of Mr. Severance are justified.

Mr. SEVERANCE: The idea of characterizing that as a difficult question.

Mr. COWAN: It may be that the witness does not know. Answer what you know, Mr. Tomlinson, in regard to the export buyers on the other markets.

A. I do not——

Mr. SEVERANCE: If he is going to answer my question, I want him to answer it straight.

The COURT: He said he could not.

The WITNESS: There might be a few export buyers at Kansas City or South Omaha, if there are I do not know of them, and I thought I knew the conditions out there.

The purchasers of live stock at those markets, of animals ready for slaughter, such purchases are mostly by the packers themselves, such as "S. & S." for example, or the packers represented there.

There is no appreciable volume of shipments of fat cattle ready for slaughter, east bound, out of the river markets.

Mr. RANSOM:

2448 Q. Where do the export cattle come from then?

Mr. SEVERANCE: Mr. Cusey said there was.

The COURT: Let Mr. Cowan examine the witness.

The WITNESS: Except such stray shipments as might come through from Kansas or Nebraska in sufficient volume to prove an exception to the rule. I don't say there is not any, but I say the volume is not large.

The COURT: All right, I understand that.

Mr. COWAN:

Q. Now, passing from the question of rate adjustment, I will ask you to state whether, in your opinion, the rates from Iowa to Chicago are reasonable or not? I mean the rates we have been discussing, the 23½ cent and other rates on live stock from Iowa points to Chicago?

Mr. SEVERANCE: Objected to, as incompetent.

The COURT: Overruled.

A. I think they are unreasonably high.

Mr. COWAN:

Q. Why?

Mr. DAWES: Do you refer to packing house products or live stock?

Mr. SEVERANCE: Live stock.

The WITNESS: Live stock.

The COURT:

Q. You say for live stock?

A. Yes, sir.

2449 The COURT: Well, now, he asks you why.

The WITNESS: Because, for equal distances in the scale of the Illinois or Iowa commission, they are less.

Mr. SEVERANCE: I move to strike that out, on the ground that it is incompetent evidence under the decision of the Supreme court.

The COURT: Let him answer.

A. Because the average rates prevailing from Kansas points into Kansas City will average up less than the rates from these Iowa points to Chicago.

The COURT:

Q. Well, supposing they are too low, supposing those other rates are all too low?

A. I am starting this as a comparison, and as one of the reasons on which I base my conclusion.

Mr. DAWES: I presume it is proper for the witness to give the

bases of his conclusion in order to enable us to arrive at his meaning, but there has not been the slightest evidence on the subject which he now introduces here, that these rates are lower into Kansas City from Kansas points and western points at similar distances than they are in Iowa. We do not know what that fact is.

The COURT: You can cross-examine him on that afterwards. Let him give his answer. Go ahead with your answer.

2450 The WITNESS: Take the rates in the St. Paul district of 25 cents on cattle and 27 cents on hogs for 400 miles; they are very much higher than the rates in western Iowa for 400 or 500 miles at 23½ cents on cattle and hogs east. 25 cents from Sioux City on cattle.

The live stock business is peculiar in many respects. That is, the live stock traffic is a very advantageous traffic to handle, and is desirable from many standpoints. Live stock coming to Chicago goes to one central point of delivery, and in that respect, it is unlike any other class of traffic that comes into Chicago.

Take, for example, the grain traffic. It might come in here to be held "order to notify," and the roads might have to hold the cars on their tracks until it is sold. It would then have to be reconsigned perhaps to one or another elevator, involving additional handling, or, grain might come in in a dozen cars consigned to as many different elevators in the city of Chicago, and the cutting up of the train, and the delivery of those different cars of grain to the different points, is, of course, an expensive undertaking.

There is no traffic coming into the city of Chicago that is all destined and delivered at the one central point like the live
2451 stock. Live stock is also a desirable class of traffic, for the reason that it is uniform in its volume.

The COURT: Well, we will assume that.

The WITNESS: Uniform in the sense that it brings in about, approximately the same number of cars month after month. In that respect it is different from grain which moves in large volume at one season of the year, and a lesser volume at other seasons.

I have here a statement of shipments of corn, wheat and oats at Chicago, during the year 1904, by months.

Mr. DAWES: I object to it.

The COURT: I don't believe that is necessary now.

The WITNESS: I simply wanted to distinguish them.

The COURT: Well, you have distinguished them, I understand. Now go on and give your reasons.

A. The live stock is loaded by the shipper. The equipment is released promptly for its return loading. The cars can be and are loaded back to an appreciable extent.

Mr. SEVERANCE: Will you look this way when you talk? We cannot hear you over here.

The COURT: You were giving the reasons why the live stock rate was too high.

Mr. COWAN:

Q. Have you a tariff that shows the comparative rates from
2452 Kansas points to Kansas City, and from Kansas and western Missouri points to St. Louis?

A. Yes, I have.

Mr. COWAN: That question seems to have been raised, as to what those comparative rates were, and I would like to have you refer to the tariff and state what those rates are, unless you have a comparison made up from the tariff.

Mr. SEVERANCE: I object to that under the rule laid down by the Supreme Court of the United States.

The COURT: Well, proceed, just put that in.

The WITNESS: I have the rates figured out on those sheets which I have put in.

The COURT: If it is in evidence, counsel can prepare it for his argument.

Mr. COWAN:

Q. It is in evidence, is it?

A. It is in evidence now.

2453 Mr. COWAN:

Q. Mr. Tomlinson, you mentioned something of an exhibit there with respect to grain traffic. There have been some comparisons made here in grain and I will ask you if you have a statement showing the receipts of grain at this market, Chicago, which indicates the time of year and the quantity of the movement of grain from the West into Chicago?

Mr. DAWES: I understood your Honor excluded that testimony. He had a table.

The COURT: Why is that material?

Mr. COWAN: It is material in this way: There are a number of statements filed here where they have compared the grain rates with the live stock rates. There has been testimony with respect to the volume of the traffic of the two. Now, I propose to show from definite statistics something pertaining to the regularity or irregularity of that traffic. One of the circumstances connected with the traffic always, is its regularity—does it move regularly or does it move by spells? Also there has been testimony here that they do not have to move cars empty westbound, to move grain. We have introduced some witnesses to the contrary with respect to the sections where they live. If the evidence I am offering should show that the movement of grain to this market is irregular it
2454 would naturally mean that the cars must go west empty in order to get it, and if it is to be compared with the live stock traffic at all, it is important to compare the regularity and volume of it with the live stock traffic.

The COURT: Well, what have you got there, what did you want to put in?

The WITNESS: A statement showing receipts of grain at the Chicago market, for the months and years shown.

The COURT: Put in the statement, but cut it short.

Mr. COWAN: Yes, I do not want him to explain it any more than I just ask it to be filed as an exhibit to his testimony.

Mr. DAWES: What does it show, the movement of grain, is that it?

The WITNESS: It shows the receipts and shipments of grain at Chicago for the year 1904, by months.

Q. Well, is it from this same territory in question?

A. No sir, it may be all points.

Q. You are going to prove by that that the cars go back empty to get this grain that comes from a different territory?

The COURT: You can argue that later, just put in the figures.

Mr. SEVERANCE: Does your Honor change his ruling? Your Honor excluded that before the recess.

The COURT: If that is true, I have changed it. I said they
2455 could file it.

Mr. SEVERANCE: I did not hear your Honor make the ruling just now, but you did exclude it before the recess.

The COURT: No; the question was not asked before the recess.

Mr. SEVERANCE: That is the same paper.

Mr. COWAN: Mr. Tomlinson was giving his reason for the statement that the rates were not reasonable, and picked that up.

The COURT: Go on.

Mr. SEVERANCE: I did not ask the question in an offensive way, I did not hear the Court's ruling. I heard Mr. Tomlinson put it in and I thought the Court had ruled it out.

The COURT: Go on with the testimony.

Mr. SEVERANCE: It goes in under our objection.

Mr. COWAN: In the course of your investigations have you ascertained what the relative expense of originating and delivering freight is compared with the transportation cost, that is to say the terminal expenses at both ends as compared with the transportation charge.

Mr. DAWES: All freight or this freight?

Mr. COWAN: All freight.

Mr. DAWES: I object to that your Honor, it takes us so far away.

The COURT: Let him put in the figures and see what it is.
2456 Mr. DAWES: We might like to meet that.

The COURT: Put in the figures. You can put in figures too.

Mr. SEVERANCE: I object to that as incompetent and immaterial.

(The statement last above referred to by the witness, as showing the receipts of grain at the Chicago market was filed as a part of his evidence, marked "Tomlinson Exhibit No. 14 C. P. D.".)

2455a TOMLINSON EX. #14. C. P. D.

Statement of Shipments of Wheat, Corn, and Oats at Chicago During the Year 1904 by Months, Showing the Total for the Year and the Average for Each Month:

Month.	Wheat.		Corn.	
	Received. Bu.	Shipped. Bu.	Received. Bu.	Shipped. Bu.
January	1,249,263	911,553	7,483,707	5,180,242
February	1,002,405	926,162	7,304,518	4,150,140
March	1,090,995	1,197,246	5,423,695	3,550,330
April	690,663	998,281	4,498,345	1,937,334
May	613,813	1,130,315	4,758,180	6,326,419
June	902,518	1,569,949	14,163,849	8,477,486
July	966,560	885,363	6,875,657	7,288,873
August	5,224,468	1,886,337	7,551,500	8,238,743
September	4,128,154	1,962,428	14,801,346	12,361,629
October	3,735,615	2,302,733	3,488,400	5,812,582
November	2,685,345	2,753,863	7,436,500	4,190,651
December	2,167,548	1,433,186	16,757,600	7,670,329
Totals	24,457,347	17,957,416	100,543,207	75,184,758
Mo'ly aver.	2,038,100	1,497,293	8,378,600	6,265,400

Month.	Oats.	
	Received. Bu.	Shipped. Bu.
January	5,297,102	3,604,097
February	6,777,796	3,190,336
March	8,931,222	5,774,923
April	4,100,338	3,951,029
May	3,748,650	3,517,333
June	5,375,257	3,414,488
July	4,380,262	3,283,589
August	13,070,386	4,612,789
September	7,419,925	3,071,094
October	5,999,705	5,366,131
November	4,436,421	4,062,088
December	3,486,055	3,456,464
Total	73,023,119	47,303,901
Mo'ly Aver.	6,085,260	3,942,000

(Endorsed:) Filed Oct. 14, 1905. Marshall E. Sampsell, clerk.

The WITNESS: I have, so far as possible, made a very careful analysis of all the operating expenses through the annual reports of the railroads and through the statistics published by the Interstate Commerce Commission, with the result that I find of the total gross operating expenses, exclusive of course, of fixed charges and dividends, just the actual operating expenses that about 20 per cent. of those expenses are incurred as initial or terminal expenses.

Mr. COWAN:

Q. That is with respect to freight traffic?
A. Yes sir.
Q. How are the rates in other parts of the country on packing house products and dressed meats adjusted except as between these points in controversy here, the Missouri River and Chicago?

2457 Mr. SEVERANCE: I object to that as incompetent and immaterial under the decision in Smith against Ames, which I read to your Honor.

The COURT: The objection is overruled.

A. All over the East, in the eastern territory the rates on fresh meats are uniformly higher than on live stock. The rates on packing house products are either the same or a little higher. In the Eastern territory they make rates on fresh meat much higher than on packing house products. In the Western territory with the exception of the rates from these interior Iowa packing points eastwardly and the rates from St. Paul and from Missouri River, and certain packing points in Kansas and Nebraska, the rates on fresh meats are uniformly higher than on the live stock; and so also are the rates on packing house product higher than on live stock. In the Western Classification fresh meats is classified as third.

Mr. SEVERANCE: This is a new question your Honor, he has answered the question. Another question should be put.

Mr. COWAN: The rates depend on classification.

Mr. SEVERANCE: I object to the matter the witness has started in now, because it is not responsive.

The COURT: But remember that every question here that is asked is supposed to be objected to by you on the ground—on the record, you put that in at the beginning so as to save it.

2458 Mr. SEVERANCE: I didn't understand that except as to the question of its not being rebuttal, I didn't understand that the other objections were in.

The COURT: The objection is overruled. Go ahead.

The WITNESS: In the Western Classification, which is the classification adopted by the majority of the Western lines, by all the Western lines, I might say, on interstate traffic, fresh meats is classified as third class, and packing house products are classified as fifth class. On shipments of these commodities to a large number of local points on lines of these various railroads, this classification is very closely adhered to. There are commodity rates, how-

ever, from and to many large distributing centers, but in all instances the rates on fresh meats and packing house products are higher than the rates on live stock, and the rates on fresh meats are always higher than the rates on the packing house products. I know of no exception except those referred to in the first part of my answer.

Mr. DAWES: May I ask you if you know of a car of stuff that moves under that classification anywhere?

A. I could not answer, Mr. Dawes.

Q. Well, do you think there is any movement of traffic under *those* classification?

A. Yes, I think there would be Mr. Dawes.

Q. Well, isn't it so insignificant as not to be worth
2459 considering in this connection fairly?

A. Insofar as shipments are made to any local points on your line, that would apply. Now, the question resolves itself down as to whether from these packing points there are any shipments to interior local points. I think there are. I am satisfied there are.

The COURT: That answers the question.

Mr. COWAN: Now, suppose the classification does not apply, then what is the relation where there is no classification and it takes a commodity rate?

A. I have stated that between large distributing centers, there are commodity rates on fresh meats and packing house products and those commodity rates are always higher than the rates on live stock. Take for example, the rate on——

Mr. DAWES: I will ask you right there if the live stock moves in to these places at all?

A. Sir?

Q. Does live stock move in to these places at all?

A. Take——

Q. Won't you answer that?

A. Yes sir.

Q. An animal at a time?

A. No sir.

Q. Well, all right, go ahead.

A. Take Denver for example: The rate on cattle from Denver to Chicago is 47 cents—I prefer to get the tariff on that, I
2460 might misstate it (refers to printed tariff). The rate on live stock from Denver to Chicago on cattle is 49 cents, and 33 cents to the Missouri River. The rate on fresh meat from Chicago to Denver, or from Denver to Chicago, is 80 cents, and between the Missouri River and Denver is 60 cents. That is fairly representative of the adjustment at other points in the West. The rate on packing house products between Chicago and Denver is 70 cents, and the rate between the Missouri River and Denver is 50 cents, the rates being 10 cents less on packing house products than on fresh meats, and both the packing house product rates and the fresh meat rates are higher than the live stock rates, and Denver is a packing center.

Q. Do they ship any packing house product or dressed meat from Denver to Chicago?

A. I could not say positively on that.
Q. What is your best impression on that?
A. Some I should think.
Q. That is pretty indefinite?
A. Denver supplies her local territory there and I doubt if there is enough moved eastbound from Denver to make any appreciable volume.

Mr. SEVERANCE:

Q. Name one shipper shipping from Denver to Chicago so we can look him up.
A. No, I say it is inappreciable.
Q. Do you know there are any?
2461 A. Not of my own personal knowledge.
Q. Do you know of any live stock shipped from Chicago to Omaha and then to Denver?
A. It would be a most unnatural movement. I don't know of any unless it is fine stock.

The COURT: Mr. Cowan, go ahead.

Mr. COWAN:

Q. State the relative cost of the transportation of live stock and its products and also in that connection compare it with the average cost of transportation of all freight.
A. I have prepared figures showing the comparative cost and earnings on an average train of 800 gross tons, the comparison being between fresh meat and cattle. The comparison is based on a paying revenue per car of eleven tons of fresh meat and eleven and a half tons on cattle, using an average weight of 21 tons for the weight of the car and ice on the fresh meat and 16 tons for the weight of the car and bedding on cattle. The total dead weight per car in tons, total gross weight would be 32 tons, and on cattle 27.5 tons. The percentage of paying weight per car of fresh meat, 34.37 per cent., and on cattle, 41.81 per cent.
The train on the basis of 800 tons would be composed as follows: 25 cars of fresh meat and 29 cars of live cattle—on the basis of the gross weight given.
2462 The total paying tons in the train would be 275 tons of fresh meat, and 333.5 tons of cattle.
The gross revenue per train at 20 cents per hundred pounds, would be on the fresh meat, $1,100, and on cattle, $1,334.
The gross revenue per train mile on the basis of 500 miles would be on fresh meat, $2.20, and on cattle, $2.668.
I have shown the known and estimated expenses on fresh meat train of 25 cars to be as follows:

Car mileage 1 cent per mile both ways	$250.00
Switching paid at Mo. River, $3 per car	75.00

I have used the $3 per car because I believe from my own personal knowledge as to costs, that it closely approximates that at all the River markets. At South Omaha it is true, it is $2. At Kan-

sas City some of the lines pay as high as $4.50, and I thought that $3 correctly represents an average cost.

Mr. SEVERANCE: Some of them don't pay any?

A. That may be true.

Q. Well, isn't that true?

A. I don't know.

Q. And if they don't pay any, don't the other roads have to absorb it in order to put themselves on an equality and ought not that item to be disregarded in comparisons?

A. I don't think so because it is an actual cost.

2463 Switching paid at Chicago, $3 per car..... 75.00
Loss and Damage per car, $1..... 25.00

Total, $425.00, or an average per car of $17.00.

Net revenue after the above deduction would be $675.00, and the average earnings per train mile, 500 miles, would be $1.35, after making those deductions.

The known and estimated expenses on cattle, 29 cars, I make as follows: Mileage, 6 cents per mile both ways, $174. Cost of maintaining stock yards, water facilities, yard tracks, depreciation and station service as per Mr. Gardner's evidence, which I adopt as being correct, $1.75 per car, making $50.75. Loss and damage to stock and personal injury to stockmen at $1.15 per car, as per Mr. Gardner estimate, $33.35. Extra cost of delivery at Union Stock Yards, above the $2 terminal charge, according to the statements filed in that case, $.22.

In explanation of that item, I might say that at the time the terminal charge case was being litigated before the Interstate Commerce Commission, all the roads interested filed itemized statements of the cost of delivering live stock at the Union Stock Yards. The average of those statements amounted to $2.22, and as they collect a $2-terminal charge, I have charged against this live stock, 22 cents, which, on 25 cars—29 cars, amounts to $6.38.

2464 Cleaning cars at 25 cents, $7.25 for 29 cars. Bedding cars at 25 cents, $7.25. Cost of passenger service $1 per car estimated as a possible cost, though not admitted to be incurred or lost, $29.

Mr. SEVERANCE: Why do you put it $1 per car?

A. That is an estimate.

Q. There is one man for every two cars?

A. I don't agree to that, I think there are nearer one man to every three cars.

Total, $307.98. Average per car, $10.62.

The net revenue per train after above deduction is $1,026.02.

Average earnings per train mile, 500 miles, $2.05.

In the above calculations no consideration is given to the fact that in returning the refrigerator cars there is 30 to 40 per cent. more weight per car than on live stock cars; nor is any consideration given to the fact that the live stock cars are loaded more frequently on their return movement than are refrigerator cars; nor is the fact that the product is more valuable than live stock considered. Due allowance should also be made on this account, namely, difference in value, in

determining what proportion of the fixed charges and maintenance charges should be borne by live stock and its product.

In further explanation of that particular point there are
2465 of course, certain fixed charges of the railroad, such as maintenance of way, maintenance of road and structures and buildings, station service and so forth, and of these items I think it would be fair to charge the product with a greater percentage than the live stock, because the product is a more valuable commodity, for the same reason that you would not burden a car of coal with the same proportion of fixed charges as you would a car of silk. Therefore, I think that the product should pay a greater proportion of these fixed charges than live stock.

The COURT: Why should the high valued one pay more than a low valued one, is there any other reason than the risk?

A. No.

Q. It is worth more to carry a valuable article, because the risk is greater if it is lost or destroyed or injured. Now, is there any other reason for saying that you should charge the valuable article more than the risk incurred.

A. Well, the value of the service,—of course, the risk is greater.

The COURT: Does not the value of the service depend on the risk—does it depend on anything else?

A. Well, the value of the service to the shipper depends on something else, yes sir. Take for example, the fixed charges of a railroad including the dividends that say are 30 per cent. of the gross
2466 operating expenses. Now, I contend that all freight should not bear the same proportion per pound of those fixed charges, in other words, that a car of lumber should not stand as much fixed charges as should a car of dry goods. And if I am correct in that assumption then there ought to be a slight difference between the burdens which should properly be placed upon the product as compared with the live stock. The roads classify their operating expenses in about this way: Maintenance of way and structure, maintenance of equipment, and conducting transportation, and the general expenses. Now, such of those as are considered fixed, or such of those as cannot be properly analyzed under conducting transportation, that is, maintenance of way and general expenses, I think that the product should be burdened with a little larger proportion of those than the live stock, and for that reason in comparison, or the comparison that I have submitted does not reflect the true condition of what the rates should be. That is based actually on the cost of service.

Mr. COWAN:

Q. Your comparison does not involve an attempt however, to charge more to one than to the other?

A. No sir, it does not.

Q. You may file that as an exhibit to your testimony if you please.

A. Yes sir.

2467 (The document above referred to was filed by the witness as a part of his testimony, marked "Tomlinson Exhibit 15, C. P. D.")

2465a *Comparison of Costs and Earnings on Average Train of 800 Gross Tons.*

	Fresh meats.	Cattle.
Paying revenue per car in tons	11 tons.	11.5 tons.
Average weight of car and ice; and car and bedding in tons	21 tons.	16. tons.
Total dead weight per car in tons	32 tons.	27.5 tons.
Percentage of paying weight per car	34.37 %.	41.81 %.
Gross weight of train of 800 tons equals:		
25 cars fresh meat at 32 gross tons per car	800 tons.	
29 cars live cattle at 27.5 gross tons per car		797.5 tons.
Total paying tons in train	275 tons.	333.5 tons.
Percentage of paying weight to gross weight of train.	34.37 %.	41.81 %.
Gross revenue per train at 20 cents per 100 lbs	$1100.00	$1334.00
Gross revenue per train mile on a basis of 500 miles.	$2.20	$2.668

Known and Estimated Expenses on Fresh Meat Train of 25 cars.

Car Mileage 1 cent per mile both ways	$250.
Switching paid at Mo. Riv. $3.00 per car	75.00
Switching paid at Chicago $3.00 per car	75.00
Loss & damage per car $1.00	25.00
Total	$425.00
Average per car	17.00
Net revenue per train after above deduction	675.00
Average earnings per train mile 500 miles	$1.35

Known and Estimated Expenses on Cattle, 29 Cars.

Mileage 6 cents per mile both ways	$174.00
Cost of maintaining stock yards, water facilities, yard tracks, depreciation, station service (Gardner's evidence page 346 Rec.) at $1.75 per car	50.75
Loss and damage to stock and personal injury to stockmen at $1.15 per car as per Gardner's statement	33.35
Extra cost of delivery at U. S. Yards Chicago above $2.00 terminal charge, according to statements filed in that case .22	6.38
Cleaning cars at 25 cents	7.25
Bedding cars at 25 cents	7.25
Cost of passenger service $1.00 per car (estimated as a possible cost though not admitted to be incurred or lost)	29.00
Total	$307.98
Average per car	10.62
Net revenue per train after above deductions	$1026.02
Average earnings per train mile, 500 miles	$2.05

In the above calculations no consideration is given to the fact that in returning the refrigerator cars there is 30 to 40 % more weight per car than on live stock cars; nor is any consideration given to the fact that live stock cars are loaded more frequently on their return movement than are refrigerator cars; nor is the fact that the product is more valuable than the live stock considered. Due allowance should also be made on this account, viz. difference in value, in determining what proportion of the fixed charges and maintenance charges should be borne by live stock and its product.

Tomlinson Ex. # 15. C. P. D.

Q. Have you any comparison of the average operating expenses in connection with the traffic, or have you in your hand some further comparison with regard to the transportation of live stock?

A. I have a further comparison of the cost and earnings of an estimated train of 800 tons between packing house products and hogs.

Without reading the statement in detail, I will say that on packing house products, I have taken the gross paying weight at the minimum of 26,000 pounds. I have taken hogs at the minimum of 17,000 pounds. The rates on both of these commodities are based on a certain minimum per car. The minimum is as much a part of the rate as is the rate itself and therefore, I think it is fair to com-

pare rates based upon the minimum. This comparison shows after enumerating the expenses given in the other statement, that the gross revenue per train mile on basis of 500 miles on packing house product would be, $2.392, and on hogs, $2.176. The hogs yielding a less revenue per train on the same gross train than the packing house product. In this statement no consideration is either given to the fact that we return a heavier car, or to the other facts enumerated in connection with the other statement.

(The statement was filed as part of the evidence of the witness, marked "Tomlinson Ex. 211.")

2465*b*

TOMLINSON EX. 211.

Comparison of Cost and Earnings on Estimated Train of 800 Tons.

	Packing house product.	Hogs.
Paying revenue per car in tons	13 tons	8.5 tons
Average weight of car and ice; and car and bedding	21 tons	16.0 tons
Total gross weight per car	34 tons	24.5 tons
Percentage of paying weight per car	38.23%	34.7%
Gross weight of train of 800 tons equals:		
23 cars Packing House Product at 34 gross tons per car	782 tons	
32 car Hogs at 24.5 gross tons per car		784. tons
Total paying tons in train	299 tons	272. tons
Percentage of paying weight to gross weight of train	38.23%	34.7%
Gross revenue per train at 20 cents per 100 pounds	$1196.00	$1088.00
Gross revenue per train mile on basis of 500 miles	$2,392	$2,176

Known and Estimated Expenses on Packing House Product Train of 25 Cars.

Car mileage 1 cent per mile both ways	$230.00
Switching paid at Mo. River at $3.00 per car	69.00
" " " Chicago at $3.00 per car	69.00
Loss and damage per car $1 00	23.00
Total	$301.00
Average per car	$17.00
Net revenue per train after above deduction	$805.00
Average earnings per train mile, 500 miles	$1.61

Known and Estimated Expenses on Hogs, 32 Cars.

Car mileage .6 cent per mile both ways	$192.00
Cost of maintaining stock yards, water facilities, yard tracks, depreciation, station service (Gardner's evidence, page 346 rec.), at $1.75 per car	56.00
Loss and damage to stock and personal injury to stockmen at $1.15 per car as per Gardner's statement	36.80
Extra cost of delivery at U. S. Yards, Chicago, above $2.00 terminal charge, according to statements filed by railroads in that case 22 cents	7.04
Amount forward to page 2	$291.84

2465*c*

	Packing house product.	Hogs.
Cleaning cars at 25 cents		$8.00
Bedding cars at 25 cents		8.00
Cost of passenger service at $1.00 per car (estimated as a possible cost, though not admitted to be incurred or lost)		32.00
Amount forwarded from page 1		291.84
Total		$339.84
Average per car		10.62
Net revenue per train after above deduction		748.16
Average earnings per train mile, 500 miles		$1,496

EXHIBITS NOT SUITABLE FOR MICRO-FILMING

2468 The WITNESS: I had also a comparison, which I mislaid, showing what the average earnings were per train, after these deductions had been made, assuming that on shipments from Iowa, there were three cars of cattle for every two cars of hogs, and assuming further that there were two cars of fresh meat shipped from Kansas City and St. Joe for every one car of packing house product. I will furnish the statement a little later. I have mislaid it somewhere.

Mr. COWAN:

Q. Have you a statement prepared from the annual reports of the railroads, and other authentic data, which correctly shows the relative cost of transporting either freight per ton mile, per car mile, and otherwise illustrating the cost of transportation service?

Mr. SEVERANCE: That is the rules of the defendant roads?

Mr. COWAN: Yes, he will call attention to the roads, whatever he has about it?

A. I have a statement of certain transportation and other statistics of the operation of the C. M. & St. P. Railroad, showing the mileage per ton, gross, net tonnage, tonnage revenue, cost, net revenue, for the year ending June 30, 1905, compiled from information published in the annual reports of that company. It shows the percentage of increase of all the detailed items of 1902 over 1895, and of 1905 over 1895. It briefly shows this—

2468*a* COPY TOMLINSON EX. 201.

Group VI. C., M. & St. P. Ry.

Number of tons of freight carried one mile per mile of line.....	706,415.	590,800.
Average number of tons in train..	284.92	264.62
Average haul per ton.....	140.87	175.14
Revenue per train mile, freight trains	2.25	2.32
Revenue per ton per mile.....	.774	.8813
Freight earnings per mile of road..	$5,579.80	$5,206.84

Group VI is a group arranged for statistical purposes by the Interstate Commerce Commission, embracing the States of Iowa, Wisconsin, Minnesota and parts of Missouri and North and South Dakota. The figures given for the C. M. & St. P. Ry. are shown in their annual report for the year ending June 30, 1905.

Mileage of loaded freight cars in Group VI:—	
North and East.....	897,769,207
South and West.....	813,888,528
Unclassified	334,501,343
Total	2,046,159,078
Mileage of empty freight cars, Group VI:—	
North and East.....	309,316,962
South or West.....	407,254,464
Unclassified	122,746,641
Total	839,318,067
Grand total of mileage of freight cars loaded and empty in Group VI.....	2,885,477,145

2468*b* Above figures show that, assuming the total mileage of freight cars to be 100 cent., the loaded freight car mileage represents 70.9 per cent., and the empty freight car mileage represents 29.1 per cent.

2469 Mr. DAWES: What kind of items are they?

The WITNESS: What do you say?

Mr. DAWES: What is the general nature of the items, if you are not going to read them?

The WITNESS: I will read the items. The mileage, for example, in 1902 over 1895 was increased 7.2%; gross earnings increased 66.8%; the total expenses increased 77.1%; net earnings increased 49.7%; the actual net earnings increased 85.8%. The number of tons revenue freight carried one mile increased 126 per cent.; miles run by freight trains increased 33.7%; number of tons revenue freight carried one mile per mile of road increased 108 per cent.; number of tons revenue freight per ton mile increased 67 per cent. The average mile each ton of revenue freight was carried increased 19 per cent. The average revenue per ton of revenue freight per mile, in cents, decreased 21.8 per cent. The average revenue from freight per train mile increased 30.5 per cent. The average expenses per revenue train mile were as follows: Maintenance equipment increased 23.5 per cent. Station service decreased 38.7 per cent.; train service increased 3.7 per cent. Engine and round house men increased 19 per cent. Train and station supplied decreased 2.2 per cent. Fuel for locomotives increased 37 per cent. Oil, tallow, and waste increased 48.2 per cent. The total increased 4.4 per cent.

2470 All other expenses not specified increased 73.3. Grand total of these average expenses for operation increased 32.3 per cent. The percentage of increase or decrease is also shown for 1905 compared with 1895.

Mr. COWAN: It will not be necessary to read all those, Mr. Tomlinson. Explain in a general way what the document shows and file it.

The WITNESS: This statement is fairly representative of all the other lines operating in the same territory. It was selected for this road because the annual report of the C. M. & St. P. Railway publishes more detailed statistics on that point than any other line.

Q. Does that road also reach all these points in controversy?

A. Yes, sir, it shows——

Mr. SEVERANCE: You are going over it, aren't you?

The WITNESS: Yes, sir. I was not going to read any more.

Mr. SEVERANCE: I would like to object to that as incompetent and immaterial.

Mr. DAWES: Yes, it is immaterial.

Mr. COWAN: It is introduced for the purpose of showing what the operating expenses of the road have been, to show how much the tonnage earnings have been and how they have increased; to show what the tonnage earnings per mile have been and the

2471 quantity of it, to show the comparative statistics relative to the hauling of the traffic and the performance of the public service.

Mr. SEVERANCE: That is interesting, but how does it have anything to do with the issues in this case, Mr. Cowan?

The COURT: We will determine that when we come to the argument. Objection overruled.

The WITNESS: I have a further statement showing a comparison between certain C. M. & St. — statistics shown on that statement and the average of all lines in a group, known as group 6, which is a subdivision, an arbitrary subdivision made by the Inter-state Commerce Commission in dividing up the territory of the United States. Group 6 covers all points in Iowa, Missouri, parts of Illinois and Wisconsin, parts of Minnesota, and I think a part of South Dakota.

Mr. SEVERANCE: Does it include simply the defendants in this case?

The WITNESS: Yes, sir.

Mr. SEVERANCE: That would make a difference of course.

The WITNESS: It includes all of Illinois, part of Missouri, all of Iowa, all of Wisconsin, all of Minnesota and parts of North and South Dakota, and is attached to the statement so that it may be intelligible.

Mr. SEVERANCE: Does it include any lines of railroad other than the lines of the defendants here?

The WITNESS: It probably does, yes, sir.

2472 Mr. SEVERANCE: Then I object to it on that special ground and as incompetent and immaterial.

The WITNESS: It undoubtedly does, yes, sir, certainly.

The COURT: Objection overruled. Go ahead and file it.

The WITNESS: This statement as well shows the mileage on loaded freight cars in this group and the mileage of empty freight cars in that group and the percentage that the empty freight car mileage represents of the total freight car mileage.

Mr. SEVERANCE: Now, your Honor, it does seem to me, pardon my suggesting it—that the record ought not to be encumbered with anything like this. Here is an average taking in a lot of rates that have nothing to do with this litigation. It is not responsive to any of the issues here. It means more printing and more trouble for everybody.

The COURT: The Court will not consider it.

Mr. SEVERANCE: Your Honor, we can't help considering it. How can we tell, your Honor, what your Honor will consider? It is in here, is the record. We have got to argue on some basis and the only basis upon which we can make argument is upon the stuff in the record. Your Honor may conclude to consider something we think is immaterial; in fact I think your Honor will, because you have overruled objections we have made which it seems to me were good; but this seems to be so clearly immaterial, if your Honor will

2473 admit this we might as well let Mr. Tomlinson hand in anything he has in the chair.

The COURT: I think myself he would get along as well if he did and save time.

Mr. SEVERANCE: If that is your Honor's ruling and Mr. Tomlinson can file any statement he pleases on any subject, of course it is idle to object.

The COURT: Objection overruled. Go ahead as fast as you can.

The WITNESS: Here is a statement of the ratio of total compensation paid to railway employés, gross earnings from operation of roads for the years named, prepared by the Inter-state Commerce Commission.

Mr. COWAN: It is the percentage for each year for ten years of the amount paid for wages to the gross earnings of each one of those roads?

Mr. SEVERANCE: As a matter of form I object to that as immaterial.

The COURT: Objection overruled. What is the next statement?

The WITNESS: The next statement shows the mileage of the C. B. & Q. Railroad—certain statistics about the C. B. & Q. Railroad, showing mileage, gross earnings per mile road, gross earnings operation, percentage operating expenses to earnings, the operating
2474 expenses, operating expenses per mile road, maintenance of way structures, percentages, maintenance equipment percentages, deducting transportation percentages and general expenses percentages.

Mr. DAWES: I will ask you if that is all contained in the annual report on file here.

The COURT: Where did you get this?

The WITNESS: From the Inter-state Commerce Commission, your Honor.

Mr. DAWES: May I ask, before that is admitted, what issue it tends to prove here?

The WITNESS: For ten years, commencing 1893 and ending 1903.

Mr. DAWES: Mr. Cowen, will you be kind enough to answer that question?

Mr. COWAN: Yes, I will answer it. The book these gentlemen have read with respect to what *us* a reasonable rate on freight certainly lays down the rule that it depends in a large measure upon the earnings which a railroad company is making. That depends upon the traffic which it hauls, the comparison going back to a period of ten years, shows the earnings and operating expenses per mile of lines, figured out per mile of line.

The COURT: You want to show this rate is reasonable under the ruling of the Supreme Court?

Mr. COWAN: I will introduce this upon the reasonableness
2475 of the rate; also as a general proposition I think it is admissiable for the court to understand what has been——

Mr. SEVERANCE: Admissible on general principles.

The COURT: The Court will admit it on both grounds.

Mr. DAWES: If it is admitted there is no reason for arguing any more.

Mr. COWAN: There is no way to compare the Burling. with the Northwestern, except by so many miles of line.

Mr. DAWES: You can't properly prove it in that way.

(Four statements were then introduced in evidence by counsel for the Complainant, marked Exhibits 200, 201, 202, 203. Also statements from annual reports as follows: C. B. & Q. R. R. Co., marked Exhibit 204; C. & N. W. R. R. Co., marked Exhibit 205; Chicago Milwaukee & St. Paul R. R. Co., marked Exhibit 206; Chicago Great Western Ry. Co. marked Exhibit 207; Illinois Central R. R. Co. marked Exhibit 208, Atchison, Topeka & Santa Fe R. R. Co., marked Exhibit 209.)

Statement Showing Ratio of Total Compensation Paid to Railway Employees to Gross Earnings from Operation of the Roads Named for the Years Ending June 30—

Name of road.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900.	1901.	1902.	1903.	1904.
Atchison, Topeka & Santa Fe Ry. Co.	41.55	47.31	49.44	43.54	45.35	41.60	37.62	33.74	31.02	32.26	39.69	35.87
Chicago & Alton Ry. Co.	35 42	31.46	31.85	31.49	32.44	33.49	34.16	40.93	44.74	45.70	(*)	40.77
Chicago & North Western Ry. Co.	41.86	39.35	40.76	38.67	39.89	39.42	39.01	39.12	38.85	39.98	40.91	41.38
Chicago, Burlington & Quincy R. R. Co	43.05	40.96	44.35	42.62	39.24	37.48	39.11	41.17	41.81	39.97	38.05	(†)
Chicago Great Western Ry. Co.	50.03	43.66	45.46	38.53	45.19	41.27	40.08	40.58	39.94	46.97	51.53	(†)
Chicago, Milwaukee & St. Paul Ry. Co.	42.65	40.03	39.92	37.89	37.48	36.27	35.66	36.88	37.43	37.72	(‡)	41.18ℓ
Chicago, Rock Island & Pacific Ry. Co.	39.92	38 66	39.64	37.55	37.78	34.20	35.48	33.83	32.60	32.97	36.61	40.76
Illinois Central R. R. Co.	47.67	44.31	44.99	43.16	44.55	44.32	46.59	46.79	45.28	43.70	45.93	49.13
International & Great Northern R. R	45.86	51.38	48.20	49.47	40.73	39.05	36.65	36.75	34.76	37.74	40.72	41.84
Missouri, Kansas & Texas Ry. Co.	41.62	41.32	37.29	41.80	39.75	36.63	38.11	38.20	34.46	38.87	40.66	42.72
Missouri Pacific Ry. Co.	42.37	45.44	49.66	44.64	48.48	45.61	43.35	42.89	41.36	43.24	43.86	46.52
St. Louis & San Francisco R. R. Co.	34.76	37.13	36.21	37.78	38.61	36.70	37.72	35.33	34.77	40.80	41.41	41.18
St. Louis, Iron Mountain & Southern Ry. Co	41.54	39.14	38.92	37.58	33.33	36.14	35.69	32.55	35.37	39.86	41.80	43.03
St. Louis Southwestern Ry. Co.	46.78	45.97	42.54	44.96	46.55	41.93	37.82	37.77	36.63	47.12	51.36	39.44
Texas & Pacific Ry. Co	40.74	41.64	39.61	42.66	40.86	39.62	40.66	41.44	35.51	39.99	46.23	44.72
Wabash R. R. Co.	42.45	42.40	42 30	40.18	40.62	39.05	38.45	36.44	36.60	36.86	37.83	40.55

* Incomplete.
† Report not filed Nov. 12, 1904.
‡ No Compensation reported.
ℓ Based on returns for approximate compensation.

[Endorsed:] Copy. Plaintiff's Exhibit, Tomlinson evidence.

Mr. COWAN:

Q. Have you the printed reports of several of the railroads?

A. Yes, sir.

Mr. COWAN: We will offer in evidence the printed annual reports from 1902 down to date of the several roads, as Mr. Tomlinson may call them out. I don't recollect which ones we have.

Mr. SEVERANCE: Can't you have them marked without taking the time to do it now.

2476 Mr. COWAN: Yes, we will have them marked A, B, C &c., later.

Q. Have you any comparison of rates contained in the publication of the Inter-state Commerce Commission from which Judge Baxter introduced some rates the other day?

A. Yes, sir.

Q. Just call the page and what you *rp*opose to introduce and a copy can be filed later.

A. The book is entitled "A Forty Year Review of Changes in Freight Tariffs, prepared by the Auditor of the Interstate Commerce Commission".

The COURT: Isn't that already in evidence?

Mr. COWAN: No. Judge Baxter just read from certain pages of it.

The WITNESS: The pages are, page 86——

The COURT: The ones you want—go ahead.

The WITNESS: Yes, sir—and pages 103 and 104.

Mr. DAWES: What do they relate to?

The WITNESS: They relate to the rates on live stock between Chicago and New York and the rates on dressed beef and dressed hogs Chicago to New York.

Mr. SEVERANCE: That is objected to as immaterial.

The COURT: Objection overruled.

The WITNESS: It relates to the rates on live stock from Kansas City, Missouri, and Leavenworth, Kansas to Chicago and the rates on packing house product from those points to

Table XLIX.—Freight Rates Charged for the Transportation of Live Stock and Dressed Meats from Chicago to New York via All-Rail Lines from March 26, 1872, to April 1, 1902.

Date.	Rates in cents per 100 pounds.							Date.	Rates in cents per 100 pounds.						
	Cattle.	Hogs.	Sheep.	Horses and mules.	Dressed beef.	Dressed hogs, in refrigerator cars.	Dressed hogs, in common cars.		Cattle.	Hogs.	Sheep.	Horses and mules.	Dressed beef.	Dressed hogs, in refrigerator cars.	Dressed hogs, in common cars.
1872—Mar. 26					90			1887—Nov. 28	18½	30	21	60	34½	34½	30
Nov. 26					95			Dec. 26	16½	30	19	60	31	31	27
1874—Dec. 1					85			Dec. 31	25	30	40	60	65	65	60
1875—Nov. 2					70			1888—May 14	25	30	25	60	65	65	5
1876—Nov. 18					65			June 18	16½	25	25	60	65	65	60
1877—Apr. 30					85			June 25	16½	25	25	60	40	40	10
Sept. 4					70			June 26	16½	25	25	60	35	35	35
Oct. 22					75			June 29	16½	25	25	60	30	30½	30
1878—Sept. 2					90			July 2	14½	25	25	60	26½	26½	24½
1879—June 9	35	35	60	60	65			July 5	12½	25	25	60	23	23	20
June 26	35	35	60	60	50			July 6	11	20	25	60	20	20	2
Aug. 4	50	40	60	60	80			July 6	24	20	25	60	17	17½	15
Aug. 25	50	45	60	60	80			July 7	24	20	25	60	15½	15½	1
Oct. 13	50	50	60	60	80			July 9	7½	20	25	60	13½	13½	13½
Nov. 10	55	50	65	65	88			July 10	24	20	25	60	12	12	12
1880—Mar. 1	55	50	65	65	88			July 11	24	20	25	60	10½	10½	10
Apr. 14	55	40	65	65	88			July 12	24	20	25	60	9	9	9
Sept. 20	55	50	65	65	88			July 13	24	20	25	60	8	8	8
Nov. 1	55	40	65	65	88			July 14	24	18	25	60	7	7	7
1881—Mar. 14	50	40	60	60	80			Aug. 3	24	18	25	60	22½	22½	22½
Apr. 1	50	35	60	60	80			Aug. 20	14½	18	25	60	25	25	25
May 9	35	35	60	60	10			Aug. 25	10	18	25	60	25	25	25
June 8	35	30	60	60	10			Sept. 24	15	18	25	60	35	35	35
June 15	35	35	60	60	10			Oct. 15	15	25	25	60	35	35	35
1882—Mar. 13	45	30	60	60	10			Oct. 22	15	30	25	60	35	35	35
Apr. 17	40	30	50	60	64			Nov. 7	15	25	25	60	35	35	
Dec. 1	40	35	50	60	64			Dec. 17	22½	30	30	60	50	50	
1883—Apr. 23	40	30	50	60	64			1889—May 1	20	30	30	60	45	45	1
Nov. 26	40	35	50	60	64			1890—May 26	20	25	30	60	45	45	4
1884—Jan. 5	40	25	50	60	64			June 16	22½	25	30	60	42	42	42
Jan. 14	40	35	50	60	64			June 20	22½	25	30	60	39	39	35
Mar. 14	40	25	50	60	64			June 26	21	25	30	60	36	36	
Mar. 21	40	30	50	60	64			June 30	19½	25	30	60	33	33	
May 5	30	20	40	60	48			July 3	18	25	30	60	30	30	30
June 24	30	25	40	60	48			July 11	18	22	30	60	30	30	30
July 21	30	30	40	60	48			Nov. 24	20	30	30	60	45	45	45
Sept. 1	30	30	40	60	52			1891—Apr. 20	28	30	30	60	45	45	
Dec. 8	40	30	50	60	70			1892—June 16	28	25	30	60	45	45	
1885—Mar. 23	40	25	50	60	70			Oct. 10	28	30	30	60	45	45	
May 4	30	25	40	60	52½			1893—Dec. 11	28	22½	30	60	45	45	
July 1	25	20	40	60	45½			Dec. 18	28	25	30	60	45	45	1
July 13	25	25	40	60	45½			1894—Jan. 1	28	30	30	60	45	45	45
Nov. 23	25	30	40	60	45½			Sept. 4	28	25	30	60	45	45	45
1886—Jan. 1	25	30	25	60	45	45½	25	Sept. 22	28	30	30	60	45	45	45
Mar. 1	35	30	45	60	65	55	50	1895—June 27	28	25	30	60	45	45	45
Dec. 20	35	35	45	60	65	55	50	July 1	28	30	30	60	45	45	45
1887—Apr. 22	35	35	60	60	65	65	60	July 1	28	30	30	60	45	45	45
June 4	35	30	40	60	65	65	60	1899—Feb. 1	25	25	25	60	40	40	40
Nov. 21	31½	30	36	60	58½	58½	54	1900—Jan. 1	28	30	30	60	45	45	45
Nov. 23	28½	30	32½	60	52½	52½	48	1901—July 29	28	30	30	60	40	40	40
Nov. 24	25½	30	29	60	47	47	43	1902—Jan. 1	28	30	30	60	45	45	45
Nov. 25	27	30	26	60	42½	42½	38	Apr. 1	28	30	30	60	40	40	40
Nov. 26	30½	30	23½	60	38½	38½	35								

Note.—For changes in the minimum carload weights governing the commodities shown above (from 1887), in carloads, see Table

1644

2476 b

Table LXVIII.—FREIGHT RATES CHARGED FOR THE TRANSPORTATION OF CLASSIFIED TRAFFIC AND IMPORTANT COMMODITIES FROM ATCHISON, KANS., ST. JOSEPH, MO., KANSAS CITY, MO., AND LEAVENWORTH, KANS., TO CHICAGO, ILL., FROM JANUARY 2, 1877, TO APRIL 1, 1902—Continued.

Date.	CLASSES AND COMMODITIES.														
	Rates in cents per 100 pounds.												Rates per car.		
	1	2	3	4	5	6	7	8	9	10	Wheat.	Rye and barley.	Corn and oats.	Cattle.	Hogs.	Sheep.
1880—Oct. 27	75	60	45	27	27	27	25½	20	25½	25½	25	20	20	67.50	67.50	45.00
Nov. 1	75	60	45	27	27	27	25½	20	25	25½	27½	22½	22½	67.50	67.50	45.00
Nov. 6	75	60	45	27	27	27	25½	20	25	25½	25	20	20	67.50	67.50	45.00
Nov. 22	75	60	45	27	27	27	25½	20	25½	25½	25½	20½	20½	67.50	67.50	45.00
1881—Jan. 1	75	60	45	27	27	27	25½	20½	25½	25½	25½	20½	20½	67.50	67.50	45.00
Mar. 8	75	60	45	27	27	27	25½	20½	27	25½	25½	20½	20½	67.50	67.50	45.00
Apr. 1	75	60	45	27	27	27	25½	25	25½	25	25	20	20	67.50	67.50	45.00
July 25	75	60	45	27	27	27	25	20	25	25	25	20	20	67.50	67.50	45.00
Nov. 7	75	60	45	27	27	27	25	20	25	25	25	20	20	60.00	67.50	45.00
1882—Jan. 2	75	60	45	27	27	27	25	20	25	25	25	20	20	60.00	67.50	45.00
Feb. 1	75	60	45	27	27	27	25	20	25	25	20	18	18	60.00	45.00	45.00
Mar. 13	75	60	45	27	27	27	25	19	25½	25	21	16½	16½	60.00	47.50	45.00
Apr. 1	75	60	45	27	27	27	25	20	25½	25	25	20	20	65.00	50.00	45.00
Aug. 1	75	60	45	27	27	27	25	20	25½	25	27½	22½	22½	65.00	50.00	45.00
Oct. 16	75	60	45	30	27	27	25	20	25½	25	25	20	20	65.00	50.00	45.00
Dec. 1	75	60	45	30	27	27	25½	20	25½	25½	28	20	20	65.00	50.00	45.00
1883—Jan. 1	75	60	45	30	27	27	25½	20	25½	25½	25	20	20	65.00	42.50	45.00

	1	2	3	4	5	6	A	B	C	D						
1883—May 5 (new classification)	90	75	50	42	28	25	37½	32	23	23	25	20	20	65.00	42.50	45.00
Nov. 12	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	48.00	45.00
Dec. 17	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	45.00	45.00
1884—Jan. 15	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	42.50	45.00
Mar. 15	90	75	50	32	28	25	37½	32	23	23	25	20	20	65.00	42.50	45.00
June 2	90	75	50	35	30	25	32½	29½	23	23	25	20	20	65.00	42.50	45.00
June 16	90	75	50	35	30	25	32½	29½	23	23	25	20	20	65.00	42.50	40.00
1886—Aug. 28	90	75	50	35	30	25½	32½	29½	23	23	25	20	20	65.00	42.50	40.00
1887—Jan. 1	90	75	50	35	30	25	32½	29½	23	22	25	20	20	65.00	42.00	40.00

	1	2	3	4	5	A	B	C	D	E						
Apr. 1 (new classification)	90	75	50	35	30	32½	29½	23	20	16	25	20	20	65.00	56.00	45.00
Aug. 1	90	75	50	35	30	32½	29½	23	20	16	22½	20	20	65.00	45.00	45.00
Dec. 20	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	45.00	40.00
1888—Jan. 9	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	45.00	45.00
Mar. 26	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	45.00	45.00
Oct. 1	75	60	40	30	25	30	25	20	17½	16	22½	20	20	60.00	40.00	40.00
Oct. 25	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1.27½	1.25	1.27½
1889—July 16	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1.22	1.25	1.22
Dec. 21	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1.18	1.25	1.22
1890—Jan. 25	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1.12½	1.25	1.22
Aug. 25	75	60	40	30	25	30	25	20	17½	16	22½	20	20	1.22	1.25	1.25
Oct. 1	75	60	40	30	25	30	25	20	17½	16	20	20	17	1.22	1.20	1.25
1891—Jan. 1	75	60	42	30	25	30	25	20	17½	16	20	20	17	1.22	1.22	1.25
Jan. 15	75	60	42	30	25	30	25	20	17½	16	25	20	(5)	1.22	1.22	1.25
1893—June 10	75	60	42	30	25	30	25	20	17½	16	24	20	20	1.22	1.22	1.25
1894—May 12	75	60	42	30	25	30	25	20	17½	16	24	20	20	1.15	1.15	1.15
June 1	75	60	42	30	25	30	25	20	17½	16	24	20	20	1.20	1.22	1.25
July 1	80	65	45	32	27	32	27	22	18½	16	24	20	20	1.22	1.22	1.25
Dec. 1	80	65	45	32	27	32	27	22	18½	16	24	20	20	1.22	1.22	1.25
1895—Oct. 22	80	65	45	32	27	32	27	22	18½	16	8	8	8	1.22	1.22	1.25
Nov. 3	80	65	45	32	27	32	27	22	18½	16	24	20	20	1.22	1.22	1.25
1896—July 18	80	65	45	32	27	32	27	22	18½	16	16	14	14	1.22	1.22	1.25
July 15	80	65	45	32	27	32	27	22	18½	16	18	14	14	1.22	1.22	1.25
July 21	80	65	45	32	27	32	27	22	18½	16	17	14	14	1.22	1.22	1.25
July 26	80	65	45	32	27	32	27	22	18½	16	16	14	14	1.22	1.22	1.25
July 28	80	65	45	32	27	32	27	22	18½	16	18	14	14	1.22	1.22	1.25
Aug. 1	80	65	45	32	27	32	27	22	18½	16	17	15	15	1.22	1.22	1.25
Oct. 15	80	65	45	32	27	32	27	22	18½	16	17	13	13	1.22	1.22	1.25
Nov. 2	80	65	45	32	27	32	27	22	18½	16	22	17	17	1.22	1.22	1.25
Dec. 22	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.22	1.22	1.25
1897—Apr. 12	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.15	1.15	1.25
Apr. 20	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.22	1.22	1.25
1898—Apr. 12	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.15	1.15	1.25
May 5	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.22	1.22	1.25
May 10	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.22	1.15	1.25
May 18	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.22	1.10	1.25
July 25	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.22	1.22	1.25
Sept. 27	80	65	45	32	27	32	27	22	18½	16	14	13	13	1.22	1.22	1.25
Nov. 25	80	65	45	32	27	32	27	22	18½	16	14	12	12	1.22	1.15	1.25
1899—Jan. 2	80	65	45	32	27	32	27	22	18½	16	19	15	15	1.22	1.22	1.25
July 1	80	65	45	32	27	32	27	22	18½	16	18	15	15	1.22	1.22	1.25
1900—Jan. 1	80	65	45	32	27	32	27	22	18½	16	19	16	16	1.22	1.22	1.25
Oct. 20	80	65	45	32	27	32	27	22	18½	16	17	16	16	1.22	1.22	1.25
Dec. 10, to Apr. 1, 1902	80	65	45	32	27	32	27	22	18½	16	19	16	16	1.22	1.22	1.25

[1] In cents per 100 pounds.

[5] Corn, 19 cents; oats, 20 cents.

NOTE.—For changes in the minimum carload weights governing the class rates shown above (from 1887), in carloads, see text, p. 18, and for those governing commodities, see Table IX.

2476bb

Table LXIX.—Freight Rates Charged for the Transportation of Important Commodities from Kansas City, Mo., to Chicago, Ill., from May 25, 1869, to April 1, 1902.

Date.	Rates per car.	Rates in cents per 100 pounds.			Date.	Rate in cents per 100 pounds.			
	Live hogs.	Packing-house products.	Wheat.	Other grain.		Live hogs.	Packing-house products.	Wheat.	Other grain.
1869—May 25			45	35	1894—July 1	22	27	24	2
1871—July 1			40	40	Dec. 1	25½	30	24	
Nov. 1	$90 00		50	40	1895—June 18	28	35	24	
1874—Apr. 20	70 00		30	30	Aug. 1	25	30	24	
1879—Jan. 17	72 00		25	30	Oct. 22	25	30	24	
Feb. 1	57 60	35	25	30	Nov. 5	25	30	9	6
Mar. 1	57 60	30	25	30	1896—July 15	25	30	24	20
Oct. 16	67 50	30	25	30	July 13	25	30	16	14
Nov. 10	67 50	30	25	30	July 24	25	30	12	11
1880—Apr. 17	67 50	30	25	30	July 28	25	30	17	14
Nov. 7	67 50	30	25	30	July 28	25	30	16	14
1881—Apr. 1	67 50	30	25	30	Aug. 1	25	30	12	9
July 25	45 00	25	25	30	Oct. 1	25	30	17	15
1882—Feb. 1	45 00	25	20	18	Oct. 11	25	30	17	15
May 1	45 00	25	25	30	Nov. 2	25	30	22	17
Apr. 1	45 00	25	25	30	Dec. 22	25	30	19	15
Dec. 1	45 00	25	25	30	1897—Apr. 8	25	30	19	15
1883—Jan. 1	45 00	25	25	30	Apr. 12	15	15	19	15
May 15	45 00	25	25	30	Apr. 20	25	25	19	15
Dec. 17	45 00	25	25	30	1898—Apr. 12	15	25	19	15
1884—Jan. 14	45 00	25	25	30	Apr. 12	15	25	19	15
1886—Aug. 23	45 00	25	25	30	Apr. 20	15	15	19	15
1887—Jan. 10	45 00	25	25	30	Apr. 21	15	15	19	15
Apr. 1	45 00	25	25	30	Apr. 30	15[1]	15	19	15
Aug. 1	45 00	25	22½	30	May 5	25	25	19	15
Dec. 31	45 00	30	22½	30	May 10	15	15	19	15
1888—Feb. 8	45 00	25	22½	30	May 16	15	15	19	15
Feb. 9	45 00	15	22½	30	July 25	25	25	19	15
Feb. 16	30 00	15	22½	30	Sept. 27	25	25	19	15
Feb. 27	30 00	15	22½	30	Nov. 25	15	15	19	15
Mar. 1	30 00	30	22½	30	1899—Jan. 2	25	25	19	15
Mar. 26	45 00	30	22½	30	July 1	25	25	19	15
June 28	30 00	30	22½	30	1900—Jan. 1	25	25	19	15
Oct. 15	37 50	30	22½	30	Oct. 30	25	25	17	15
1889—July 19	37 50	15	22½	30	Dec. 10, to Apr. 1, 1902	25	25	19	16
Nov. 1	31 00	15	22	30					
1890—Apr. 22	34 00	15	22½	30					
Aug. 28	37 50	18	22½	30					
Oct. 1	37 50	18	30	20					
1891—Jan. 1	45 00	22	30	20					
Jan. 13	33 00	22	30	20					
1893—June 16	41 00	22	24	20					
1894—May 12	22 00	22	24	20					

[1] Corn and oats, 17 cents.

[2] Corn, 19 cents.

NOTE.—For changes in the minimum carload weights governing the commodities shown above (from 1887), in carloads, see Table X.

RATES FROM MISSOURI RIVER POINTS TO ST. LOUIS.

The table following shows the rates from the principal Missouri River points, such as Atchison, Kansas City, St. Joseph, and Leavenworth, to St. Louis, for classified traffic, the principal grain articles, and cattle, hogs, and sheep, the period covered being from 1877 to the present time. The freight classification governing these rates has changed at various times, and such changes have resulted in a lower classification of the articles taken under the class rates in this table. For the articles specially mentioned it may be seen exactly what changes have taken place.

The second table, although partially covering rates shown in the first, embraces also the rates for packing-house products, and shows the changes since January 17, 1879.

1646

3476 c

TABLE LXX.—FREIGHT RATES CHARGED FOR THE TRANSPORTATION OF CLASSIFIED AND SPECIFIC AND IMPORTANT COMMODITIES FROM ATCHISON, KANS., KANSAS CITY, MO., ST. JOSEPH, MO., AND LEAVENWORTH, KANS., TO ST. LOUIS, MO., VIA RAIL LINES FROM JANUARY 2, 1877, TO APRIL 1, 1892.

Date.	CLASSES AND COMMODITIES.														
	Rates in cents per 100 pounds.												Rates per car.		
	1	2	3	4	5	6	7	8	9	10	Wheat.	Corn and oats.	Rye and barley.	Cattle.	Hogs.	Sheep.
1877—Jan. 2	60	45	30	25							25	17½	17½	$70.00	$60.00	$37.50
May 1	60	45	30	25							25	18	18	50.00	50.00	37.50
June 1	60	45	30	25							25	18½	18½	50.00	50.00	37.50
July 15	60	45	30	25							25	16	16	50.00	50.00	37.50
Aug. 26	60	45	30	25							25	20	20	50.00	50.00	37.50
Sept. 7	60	45	30	25							24	19	19	50.00	50.00	37.50
Oct. 19	60	45	30	24							24	19	19	50.00	50.00	37.50
Nov. 1	60	45	30	24							24	19	19	50.00	50.00	37.50
1878—Jan. 12	60	45	30	20							24	16	16	50.00	40.00	33.00
Jan. 14	60	45	30	20							20	16	16	50.00	40.00	33.00
May 6	60	45	30	20							20	15	15	50.00	40.00	33.00
July 25	60	45	30	20							20	15	15	50.00	40.00	33.00
Nov. 18	60	45	30	25							20	15	15	50.00	40.00	33.00
Nov. 27	60	45	30	25							20	15	15	50.00	40.00	33.00
1879—Feb. 1	60	45	30	25							20	15	15	50.00	40.00	33.00
Feb. 10	60	45	30	20							20	15	15	50.00	40.00	33.00
1880—Apr. 5 (new classification)	60	45	30	20	20	20	20	15	22	20	20	16	16	50.00	40.00	33.00
Apr. 21	60	45	30	20	20	20	20	15	20	20	21	9	9	50.00	40.00	33.00
Apr. 24	60	45	30	20	20	20	20	15	20	20	10	7	7	50.00	40.00	33.00
Sept. 29	60	45	30	20	20	20	20	15	20	20	18	12	12	50.00	40.00	33.00
Oct. 27	60	45	30	20	20	20	20	15	20	20	20	15	15	50.00	40.00	33.00
Nov. 6	60	45	30	20	19	20	20	15	20	20	20	15	15	50.00	40.00	33.00
1881—Nov. 7	60	45	30	20	19	20	20	15	20	20	20	15	15	50.00	40.00	33.00
1882—Jan. 2	60	45	30	20	19	20	20	15	20	20	20	15	15	45.00	40.00	33.00
Feb. 1	60	45	30	20	19	20	20	15	20	20	20	15	15	45.00	40.00	33.00
Mar. 15	60	45	30	20	19	20	20	15	20	20	20	15	15	45.00	40.00	33.00
Apr. 1	60	45	30	20	19	20	20	15	20	20	17	12½	12½	45.00	40.00	33.00
May 1	60	45	30	20	19	20	20	15	20	20	20	15	15	47.50	40.00	33.00
Oct. 16	60	45	30	20	19	20	20	15	20	20	22½	17½	17½	47.50	40.00	36.00
1883—Jan. 1	60	45	30	25	19	20	20	15	20	20	20	15	15	47.50	40.00	33.00
	1	2	3	4	5	6	A	B	C	D						
1883—May 15 (new classification)	70	55	40	27	23	20	25	22	18	18	20	15	15	47.50	40.00	33.00
Nov. 12	70	55	40	27	23	20	25	22	18	18	20	15	15	47.50	37.50	30.00
Dec. 17	70	55	40	27	23	20	25	22	18	18	20	15	15	47.50	38.00	30.00
1884—June 2	70	55	40	30	25	20	25	22	18	18	20	15	15	47.50	30.00	30.00
June 16	70	55	40	30	25	20	25	22	18	18	20	15	15	47.50	30.00	25.00
1886—Aug. 28	70	55	40	30	25	20	25	22	18	18	20	15	15	47.50	30.00	25.00
1887—Jan. 1	70	55	40	30	25	20	25	22	18	18	20	15	15	47.50	30.00	25.00
	1	2	3	4	5	A	B	C	D	E.						
1887—Apr. 1 (new classification)	70	55	40	30	25	25	22	18	15	12	20	15	15	47.50	35.00	30.00
Aug. 1	70	55	40	30	25	25	22	18	15	12	17½	15	15	47.50	30.00	30.00
Dec. 26	55	40	30	25	20	22½	17½	15	12½	11	17½	15	15	42.50	30.00	30.00
1888—Jan. 9	55	40	30	25	20	22½	17½	10	10	10	17½	15	15	42.50	30.00	30.00
Mar. 26	55	40	30	25	20	22½	17½	15	12½	11	17½	15	15	42.50	30.00	30.00
Oct. 1	55	40	30	25	20	22½	17½	15	12½	11	17½	15	15	42.50	35.00	25.00
														In cents per 100 lbs.		
Oct. 25	55	40	30	25	20	22½	17½	15	12½	11	17½	15	15	126	15	20
1889—July 16	55	40	30	25	20	22½	17½	15	12½	11	17½	15	15	126	214	144
Dec. 23	55	40	30	25	20	22½	17½	15	12½	11	17½	15	15	98	214	144
1890—Jan. 30	55	40	30	25	20	22½	17½	15	12½	11	17½	15	15	98	214	144
Aug. 29	55	40	30	25	20	22½	17½	15	12½	11	17½	15	15	184	214	214
Oct. 1	55	40	30	25	20	22½	17½	15	12½	11	18	12	15	183	214	214
1891—Jan. 19	55	40	30	25	20	22½	17½	15	12½	11	18	12	15	183	214	214
1892—Aug. 1	55	40	30	25	20	22½	17½	15	12½	11	18	14	15	160	214	214
1893—June 10	55	40	30	25	20	22½	17½	15	12½	11	18	14	15	142	15	174
1894—May 14	55	40	32	25	20	22½	17½	15	12½	11	18	15	15	142	15	174
June 1	55	40	32	25	20	22½	17½	15	12½	11	18	15	15	142	15	174
July 1	60	45	35	27	22	24½	19½	17½	13½	11	18	15	15	142	15	174
1895—July 29	60	45	35	27	22	24½	19½	17½	13½	11	12	9	9	20	15	214
July 30	60	45	35	27	22	24½	19½	17½	13½	11	12	9	9	20	15	214
July 30	60	45	35	27	22	24½	19½	17½	13½	11	8	6	6	20	15	214
Aug. 1	60	45	35	27	22	24½	19½	17½	13½	11	8	6	6	20	15	214
Aug. 6	60	45	35	27	22	24½	19½	17½	13½	11	13	10	10	20	15	214
Aug. 17	60	45	35	27	22	24½	19½	17½	13½	11	13	10	10	20	15	214
Nov. 2	60	45	35	27	22	24½	19½	17½	13½	11	13	10	10	20	15	214
1897—Apr. 8	60	45	35	27	22	24½	19½	17½	13½	11	13	10	10	20	15	214
1898—Jan. 1	60	45	35	27	22	24½	19½	17½	13½	11	14	10	10	20	15	214
Apr. 8	60	45	35	27	22	24½	19½	17½	13½	11	14	10	10	20	15	214
May 5	60	45	35	27	22	24½	19½	17½	13½	11	14	10	10	10	10	214
May 10	60	45	35	27	22	24½	19½	17½	13½	11	14	10	10	10	10	214
Sept. 27	60	45	35	27	22	24½	19½	17½	13½	11	9	8	8	10	10	214
1899—Jan. 2	60	45	35	27	22	24½	19½	17½	13½	11	14	10	10	14[1]	18½	17½
July 2	60	45	35	27	22	24½	19½	17½	13½	11	14	10	10	14[1]	18½	17½
1900—Jan. 1	60	45	35	27	22	24½	19½	17½	13½	11	14	11	11	14[1]	18½	17½
Mar. 6	60	45	35	27	22	24½	19½	17½	13½	11	9	8	8	14[1]	18½	17½
Apr. 10, to Apr. 1, 1902	60	45	35	27	22	24½	19½	17½	13½	11	14	11	11	14[1]	18½	17½

[1] Rate, 15 cents.

NOTE.—For changes in the minimum carload weights governing the class rates shown above (from 1887), in carloads, see text, p. 18, and for three governing commodities, see Table IX.

1647

2476 ee

Table LXXI.—FREIGHT RATES CHARGED FOR THE TRANSPORTATION OF GRAIN AND MEAT PRODUCTS FROM KANSAS CITY, MO., TO ST. LOUIS, MO., FROM JANUARY 17, 1879, TO APRIL 1, 1902.

Date.	Rates in cents per 100 pounds.		
	Packing-house products.	Wheat.	Other grain.
1879—Jan. 17	25	25	25
Feb. 1	25	25	25
Mar. 1	20	20	25
Sept. 15	20	20	25
Oct. 16	20	20	25
Oct. 23	20	20	25
Nov. 10	20	20	25
1880—Apr. 17	20	20	25
Apr. 21	20	20	25
Apr. 24	20	20	25
May 6	20	20	25
1881—Apr. 1	20	20	25
July 25	20	20	25
Sept. 26	20	20	25
1882—Feb. 1	20	20	25
Feb. 4	20	17	25
Mar. 10	20	17	25
Apr. 1	20	20	25
Nov. 27	20	20	25
Dec. 1	20	20	25
1883—Jan. 1	20	20	25
May 15	20	20	25
June 11	20	20	25
Dec. 17	20	20	25
1884—Jan. 15	20	20	25
1885—Mch. 1	20	20	25
1886—Jan. 1	20	20	25
Aug. 23	17½	20	25
Aug. 30	17½	20	25
1887—Jan. 1	20	20	25
Jan. 10	20	20	25
Feb. 1	20	20	25
Feb. 15	20	20	25
Apr. 1	20	20	25
Aug. 1	20	17½	25
Dec. 26	15	17½	25
1888—Jan. 9	15	17½	25
Feb. 6	7½	17½	25
Feb. 11	7½	17½	25
Feb. 16	6	17½	25
Feb. 27	6	17½	25
Mar. 1	6	17½	25
1888—Mar. 26	15	17½	25
May 12	15	17½	25
June 29	15	17½	25
Oct. 1	15	17½	25
Oct. 15	15	17½	25
1889—Apr. 1	15	17½	25
May 25	15	17½	25
July 20	15	17½	25
Sept. 1	15	17½	25
1890—Mar. 3	15	17½	25
Apr. 28	15	17½	25
Aug. 25	15	17½	25
Oct. 1	15	17½	25
1891—Jan. 15	15	17½	25
Feb. 15	15	17½	25
1892—June 10	15	17½	25
1893—Dec. 1	15	17½	25
1894—June 16	15	17½	25
Aug. 1	15	17½	25
1896—July 20	15	17½	25
July 25	15	17½	25
July 30	15	17½	25
Aug. 1	15	17½	25
Aug. 6	15	17½	25
Aug. 17	15	17½	25
Sept. 30	15	17½	25
Nov. 1	15	17½	25
1897—Apr. 1	15	17½	25
Apr. 6	15	17½	25
1898—Apr. 1	15	17½	25
Apr. 6	15	17½	25
Apr. 22	15	17½	25
Apr. 30	15	17½	25
May 5	15	17½	25
May 10	15	17½	25
Sept. 27	15	17½	25
1899—Feb. 3	15	17½	25
Mch. 1	15	17½	25
1900—Jan. 1	15	17½	25
Mar. 6	15	17½	25
Apr. 10	15	17½	25
1902—Apr. 1	15	17½	25

[1] Corn and oats, 12 cents.

[2] Corn, 14 cents.

NOTE.—For changes in the minimum carload weights governing the commodities shown above (from 1887), in carloads, see Table XI.

GRAIN RATES FROM KANSAS AND NEBRASKA POINTS.

Below are given two tables showing changes in rates on wheat, corn, and other grain from Kansas and Nebraska points to Chicago. The first table begins with 1883, and shows the successive changes up to the present time from Nebraska points. In the second table will be found similar data from Kansas points, beginning with 1886.

An effort has been made to collect data which would show the changes in the through rates from Kansas and Nebraska to the seaboard. Owing to the fact that the rates from these localities to the seaboard are not published as through rates, it has been found impossible to compile these rates for a period sufficiently long to serve for the purposes of comparison. In explanation of the manner in which the through rates are determined it may be said that rates are published by the western roads from Kansas and Nebraska to Chicago and to the Mississippi River. The rates to the Mississippi River are usually 5 cents per 100 pounds less than the rates to Chicago. The through rates to the eastern seaboard are generally made on the combination of the rates east and west of the Mississippi River. It has been explained that the rates eastward from the Mississippi River to the seaboard are constructed upon a percentage basis of the Chicago rate; at present this percentage is 116. In order to ascertain the rates from the Mississippi River the tables showing the grain rates via all rail from Chicago may be extended to apply from the Mississippi River by increasing them 16 per cent. By this process it is shown that a rate of 17½ cents per 100 pounds all rail from Chicago to New York is equivalent to 20½ cents

EXHIBITS

NOT

SUITABLE

FOR

MICRO-

FILMING

LIVE STOCK, exception to rule 5. 2476

The Minimum Weights on Live Stock carloads, to be used in connection with the rates named on v and vii, will be as follows:

	Horses and mules.	Fat cattle.	Hogs, single deck.	Sheep, single deck.
Cars 27 ft. 6 in.	17,700	16,800	13,300	8,900
Cars 28 ft.	18,000	17,100	13,500	9,000
Cars 28 ft. 6 in.	18,400	17,500	13,800	9,200
Cars 29 ft.	18,800	17,800	14,100	9,400
Cars 29 ft. 6 in.	19,000	18,000	14,300	9,500
Cars 30 ft.	19,400	18,400	14,500	9,700
Cars 30 ft. 6 in.	19,700	18,700	14,800	9,800
Cars 31 ft.	20,000	19,000	15,000	10,000
Cars 31 ft. 6 in.	20,300	19,300	15,200	10,200
Cars 32 ft.	20,600	19,600	15,400	10,300
Cars 32 ft. 6 in.	20,900	19,900	15,700	10,500
Cars 33 ft.	21,200	20,100	15,900	10,600
Cars 33 ft. 6 in.	21,600	20,500	16,200	10,800
Cars 34 ft.	21,800	20,700	16,400	10,900
Cars 34 ft. 6 in.	22,200	21,100	16,700	11,100
Cars 35 ft.	22,600	21,500	16,900	11,300
Cars 35 ft. 6 in.	22,900	21,800	17,200	11,400
Cars 36 ft.	23,200	22,000	17,400	11,600

2477 Chicago. Also pages 105 and 106, containing rates on live stock and rates on product.

The COURT: Anything else, Mr. Cowan?

Mr. COWAN: I will have to ask Mr. Tomlinson what other——

The COURT: If you have anything more let it go in subject to objection, so as to save argument and time.

The WITNESS: The schedule of the Iowa Commission.

The COURT: Put that in.

The WITNESS: Just put in that portion showing the rates on live stock.

Mr. COWAN: Call the pages off and we can have it copied.

The WITNESS: Roman lettered pages IV, V, VI, VII, certain annual reports grouped together—an extract from the annual report of the C. M. & St. P. Railway for the year 1904, and from the C. & N. W. Railway for the same year showing the percentage that certain operating expenses represent of the total operating expenses. In other words, the classification of your expenses is shown in percentages in this way, the taxes, fixed charges, sinking fund, dividend and expenditures for permanent improvements, amount to 34.1 per cent. of the total expenses of the C. & N. W. Railway for that year.

Mr. COWAN: Mr. Tomlinson, won't the annual reports that are already in show those facts or not?

The WITNESS: They don't show the percentage classification.

Mr. DAWES: Where did you get them, then? You say you
2478 got them out of the annual report?

The WITNESS: The percentages are figured out for convenience.

Mr. COWAN: He made the compilations from that. We will ask to introduce the compilations he has made from the annual reports, subject to correction, of course, according to the figures in the annual reports. I suppose the compilations are correct.

The WITNESS: Also compilations from the annual report of various roads, annual reports showing the gross and net earnings, the cost per mile of line, the cost of construction of certain parts of their line, the amount of the surplus for the years as stated in those annual reports?

Mr. DAWES: For the construction of certain parts of our line?

The WITNESS: Yes, sir, as shown in the annual report.

Mr. DAWES: It ma-es no difference where they are; it isn't the part of the line over which we operate, I suppose.

The WITNESS: It is extracts from the annual reports on file in this case, showing the cost of construction of certain new lines constructed by the defendant companies.

Mr. DAWES: I object to that.

The COURT: What difference does that make?

Mr. DAWES: I don't know what that has to do with it.
2479 The WITNESS: It has a bearing in showing what it cost to construct these lines.

The COURT: If they are not the same lines——

Mr. COWAN: I didn't understand him to say it is not the line, but that it is a part of the line.

Mr. DAWES: New lines.

The WITNESS: The construction of some of the branches.

Mr. SEVERANCE: Like the equator, imaginery lines.

Mr. COWAN: That may be like your line to Ft. Dodge, for example.

The WITNESS: Estimate of the total average terminal expenses per car incurred in delivering the live stock at the Union Stock Yards as filed by the defendant carriers in the terminal charge case.

The COURT: What is the next one?

The WITNESS: An estimate——

Mr. LYNDE: Before you pass on, there are certain special objections to that last paper you have there——

The COURT: I don't know which you mean.

Mr. LYNDE: I don't know whether the Court cares to hear them. The new lines. We have special objections to that that we wish to urge if the Court cares to hear them.

The WITNESS: Did you say I should put in the terminal charge?

The COURT: No, I think not.

2480 The WITNESS: This is an estimate of what the rates should be, relative rates on live stock on basis of a minimum weight on fresh meat of 20,000 pounds, on packing house product of 26,000 pounds, cattle 22,000 pounds and a difference of 9,500 pounds between the weight of the refrigerator cars compared with the live stock cars at an allowance of 4,000 pounds for icing and salt in the refrigerator cars and 2,000 for the weight of the bedding in the live stock cars, and charging against the refrigerator car a mileage of one cent a mile and against the live stock cars of six mills, the equivalent of an 18½ cent rate on fresh meat, would be—

Fresh meat	18.5
Packing house product	15.27
Cattle	13.05
Hogs	15.57

Mr. SEVERANCE: Will that not be filed?

The WITNESS: Yes, I will file it.

Mr. SEVERANCE: Over our objection.

The COURT: Is that about all the papers?

Mr. COWAN: There are several matters I want to offer in testimony which I deem it unnecessary to ask about this evening.

Mr. SEVERANCE: I want to ask a few questions before we adjourn tonight, as I will not be here Wednesday.

The COURT: Go ahead.

2481 Cross-examination by Mr. SEVERANCE:

Q. In that table of expenses that you introduced, a comparative table, you charge against live stock cars mileage six mills a mile?

A. Yes, sir.

Q. You heard the testimony of Mr. A. B. Stickney in this case, didn't you? You were present in court?

A. I wasn't present. I read it.

Q. He showed by actual figures that the expense to his company for live stock cars was between one cent and two mills and one cent and three mills a mile instead of the six-tenths, which is the rate at which live stock cars are rented by other live stock car companies. You don't intend to dispute the accuracy of his figures or the deductions he made, do you, but you pass the six mills a mile on the fact that that is the price charged for cars by live stock car companies?

A. Yes; and further, from my own experience and knowledge on the question, I think that that is about a fair allowance.

Q. You don't dispute that Mr. Stickney gave correctly the actual expense of his line of road, do you?

A. No, sir.

Q. Now, Mr. Tomlinson——

The WITNESS: I don't dispute it because I don't know anything about it.

Q. You stated that there were a great many cattle driven into Omaha and Kansas City and you gave the figures.

A. Yes, sir.

2482 Q. And also South St. Paul; now, isn't it a fact that there are as many cattle driven out from those places as are driven in?

The COURT: By "driven out" you mean to feed?

Mr. SEVERANCE: Yes, taken out, or sold in the vicinity and driven out.

The COURT: Do you know anything about that, Mr. Tomlinson?

The WITNESS: I should think there are some driven out. It is shown in the annual reports of the Stock Yards Company on file, I should think.

Mr. SEVERANCE: If it is filed you need not bother about it. You admit there are a great many cattle driven out of those places, don't you?

The WITNESS: I should think there are a good many driven out of those markets.

Q. You don't know whether there are more driven out than there are driven in, do you?

A. I have no accurate information on that, no.

Q. Now, you stated that steers would dress out altogether in product 70 per cent.

A. I said 67.

Q. You said 70, but we will call it 67. If that is the case will you explain how it is that you arrive at 175 per cent. as the fair difference between the rates? Ought it not to be on that basis only about 133 per cent?

A. No, because there is a shrinkage which must be taken into consideration.

2483 Q. Well, that is the natural advantage, isn't it, that the packers in the Missouri River Valley have over Chicago? You don't ask the railroads to compensate Chicago for the natural shrinkage in transit, do you?

A. No, sir. I said at the outset that the natural advantages the market was entitled to.

Q. Then as a matter of fact, Mr. Tomlinson, if you figured out a basis of 67 per cent., or 70 per cent., as you stated, it does not figure out 175 per cent., does it?

A. No, sir; I didn't claim that it did.

Q. I thought you did.

A. No, sir.

Q. I misunderstood you, then.

The WITNESS: I will once more state what I——

The COURT: Just answer the question.

Mr. SEVERANCE: Answer the question; we are in a hurry. You made an elaborate statement today. You stated that South St. Paul was confined to one buyer. Why do you say that?

The WITNESS: I didn't say one buyer.

Mr. SEVERANCE: Yes, you did.

The WITNESS: One slaughterer, practically, one slaughterer.

Q. Why do you make that statement? Don't you know more about South St. Paul than that, Mr. Tomlinson?

A. If I did make that statement I didn't intend to. What I wished to convey regarding the South St. Paul market, was, as I understand it, there is practically only one slaughterer out
2484 there.

Q. What do you mean by "practically"?

A. I understand there is only one slaughterer there.

Q. Did you ever hear of McCormick & Company?

A. No.

Q. Did you ever hear of J. T. McMillan?

A. No.

Q. J. T. McMillan & Company?

A. No.

Q Did you ever hear of Bronson & Company?

A. No.

Q. Don't you think, then, you ought to hesitate a little in saying there is only one slaughterer there when you don't know anything about these other men?

The COURT: It depends on whether they exist or not.

The WITNESS: I have no doubt that small slaughterers——

Mr. SEVERANCE: As a matter of fact you don't know anything about how many slaughterers there are at South St. Paul?

A. Not exactly, no, sir.

Q. That is what I thought. It is in evidence already that these other men are engaged in business there. Now, in giving the receipts of cattle and hogs at St. Paul and Omaha, don't you include in that, the figures you gave, cattle and hogs received at those points and then shipped on to Chicago?

A. They may be included.

Q. You know they are, don't you?

A. I would think they are, yes, sir.

Q. So that the figures you gave don't convey any information as to the number of cattle that are slaughtered at those points?

A. I think I stated that the slaughter at these other markets had

increased relatively much greater than at Chicago. That is
2485 the point I wished to convey.

Q. You don't know anything about that, do you, not knowing who the slaughterers are?

A. Yes, sir, I know it from the official books that have been put in evidence.

Q. You stated that cattle from South Dakota and Wyoming and other points come through on a 12 cent balance of rate from Omaha?

A. Yes, sir.

Q. A great many of them?

A. Yes, sir.

Q. That rate you regard as high enough, do you?

A. Considering the fact that the road receives revenue West of the Missouri river on the service for hauling the cattle in to the river, in other words, considering the entire through rate of 48 cents from that district to Chicago, I regard that as amply high enough; in fact I think it is unreasonably high.

Q. That is to say, one road brings it in to Omaha; other roads that don't go beyond Omaha carry it to Chicago for 12 cents, and you think that other road is getting too much, while roads carrying it a little greater distance get 36 cents?

A. I don't know whether there is any other line East of Omaha participating in that distance. It is all hauled in by the C. & N. W. or the C. B. & Q. railroad.

Q. All of it?

A. There might be an exception. I doubt whether the Northwestern allows the Milwaukee to have any of that business. It would be unusual if they did.

Q. You said there is a 7½ cent rate on sheep from Idaho.

A. No, sir, I said there is a difference of 7½ cents be-
2486 tween the Missouri river and Chicago on sheep, between Spencer and Idaho.

Q. You regard that as too high, do you, 7½ cents too much?

A. No, sir, I do not.

Q. Is it too low?

A. I would say there would be no line that would handle business from Omaha——

Q. Answer my question; is it too high or too low?

A. I say, for the service of performing—for the service of handling a car of live stock from the Missouri river to Chicago 7½ cents, as an independent transaction, in and of itself, is too low.

Q. That is what I wanted to get. What do you say as to handling car load live stock from Omaha to Chicago on a 12 cent rate? Is that too high or too low?

A. That undoubtedly pays the cost of the service and some profit.

Q. Then you regard that as a fair rate?

The COURT: Answer whether it is too high or too low. Answer the question.

Mr. SEVERANCE: Is that a fair rate? Is that enough?

The WITNESS: For the service, if you will permit me to make an explanation——

Mr. SEVERANCE: No, I don't want an explanation. Answer the question.

The WITNESS: Repeat the question.

Mr. COWAN: The witness has a right to make an explanation.

2487 Mr. SEVERANCE: This is cross-examination.

The COURT: Is that a fair rate? Answer that.

Mr. SEVERANCE: Is that 12 cent rate a fair rate for the service of hauling cattle and hogs from Omaha to Chicago?

The WITNESS: Can I make an explanation?

The COURT: Answer it.

Mr. SEVERANCE: Answer yes or no.

The WITNESS: No.

Q. Is it too high?

The COURT: Answer that.

A. No.

Q. Is it too low?

A. In and of itself, for independent service——

Q. That is what I am asking you.

A. For independent service——

Q. Is it too low?

A. I regard it as affording——

Q. I just want you to answer the question. Is it too low? That will answer it yes or no.

A. It is a trifle too low.

The COURT: Now, what is your explanation?

The WITNESS: The explanation I wish to make is that on a shipment, in and of itself, say it originated at South Omaha, for example, for the service of transporting that shipment to Chicago I regard it as too low, but you cannot consider that 12 cent difference in

2488 the rate between Omaha and Chicago in and of itself, because it is a part of a through rate from the Black Hills District to Chicago and it is participated in only by the line which hauls the traffic west of the Missouri river.

Mr. SEVERANCE: I am not asking you on that basis at all.

The COURT: Can't you get along now until next week?

Mr. SEVERANCE: I only want to ask one or two questions on this one point. I am nearly through.

Q. Assuming that that rate is *taking* by the Milwaukee or Great Western, or any of the Lines hauling from Omaha in here, the stuff is taken over to them there by the Western Lines, you say the 12 cent rate is too low a rate, do you?

The COURT: I think he has answered that fairly and favorably to you.

Mr. SEVERANCE: If it is too hard, don't answer it.

The WITNESS: There is not a line that wants to take that 12 cents.

Mr. SEVERANCE: I haven't asked you to volunteer that statement. I asked you if the Western Line turns that over to the Milwaukee or the Great Western, if you don't say that rate is too low to Chicago?

The WITNESS: I say it is.

The COURT: We will adjourn now.

Mr. COWAN: I shall want to have various matters copied into the record; I shall have a number of things to introduce Wednes-
2489 day besides the record.

The COURT: What else have you in finishing the cross-examination?

Mr. COWAN: I have several little matters.

The COURT: Then you can close up Wednesday.

Mr. COWAN: I can if there is no embargo laid on what I have mentioned.

Mr. DAWES: If this is to be copied into the record, we don't care to have him go through all of it.

Mr. COWAN: I will offer in evidence a part of the testimony of some of these witnesses upon the authority of the decision read at the beginning of this case, which lays down the rule flat-footed that either party has a right to introduce any part of the record before the Comm-ssion. There is some of the testimony of Mr. Stickney, that I don't want to introduce in witness and I don't want to be in the position of introducing it all. Mr. Severance wants to make objection to doing that. I told him today I wanted to introduce some of the evidence of Mr. Stickney.

Mr. SEVERANCE: I want to enter a special objection to that, which is this: Mr. Stickney was produced here as a witness, and if it was desired to impeach his testimony, he should have been asked certain things on the stand——

The COURT: I will rule with you on that at the present.

Mr. COWAN: We will bring Mr. Stickney back then.

2490 Mr. SEVERANCE: I don't know whether we will or not.

Adjourned until 10 o'clock A. M., Wednesday, October 11th, 1905.

2491 WEDNESDAY, *October* 11, 1905—10 o'clock a. m.

Court met pursuant to adjournment.

Counsel present same as before.

The COURT: Have you got this matter settled yet about the Northwestern Railway Company?

Mr. COWAN: Well, Mr. Lynde was to be up here before court time. He stated to me yesterday that he would file a written waiver of his plea.

The COURT: There is also the question about the admission of evidence, and that must not be overlooked either. I do not think your evidence is competent against the North Western if they were not before the Commission.

Mr. COWAN: The only evidence we have here as to that matter is the plea.

The COURT: The record shows that they were not, and the admissions which were made show that they were not before the Commission. I don't want that question in the case because there are enough other questions to settle.

Mr. COWAN: Unless they waive that question, we propose to dismiss as to the North Western. Mr. Lynde told me that he would waive that question and unless he does, we will dismiss entirely as to the North Western. I stated that to him definitely and he understands it.

2492 I desire now to offer in evidence a copy of a statement which I have exhibited to Judge Baxter, sworn to by the Auditor of Shipments of the Santa Fe Railway in the Texas Cattle Raisers' case before the Commission, showing the amount of loss and damages paid on live stock for the years 1898 to 1904 inclusive, but embracing the last half only of 1898 and the first half only of 1904, making six years, the total of which is $233,704.00.

(The said statement so offered in evidence is marked "Complainant's General Exhibit No. 1.")

2492*a* COMP. GENERAL—EX. 1.

The Atchison, Topeka & Santa Fe Railway Company.

Statement of Payments Made to Claimants for Loss and Damage to Live Stock in Transit.

Fiscal Years Ending June 30th, 1898 to 1894, Incl.

Year 1898	$13,686.44	(last half only)
1899	15,580.44	
1900	49,455.15	
1901	55,944.68	
1902	26,831.34	
1903	48,488.85	
1904	23,667.26	(first half only)
	$233,704.16	

JOHN W. WITE,
Auditor of Disbursements.

STATE OF KANSAS, *County of Shawnee:*

J. W. White, being duly sworn on oath says that the above and foregoing statement is true, as he verily believes.

Subscribed and sworn to before me this 10th day of May, 1904.

GEO. N. HOLMES,
Notary Public.

My Commission Expires Jan. 18, 1907.

I desire to offer also in evidence a statement furnished on request by Mr. Daly of the loaded car mileage on these three divisions of the Illinois Central Railroad, extending from Chicago west, the items being named in the statement and signed by Mr. Daly.

(The said statement so offered in evidence is marked "Complainant's General Exhibit No. 2.")

I desire to offer in evidence a statement furnished by Mr. Daly, which he was interrogated about when on the stand, of the train consists on the Illinois Central of all freight east bound out of Fort Dodge and all freight east bound out of Freeport for the first fifteen days in April and October, 1904, which I have exhibited to Judge Baxter and with which he is familiar.

2493 (The said statement so offered in evidence is marked "Complainant's General Exhibit No. 3.")

I had an agreement with Mr. Dawes and Mr. Lynde in regard to the witness Martin, whose child was sick, that he might make an affidavit of some brief facts and file it in lieu of his testimony. I dictated it at his direction, and he swore to the statement which I desire to read into the record or to file a copy of it.

The COURT: All right, either way.

Mr. COWAN (Reading): "R. C. Martin of St. Charles, Iowa, live stock raiser, farmer and shipper of live stock on my oath testify that I ship about 200 cars of live stock some to Chicago but principally to Des Moines, St. Joseph and Omaha. I invariably furnish the bedding for the cars at my own expense. This applies to the Rock Island, the Burlington and the Great Western. The bedding, after the cattle are unloaded, would weigh about 800 pounds. They do not furnish me with clean cars in the winter time in more than one out of ten and in the summer one out of five."

The COURT: Furnish him with what?

Mr. COWAN: Clean cars. "And in the summer time one out of five. They usually run us about 20 miles an hour, from 30 to 45 cars to a train. With the exception of the car put at the chute when they set them, I pinch the cars to

2493*a* Statement showing the number of trains carrying live stock and the consist of such trains moved over the Division Freeport to Chicago and Fort Dodge to Waterloo, for the period April 1st to April 15th and October 1st to October 15th, 1904, filed with the Interstate Commerce Commission by J. M. Daly, Car Accountant, Illinois Central Railroad Company, furnished on request of Honorable Mr. Cowan.

Copy to
Honorable Commissioner Prouty.
Honorable Mr. Baxter.
Honorable Mr. Cowan.

2493*b* Statement showing the number of trains carrying live stock and the consist of such trains moved over the Division Freeport to Chicago and Fort Dodge to Waterloo, for the period April 1st to April 15th and October 1st to October 15th, 1904, furnished on request of Honorable Mr. Cowan.

Out of Freeport April 1st to 15th, 1904, Inclusive.

Number trains carrying stock	36
Total number cars stock	654
Average number cars stock per train	18
Total number other cars in stock trains	362
Total number stock and other cars	1,016
Average number stock and other cars per train	28
Number trains without stock	48
Number cars in trains without stock	1,515
Average number cars per train without stock	32

2493*c* Illinois Central Railroad Company.

Office of the Car Accountant.

All Freight out of Freeport East Bound April 1st., to 15th, Inclusive. 1904.

Date.	Train No.	Loads stock.	Other loads.	Empties.
1	X		5	
	#92		23	8
	64		18	20
	52		31	
	62	11	13	1
	X		41	15
2	#92		19	16
	50		10	7
	52		22	10
	60	6	21	10

Date.	Train No.	Loads stock.	Other loads.	Empties.
3	X	26		
	X	27		
	X	16	6	1
	X	30		
	X	25		
	X	21	3	2
	52	1	23	1
	52		20	5
	X		21	15
4	60		30	
	#92		17	23
	62	22		
5	X		24	19
	50		19	1
	52		22	3
	X		13	24
	#92		20	12
	2-62	26		
6	52		25	2
	#92		22	18
	64	29		
	1-2-60	26		
	X	1	26	16
	60	28		
7	62	26	1	
	50	2	18	5
	#92		28	9
	60		32	6
	62		29	
	64		21	2
	52		26	
2493*d*				
8	#92		18	17
	X		24	8
	52		29	
	64		21	5
	60		28	3
	62	5	19	1
9	92		14	8
	50 & 1-32	2	18	2
	60		31	8
	50		23	2

Date.	Train No.	Loads stock.	Other loads.	Empties.
10	52		22	4
	52		21	7
	X	32		
	X	32		
	X	22	2	
	X	29		
	X	24		
	X	32		
	62	16	8	
11	#92		18	25
	60		39	15
	64	1	25	8
12	60		26	17
	50	1	20	4
	#92		21	12
	52		34	1
	62	29		
	62	30		
13	64	24		
	#92		12	18
	52	1	29	1
	X		20	
14	#92		17	11
	60		27	14
	64		30	3
	1-50	4	27	
	2-50		22	
	62	16	1	4
15	#92		17	18
	60		25	5
	64		28	3
	62	30		
	52	1	27	
	84	654	1402	754

#Local Train.

2493*e* Out of Freeport, 1st to 15th, 1904, Inclusive.

Number of trains carrying stock	28
Total number of cars stock	371
Average number of cars stock per train	13
Total number of other cars in stock trains	444
Total number of stock and other cars	815
Average number of stock and other cars per train	29
Number of trains without stock	45
Number of cars in trains without stock	1,533
Average number of cars per train without stock	34

2493*f* Illinois Central Railroad Company.

Office of the Car Accountant.

All Freight out of Freeport East Bound, October 1st to 15th, Inclusive, 1904.

Date.	Train No.	Loads stock.	Other loads.	Empties.
1	#92		28	5
	60		47	4
	64		32	2
	62	6	17	
	52		36	
2	60	20	11	1
	62	20	9	
	52	3	1	
	X		30	1
3	64		38	6
	X		36	7
	52		28	1
	#92		39	6
	X		32	3
4	#92		29	5
	64		43	10
	60		38	3
	52	2	25	2
	62	29		
	52	2	25	
5	#92		27	7
	X		28	5
	62	36		
6	#92		30	9
	64		26	2
	60		29	5
	62	29		
	52		34	

Date.	Train No.	Loads stock.	Other loads.	Empties.
7	#92	1	35	14
	60		40	2
	X	1	33	2
	64		27	9
	52		22	
	62	12	15	
8	#92		11	3
	52	1	22	1
	62	15	12	
	X		2	
	X		24	1
	64	2	12	
2493*g*				
9	60	27		
	52	1	33	2
10	#92		29	
	60		35	
	64		34	
	62	23	7	
	52		27	
	64	16	3	
	62	21	6	
11	#92		23	8
	X		22	6
	60		35	4
	X		30	
	52	1	22	1
12	52		28	
	60		40	3
	#92		24	8
	64		27	4
	62	33		
13	#92		24	10
	60		41	1
	62	28		
	64		29	5
	52		31	
14	#92		24	11
	64	2	23	10
	60		39	5
	52		28	
	62	25	4	

Date.	Train No.	Loads stock.	Other loads.	Empties.
15	#92	1	19	13
	64	1	27	1
	62	13	6	
	52		31	
	73	371	1764	213

#Local Train.

2493*h* Out of Fort Dodge, April 1st to 15th, Inclusive.

Number of trains carrying stock	33
Total number of cars stock	464
Average number of cars stock per train	14
Total number of other cars in stock trains	315
Total number of stock and other cars	779
Average number of stock and other cars per train	24
Number of trains without stock	55
Number of cars in trains without stock	1,619
Average number of cars per train without stock	29

2493*i* Illinois Central Railroad Company.

Office of the Car Accountant.

All Freight out of Ft. Dodge East Bound, April 1st to 15th, Inclusive, 1904.

Date.	Train No.	Loads stock.	Other loads.	Empties.
1	X			31
	1-52	5	16	
	50		16	2
	#94		11	31
	2-52		12	15
	X	3	12	2
2	#94		14	13
	X		6	29
	X	6	2	26
	52 & X		16	3
3	X	20	3	
	X		1	53
	72		21	9
	X	30		
	62 & 1-60	18	4	
	62 & 1-2-60	23		
	52	7	19	3
	X	30		

Date.	Train No.	Loads stock.	Other loads.	Empties.
4	50		8	3
	X		7	37
	X		3	30
	72		3	37
	X		8	29
	#94		9	41
5	X		9	33
	2-52		9	48
	#94		14	11
	X	21	5	
	1-51	1	15	2
	62	23		
6	#94		21	7
	X		9	26
	2-52		27	
	3-52		24	
	50	6	10	2
	1-52	15	6	
7	#94		13	23
	X		3	5
	2-50		10	26
	2-50	3	16	
	72		11	47
	1-50		11	9
	1-52	12	9	1
2493*j*				
8	X		9	4
	2-52		10	3
	50		18	
	#94		8	37
	X		14	14
	X		13	17
	X		8	4
	1-52	3	8	3
9	52	1	15	1
	X		3	2
	#94		8	28
10	X		1	42
	72		18	48
	2-62 & 62	14		
	60	30		
	X	30		
	X	19	1	3
	1-60 & X	30		
	X	30		
	52	7	21	2

Date.	Train No.	Loads stock.	Other loads.	Empties.
11	60		17	14
	#94		7	11
	50	1	16	
12	#94		12	24
	X		10	4
	X		11	9
	2-52		18	4
13	X		20	8
	62	30	7	
	1-52	11	9	2
	#94		3	17
	2-52		24	
	72		11	5
	X		23	
	1-52	3	19	1
14	#94		8	13
	X		16	5
	2-52		14	9
	60	12	11	1
	1-52	7	16	
15	#94		10	37
	X		3	22
	2-52		17	4
	1-52	9	13	
	50	4	13	
	88	464	902	1032

#Local Train.

2493*k* Out of Fort Dodge, October 1st to 15th, Inclusive.

Number of trains carrying stock	24
Total number of cars stock	195
Average number of cars stock per train	8
Total number of other cars in stock trains	451
Total number of stock and other cars	646
Average number of stock and other cars per train	27
Number of trains without stock	54
Number of Cars in trains without stock	1,638
Average number of cars per train without stock	30

2493*l* Illinois Central Railroad Company.

Office of the Car Accountant.

All Freight out of Ft. Dodge East Bound, October 1st to 15th, Inclusive, 1904.

Date.	Train No.	Loads stock.	Other loads.	Empties.
1	X		20	
	X		18	
	#94		22	10
	X		27	22
	1-52	2	27	
	2-52		22	
2	72		26	16
	60	19	12	
	X	10	11	8
	2-52	8	1	
	1-52	13	21	1
3	#94		34	16
	X		21	13
	X		19	
	X	2	16	1
4	#94		27	12
	72		22	3
	X		19	23
	52	1	27	2
	X		23	
	X		19	
5	#94		18	20
	1-52	22	4	
	2-52		26	
	72		28	
	X		24	
6	#94		22	17
	72	2	25	3
	X		30	
	52	6	25	
	X		17	
	X		19	
7	#94		22	4
	X		19	14
	72		29	
	2-52	5	19	
	1-52	8	17	1
	X		20	

Date.	Train No.	Loads stock.	Other loads.	Empties.
8	2-52		20	1
	X		20	
	#94		22	12
	72		29	16
	X		27	12
	1-52	6	22	2
2493*m*				
9	62	23	4	1
	60	10	11	6
	52	6	21	1
	X		29	21
10	#94		29	22
	X		22	8
	72		20	16
	X		27	11
	52	1	28	1
11	X		21	
	#94		19	9
	X & 2-52		26	6
	52 & 1-52	9	23	
12	72		32	2
	52	13	19	
	#94		21	15
	X		14	15
	X		18	
13	#94		18	6
	72		23	20
	2-52		20	6
	X		20	6
	1-52	14	18	
14	94		10	14
	X		20	
	X		21	11
	1-72		19	2
	1-52	9	17	
	2-52	2	15	
15	#94		14	12
	X		23	18
	X	1	22	1
	X		27	3
	52	3	18	
	78	195	1627	462

2494 the chute as I load. My cattle weigh at Chicago from 22,000 to 24,000 pounds."

(The said affidavit is marked "Complainant's General Exhibit No. 4.")

From the original record I desire to offer in evidence the letter admitted in evidence by the Commission from President Stickney of the Great Western Railroad to his stockholders written upon the occasion of the making of the contract with the packers which has been alluded to heretofore and, explanatory of that contract, I desire to introduce that without taking the time to read it, and I have a copy of the letter that was printed in the Railway Age and that will save the expense of copying it out of the record. I now file that.

Mr. LYNDE: I am not authorized, of course, to speak for Mr. Severance, but in view of his statement here the other night, I think it would be only proper to call the Court's attention to the fact that he did not make special objections in reference to that matter.

The COURT: That will go in over his objection.

Mr. LYNDE: I want to have special attention called to the fact that he had suggested that he had special objections.

The COURT: Do you remember what his special objection was?

2494*a* GEN. EXHIBIT NO. 4.

R. J. G. Martin, of St. Charles, Iowa, live stock raiser, farmer and shipper of live stock, on my oath testify that I ship about 200 cars of live stock, some to Chicago, the principal to Des Moines and St. Joseph, Missouri. I invariably furnish the bedding for the cars at my own expense. This applies to the Rock Island, the Burlington and the Great Western Railroads. The bedding after the cattle are unloaded will weigh about 800 pounds. They do not furnish me with clean cars in the winter time not more than one out of ten and in the summer one out of five. They usually run us about 20 miles an hour from thirty to 45 cars to the train. With the exception of the car put at the *shoot* when they set them I pinch the cars to the *shoot* as I load. My cattle weigh at Chicago from 22,000 to 24,000.

J. G. MARTIN.

Subscribed and sworn to before me this twenty-ninth day of September, A. D. Nineteen hundred and five.

MARSHALL E. SAMPSELL,
Clerk of U. S. Cir. Court, Nor. Dist. of Ill.

2494*b* GEN. EX. 5.

Statements from Record Before the Commission in this Case.

Exhibit 4 is the annual report of the C. M. & St. P. Ry. Co. for the year ending June 30th, 1902, and on pages 11 and 12 it is stated that the amount of capital stock per mile of road is $15,879.57 and the funded debt per mile of road is $18,897.54, a total per mile of $34,777.11.

On pages 7 and 21 the income for the fiscal year is shown, as follows:

Gross earnings	$45,613,124.84
Net earnings and income	15,850,544.48
Interest on bonds	6,210,086.11
Dividends at 7 per cent. on preferred and 6 per cent. on common stock	6,584,619.00
Balance	3,055,839.37
Improvements and additions to property, including amount credited to renewal and improvement fund (p. 17 exhibit 4) charged to operating expense	3,705,800.94
Actual surplus during the year	6,761,640.31

The actual surplus was 14.8 per cent. of the gross earnings. The earnings on both the preferred and common stock was 12.7 per cent. and the earnings on the common stock, after payment of 7 per cent. on the preferred stock, were equal to 17.5 per cent.

During year ending June 30, 1901, the C. M. & St. P. Ry. Co. earned on its common stock, after payment of 7 per cent. on its preferred stock, 15.2 per cent. (exhibit 28) and during year ending June 30, 1900, the C. M. & St. P. Ry. earned on its common stock, after payment of 7 per cent. on the preferred stock, 15.6 per cent.

2494*c* References to pages 17 and 18 of exhibit 4 and page 18 of exhibit 28 indicates the policy of the C. M. & St. P. Ry. regarding the making of permanent improvements and additions and including them in operating expenses. During the year 1901 the amount thus charged into operating expenses was $3,152,980.45, which added to the surplus as shown on page 23 of exhibit 28 would give an actual surplus of $5,891,956.03.

The credit balance (income account) on June 30, 1902, was $20,682,068.61 (exhibit 4, p. 21).

The credit balance (income account) on June 30, 1905, was $31,185,001.59. (See annual report of C. M. & St. P. Ry. for the year ending June 30, 1905, in evidence.)

This shows an increase over the year ending June 30, 1902, of $10,502,932.98. In addition to this growth of the income account the C. M. & St. P. Ry., as has been their custom, has made betterments and additions to its property aggregating $5,000,000, which have been charged to operating expenses. Extraordinary — and renewals have been made, and for these reasons the immense increase in income account as shown in the annual report does not

by any means reflect the net earnings of that company. This is true of the other defendant companies.

Exhibit 27, annual report of the C. & N. W. Ry. Co. for the year ending May 31, 1902, shows on pages 5 and 6:

2494*d* Gross earnings	$46,644,121.49
Operating expenses and taxes	30,005,642.77
Net earnings	16,638,478.72
Income from investment	577,080.00
Total income	17,215,558.72
Interest on bonds	6,406,038.08
Available for dividends	10,809,520.64
Dividends of 8 per cent. on preferred and 7 per cent. on common stock	4,529,468.00
Surplus	6,280,052.64
Paid out of surplus for Minnesota Western Ry. and for permanent improvements	4,697,055.04
Sinking fund and anticipated interest	234,695.44
Balance	1,348,302.16

Surplus for the year is 13.2 per cent. of gross earnings. After payment of 8 per cent. on preferred stock the common stock earned 23 per cent. and the preferred and common stock both earned at the rate of 17.56 per cent.

The C. & N. W. Ry. is bonded for $27,000 per mile and has issued $11,000 stock per mile, a total of $38,000 per mile.

According to the C. & N. W. Ry. annual reports for the years ending May 31, the surplus, after payment of all fixed charges and dividends, and exclusive of any sinking funds charged out of net earnings, are:

1897	$1,171,970.84
1898	2,235,322.59
1899	3,635,325.97
1900	6,147,160.49
1901	5,906,893.30
1902	6,045,357.20
Total for five years	25,142,030.39

In the surplus for the years 1900, 1901 and 1902 is included the amounts expended for new lines or construction and for permanent additions to the property paid out of the income.

2494*e* Exhibit 26 is the annual report of the C. R. I. & P. Ry. Company for the year ending March 31, 1902, and on page 5 the following items appear:

Gross earnings from operation	$28,385,845.81
Net income	11,079,969.25
Payment for rentals, interest on bonded debt and dividends	6,106,928.62
Surplus	4,973,040.63

The surplus is 17.5 per cent. of the gross earnings and the earnings on the common stock amounted to 12.87 per cent. At the time of the last annual report the C. R. I. & P. Ry. had issued $18,300 stock per mile, and was bonded at $22,000 per mile, a total of $40,300 per mile, an increase of $3,000 per mile over preceding year. Since then, by means of a reorganization, each $100 of old stock has been converted into $270 of new securities, thus adjusting the indebtedness so as to absorb the increased earnings, which the management manifestly believed were to be permanent.

The annual reports of the C. R. I. & P. Ry. for the years ending March 31st show surplus as follows:

Year.	Surplus.
1898	$1,937,179.17
1899	1,812,728.03
1900	2,462,475.12
1901	3,097,325.01
1902	4,973,040.63
Total for five years	14,282,747.96

The annual report of the Illinois Central Railroad Company for the year ending June 30, 1902, pages 4 and 11, shows that permanent improvements to the amount of $4,340,172.08 were defrayed out of the current income, and that after payments for in-
2494*f* terest, dividends, sinking funds, etc., there was a surplus of $1,132,446.92.

Exhibit No. 5, Chicago Great Western Ry. Co. annual report for the year 1902, page 11, shows outstanding securities to the amount of $68,570,674 equal on 929 miles to $73,600 per mile of road. The debenture stock and the preferred stock A are equal to $38,300 per mile, and during the fiscal year there was paid 4 per cent. on the debenture stock and 5 per cent. on the preferred stock A. The debenture stock outstanding of $24,327,089 is equal to $26,200 per mile and this amount probably amply covers the present value or the actual money invested in the property. Allowing for payment of 4 per cent. on the debenture stock, the balance for payment on the other issues would be $589,645.45, and this amount should be really considered as a surplus.

The Burlington, Cedar Rapids and Northern Railway Co. carried a total railway capitalization of about $19,000 per mile (see 14th annual statistical report of the I. C. C.), and that amount undoubtedly covered all the money ever invested in that property.

In the annual report of the Illinois Central Railroad for the year ending June 30, 1902, page 3, will be found official estimated figures of the cost of construction of certain new branches and extensions. One branch of 18 miles is estimated to cost $300,000, or $16,666 per mile; another branch of 20.5 miles is estimated to cost $485,614, or $23,700 per mile.

2494*g* Exhibit 27, page 20, shows that the entire cost of the Minnesota Western Railway, built in the interest of the C. & N. W. Ry., 45.82 miles in length, was $497,353.64, less than

$11,000 per mile. In the same annual report, page 21, appears the following: "For cost of constructing an extension from Sargent's Bluffs to Moville, Iowa (about 20 miles) including cost of equipment, $500,000, or $25,000 per mile.

In exhibit 28, which is thirty-seventh annual report of the C. M. & St. P. Ry. Co. for year ending June 30, 1901, pages 8 and 9, the cost of certain extensions and new lines is given. The total amount of new mileage constructed was 284.14 miles, at a total cost of $6,135,284.29, or $21,592 per mile. It is not stated whether this amount includes the necessary equipment; presumably it does. If it does not then $5,000 or $6,000 per mile would furnish ample equipment.

The tenth annual report of the Railroad Commission of Texas for the year 1901, pages 24 and 25, shows the value of the railroad property in the State of Texas, as ascertained by the Railroad Commission of Texas, to be $15,863 per mile, and on that valuation the roads earned during the year 11.43 per cent.

The following is an extract from the annual report of the C. M. & St. P. Ry. for the year ending June 30, 1904, now in evidence, showing the cost of construction of a portion of the line in Wisconsin:

"A portion of the line of the Marinette, Tomahawk & Western Ry., extending south from Gleason, Wis., a distance of 12.60
2494*h* miles, with a spur track extending northerly 6.65 miles, costing together $150,000.00, was purchased during the year, and a connection of this line with the main line of the Wisconsin Valley Division has been formed by the construction of a line from Otis to Gleason, a distance of 11.16 miles, at a cost of $71,596.48."

2494*i* *Extract from Annual Report of C., M. & St. P. Ry. for Year Ending June 30, 1904.*

Number of tons of revenue freight carried	21,267,370
Expenses of station service	$2,511,282.76
Station supplies	201,658.79
Total	$2,712,941.55

Equal to 12.8 cents per ton.

On cars loaded at 13,297 tons, which is the average revenue load of all loaded cars on C. M. & St. P. Ry., the expense would be $1.70 per car, and on cars of 60,000 lbs. paying weight would amount to $3.84 per car.

C. & N. W. Ry.

Figures Taken from Annual Report for Year Ending June 30, 1904.

Gross earnings	$53,334,633.86	
Income from investment	553,435.00	
Total	$53,888,068.86	
		Percentage.
Operating expenses	$35,389,303.96	65.9
Taxes	1,837,805.33	
Fixed charges	7,035,718.26	
Sinking fund	225,500.00	34.1
Dividends	5,174,924.00	
Expenditures for permanent improvements	4,000,000.00	100.

Classification of operating expenses:		Percentage.
Operating expenses	$35,389,303.96	100.
Maintenance of way and structures	7,166,308.14	20.2
Maintenance of equipment	5,509,734.16	15.5
Conducting transportation	21,654,456.35	61.1
General expenses	1,058,805.31	3.

2494*j* From C. G. W. Ry. Co. Annual Report for 1902 and 1903.

Locomotive Statement for the Years Ending June 30, 1902, *and June* 30, 1903.

	1902.	1903.	Increase.	Decrease.
Number of miles run by engines:				
On passenger trains	2,374153	2,478695	104542	
On freight trains	3,575763	3,284694	.....	291069
On work trains	242987	301004	58017	
On switch trains	858773	850410	.....	8363
Total number of miles run.	7,051676	6,914803	162559	299432
Service:				
Pounds of waste	63886	73004	9208	
Pints of oil.	712440	857040	144600	
Cords of wood	2249	1970	.. ..	279
Tons of coal	542161	426348	.....	15813
Cost per mile run:				
Oil, waste and supplies (cts.)	.51	.66	.15	
Wood and coal (cts.)	11.74	12.71	.97	
Wages, engineers, firemen and dispatchers (cts.)	8.04	8.43	.39	
Maintenance and repairs (cts.)	5.59	7.27	1.68	
Total cost per mile run (cts.)	25.88	29.07	3.19	
Cost per 1,000 ton miles (gross):				
Oil, waste and supplies (cts.)	1.06	1.26	.20	
Wood and coal (cts.)	24.55	24.56	.01	
Wages, engineers, firemen and dispatchers (cts.)	16.85	16.29	.....	.56
Maintenance and repairs (cts.)	11.72	14.06	2.34	
Total cost per 1000 ton mile-(cts.)	54.18	56.17	2.55	.56
Average of miles:				
To pint of oil all kinds (miles)	9.90	8.06	.....	1.84
To pound of waste (miles)	110.34	94.60	.....	15.78
To ton of coal (miles)	15.05	15.15	.10	

2494*jj* *Table Showing Increase in Volume of Traffic A., T. & S. F. System.*

(See printed Annual Reports, fiscal years, 1902, p. 11; 1903, p. 15.)

(No company freight included.)	1901.	1902.	Per c't incr'e.	1903.	Per c't incr's.
Average tons freight per loaded car, mile	12.60	13.68	8.57	14.15	3.44
Average tons freight per freight train mile	242.67	247.51	1.99	279.67	12.99
Average freight revenue per train mile	$2.44	$2.53	3.69	$2.65	4.74
Average passenger revenue per train mile	$1.20	$1.04	4.20	$1.03	0.96 dec.
Average total revenue per passenger train mile	$1.26	$1.28	1.59	$1.29	0.78
Tons revenue freight carried one mile, increased	.....	354955176	9.16	473792445	11.20
Freight car mileage increased miles	.....	13978360	3.25	23525926	5.30
Freight train mileage increased miles	.....	559,803	3.50	290,421	1.76
Number of passengers carried one mile, increased	.....	93,633,535	18.22	5,405,773	0.90
Passenger carr mileageincreased	....	8,793,460	13.24	2,081,582	2.77
Passenger train mileage increased	.....	1,367,589	10.85	174,320	1.35
Operating expenses, per cent. to gross earnings	59.23	57.34	....	61.65	

NOTE.—The increase in operating expenses due to permanent improvement in maintenance of way and structures for the year 1903 of $3,265,426 over the same item for 1902, accounts for the increase in the percentage of operating expenses to gross earnings.

2494*k* From C. & N. W. Printed Annual Reports, 1901, 1902, 1903.

General Summary of Operations.

	1901.	1902.	1903.
Gross earnings per mile	$7,825.92	$8,098.49	$7,871.40
Operating expenses and taxes per mile	4,944.47	5,209.67	5,252.59
Net earnings per mile	2,881.45	2,888.82	2,618.81
Number of passengers carried	16,944,372	18,648,845	20,152,311
Number of passengers carried one mile	483,273,248	541,676,123	602,594,208
Average rate per passenger per mile	2.01 cts.	2.01 cts.	2 cts.
Average number of passengers carried per train per mile run	39.66	39.17	
Average number of passengers carried per passenger car per mile run	11.02	11.10	
Average approximate earnings per mile run by passenger trains	95 cts.	94 cts.	99 cts.
Number of tons of revenue freight carried	25,271,726	29,321,538	30,450,955
Number of tons of revenue freight carried one mile	3701417722	4122440480	4029840841
Average rate per ton per mile	.85 cts.	.81 cts.	.87 cts.
Av. number of tons of revenue freight carried per train per mile run	232.37	249.65	231.78
Av. number of tons of revenue freight carried per loaded car per mile run	13.54	14.	13.06
Average approximate earnings per mile run by freight trains	$1.98	$2.03	$2.03
Total mileage of engines	41,323,805	43,953,894	46,611,762
Repairs and supplies for engines and tenders per mile run	3.76 cts.	4.23 cts.	4.15 cts.
Engineers, firemen, wipers, etc., per mile run	7.60 cts.	7.67 cts.	8.10 cts.
Cost of oil, waste and tallow per mile run	.28 cts.	.26 cts.	.30 cts.
Cost of fuel per mile run	8.39 cts.	8.32 cts.	9.27 cts.
Total cost per mile run by engines	20.03 cts.	20.48 cts.	21.82 cts.

2494*l* Fuel:

Coal consumed (all purposes) tons	2,170,293	2,340,255	2,652,550
Wood consumed (all purposes), cords. ...	14,324	15,775	18,955
Average cost per ton of coal consumed...	$1.71	$1.68	$1.72
Average cost per cord of wood consumed..	$2.48	$2.57	$2.71
Locomotive coal on hand, tons	68,698	115,679	122,081
Long wood on hand, cords	7,563	6,842	5,173
Short wood on hand, cords	7,007	6,232	6,731

2495 Mr. LYNDE: His statement there was that Mr. Stickney was called as a witness, and your Honor said—If I remember correctly, your Honor rules with him.

The COURT: Not as to that.

Mr. LYNDE: That he was here as a witness on the stand?

The COURT: That was without the reading of the letter, that was another proposition, and that was talked about at another time.

Mr. LYNDE: Yes, as I understand it.

The COURT: I guess you had better let this go till Mr. Severance comes back.

Mr. COWAN: Well, the letter was not the matter under discussion. I stated while he was here that I proposed to read it.

The COURT: As long as he has special objections to that, I think you had better wait till he comes back. I understand that the point about that letter is that counsel claims that it tends to show that these rates were not fixed by competition. If that is true, it seems to me it might be material.

Mr. COWAN: Well, I think there can be no question that the letter as admitted by the Commission, is admissible here. If the court desires to have the letter, the complainant offers it. I think it is clearly admissible.

The COURT: Well, I won't pass on that till I hear from —.

2496 Mr. COWAN: We make the formal offer of the annual reports for the year 1902 of the Chicago Great Western Railroad, Chicago Rock Island & Pacific, and Chicago & North-Western Railroad, which are in the original records in printed form. I think we can supply copies of them by requesting them from counsel so that they will be introduced formally if they are not in the exhibits that have been offered by Mr. Tomlinson. Some of them are and some are not, but, for the purpose of showing statistical data that we desire to call special attention to, we offer them and a statement copied from those annual reports containing certain figures respecting the earnings and operating expenses and certain operating statistics copied from those reports as General Exhibit No. 5. Those are just copies that are made from the pages indicated in the annual report and as we have them filed, the printed reports, it will simply be a duplication of that part of the report.

(The statement referred to and offered in evidence is marked "General Exhibit No. 5.")

Mr. BAXTER: On the Chicago Rock Island & Pacific Road, what report do you offer?

Mr. COWAN: For the year 1902. That is on file in the Commission's Report, and I will have to request a printed copy in order that I may file it in this case, and counsel,

2496a GENL. EX. 6.

Extracts from the Testimony of Mr. A. C. Bird, before the Interstate Commerce Commission in the case of the Chicago Live Stock Exchange *vs.* the Chicago Great Western Railway *et al.*, at the hearing held at Chicago, November 6, 7, 8, 1902, appearing on pages of the record as indicated.

Pages 32 and 33.

Mr. TOMLINSON: What is the general practice in the making of rates on raw articles as compared with the finished product?

Mr. BIRD: Except when the raw article is a live animal the proposition is generally to make the rate on raw material less, if possible, if circumstances require it. As a general theory it is less on the raw material. I should say as a general principle it is less than on a manufactured article.

Mr. TOMLINSON: You say there is an exception so far as live stock is concerned?

Mr. BIRD: There seems to be at the present time.

Mr. TOMLINSON: How are your rates adjusted between, for example, points west of the Missouri River or points east of there except the particular traffic between the Missouri River and Chicago? In other words, is there any other instance in rates prevailing in any territory in this country where the rate on live stock is more than on the finished product except between the Missouri River and Chicago and St. Paul and Chicago?

2496b Mr. BIRD: And St. Louis, I suppose. I do not know of any cases except on shipments from Missouri River points and from South St Paul.

Page 34.

Mr. TOMLINSON: Is it not almost universal that the rates on fresh meat are higher than on packing house products except between the Missouri River and Chicago?

Mr. BIRD: I think that the rates on fresh meats are greater generally than on packing house products except from Missouri River points and from South St. Paul.

Pages 104, 105, 106, 107.

Commissioner PROUTY: It seems that the rate on live stock and packing house products has ordinarily been the same from most points on the Missouri River to Chicago; that is, the tariff has.

Mr. BIRD: That has been the case since this early contract that I spoke of a while ago. At the beginning of the fresh meat shipment from Omaha to Chicago the rate on fresh meat was 148 per cent. of the average rate received on live stock coming out of Nebraska. In other words, whatever the average rate was from Omaha to Chicago on Nebraska stock, that was taken as the basis for the original

dressed beef rate from Omaha to Chicago—148 per cent.,—and that continued more or less—it is a fact—for a number of years,
2496c until the business increased; a number of packers located there and increased the competition there and at Southwestern Missouri River points, and it culminated a good many years ago in the contract made by the Chicago & Alton with one of the packers at Kansas City. I do not remember what that contract was, but it contained a minimum rate of 15 cents, and the maximum rate was less than 23½ cents; but when the full effect of what was known upon traffic, something was done. I cannot recall all the details, but a compromise was made, under which the packers accepted a maximum rate of 23½ cents. Whether that was about the time of the decision of this Commission in the Chicago & Alton case in 1890 I am not clear; I think that it was the time the compromise was made. At any rate, it had the effect of reducing the rate on the live animal as well as on the product, and being put so low it seemed inexpedient to attempt to make a difference between the two articles at that time, because it had been reduced so much.

Commissioner PROUTY: Now, it seems that the rate at St. Paul, the rate on live stock, has always been higher on live stock than on the product.

Mr. BIRD: That is a harder matter——

Commissioner PROUTY: My question is this: Why have you not made the rate the same from St. Paul, while it has been the same from Missouri River points?

Mr. BIRD: Because of various conferences and negotiations with the Commission of Minnesota.

2496d Commissioner PROUTY: Just explain, if you can, how the Commission of Minnesota produces any effect on the relative live stock rate from St. Paul to Chicago?

Mr. BIRD: There was a disposition on the part of that Commission to foster as far as it could lawfully do so the industry at South St. Paul—the packing industry. A rate reduction on live stock from South St. Paul to Chicago would in their opinion have carried with it at least a maximum throughout that part of Southern and Southeastern Minnesota which would be intermediate on the route to Chicago by any line; so that the rate, if reduced from St. Paul to Chicago on live stock, would be probably reduced from some points in Southern Minnesota. Then the result would have been that the St. Paul packer, taking his live stock out of Southern Minnesota to St. Paul, would have to pay that local rate, whatever it was, to St. Paul, plus the provision rate back, and it would embarrass the production of provisions at that point; and at one time it was generally suggested, or urged, that if the rates on live stock were reduced from South St. Paul, it would call for a general reduction of local maximum rates of the State, not only applying in that corner which would be affected by any order of this Commission, but it would be a State affair, that would apply throughout the entire State. Now, we had discussions on that subject with various representatives of the Commission at various times, and it did not seem a proper time

to make that reduction or any change of the live stock rate from South St. Paul to Chicago.

2496*e* Page 267.

Mr. BIRD: * * * Theoretically, to make a tariff on every article that we carry and put each article in its proper relation to the others, while it is very difficult, you would naturally put a greater tax on articles of high value and of greater concentration than on the coarser articles; and if it were left to my judgment and decision, free from all competitive force, I would put a higher rate on dressed meat than on cattle.

Page 280.

Mr. TOMLINSON: You said a few moments ago that under ideal conditions that you would make the rate on fresh meat higher than on live stock. For what reason would you make it higher than on live stock?

Mr. BIRD: Simply because the relative values ought to be taken into account, not literally, but to some extent, and because of concentration of values should pay something more than that which is less concentrated.

Mr. TOMLINSON: Is that the only reason?

Mr. BIRD: I believe the tariff should be made on the basis of what the traffic will bear.

2496*f* Basis of Rates Applicable in Central Freight Association Territory on Hogs, Cattle, Calves, and Sheep, Except Where Commodity Rates Apply.

Distance—miles.	Rate—cents per 100 pounds.
5	4
10	4½
15	5
20	5
25	5½
30	6
35	6½
40	7
45	7½
50	7½
55	7½
60	7½
65	7½
70	8
75	8
80	8½
85	8½
90	9
95	9

Distance—miles.	Rate—cents per 100 pounds.
100	9
110	9
120	9½
130	10
140	10
150	10½
160	11
170	11
180	11½
190	11½
200	12
210	12½
220	13
230	13
240	13
250	13½
275	14
300	14½
325	15
350	15½
375	16½
400	17
425	17½
450	18

2496*g* Schedule of Reasonable Maximum Rates of Charges for the Transportation of Live Stock in the State of Illinois for the Distances Indicated, as Published by the Railroad and Warehouse Commission of the State of Illinois.

Distances.	Cattle.	Hogs.
5 miles.....	5.	5.5
10 "	5.5	6.2
15 "	6.	7.
20 "	6.2	7.5
25 "	6.5	8.
30 "	6.7	8.
35 "	7.	9.
40 "	7.2	9.3
45 "	7.5	9.6
50 "	7.7	10.
55 "	7.9	10.4
60 "	8.1	10.7
65 "	8.3	11.1
70 "	8.5	11.5
75 "	8.7	11.8
80 "	8.9	12.1
85 "	9.	12.3
90 "	9.2	12.5

Distances.	Cattle.	Hogs.
95 "	9.3	12.7
100 "	9.5	13.
105 "	9.6	13.2
110 "	9.7	13.4
115 "	9.8	13.5
120 "	10.	13.7
125 "	10.1	13.8
130 "	10.2	14.
135 "	10.4	14.2
140 "	10.5	14.3
145 "	10.6	14.5
150 "	10.8	14.7
155 "	10.9	14.9
160 "	11.	15.
165 "	11.1	15.2
170 "	11.3	15.3
175 "	11.4	15.5
180 "	11.5	15.7
185 "	11.7	15.9
190 "	11.8	16.1
195 "	11.9	16.3
200 "	12.1	16.5
210 "	12.3	16.6
220 "	12.6	16.8
230 "	12.8	16.9
240 "	13.1	17.1
250 "	13.4	17.2
260 "	13.6	17.4
270 "	13.9	17.6
280 "	14.1	17.7
290 "	14.4	17.9
300 "	14.7	18.
320 "	15.	18.4
340 "	15.4	18.8
360 "	15.7	19.2
380 "	16.1	19.6
400 "	16.5	20.
420 "	16.8	20.4
440 "	17.2	20.8
460 "	17.5	21.2
480 "	17.9	21.6
500 "	18.3	22.

2496*h* Schedule of Reasonable Maximum Rates of Charges on Live Stock in the State of Iowa, for the Distances Indicated, as Published by the Railroad Commission of the State of Iowa.

Distances—miles.	Cattle.	Hogs (cents per 100 lbs.).
5	5.13	5.67
10	5.53	6.
15	5.92	6.33
20	6.32	6.67
25	6.71	7.
30	7.11	7.33
35	7.5	7.67
40	7.89	8
45	8.29	8.33
50	8.68	8.67
55	8.95	9
60	9.21	9.33
65	9.47	9.67
70	9.74	10
75	10	10.16
80	10.26	10.32
85	10.53	10.48
90	10.79	10.64
95	11.05	10.8
100	11.32	10.96
105	11.53	11.12
110	11.74	11.28
115	11.95	11.44
120	12.16	11.6
125	12.37	11.8
130	12.58	12
135	12.79	12.2
140	13	12.4
145	13.21	12.6
150	13.42	12.8
155	13.63	13
160	13.84	13.2
165	14.05	13.4
170	14.26	13.6
175	14.47	13.8
180	14.68	14
185	14.89	14.2
190	15.11	14.4
195	15.32	14.6
200	15.33	14.8
210	16	15.22
220	16.47	15.64
230	16.95	16.06
240	17.42	16.48

Distances—miles.	Cattle.	Hogs (cents per 100 lbs.).
250	17.89	16.9
260	18.37	17.32
270	18.84	17.74
280	19.32	18.16
290	19.79	18.58
300	20.26	19
310	20.53	19.13
320	20.79	19.25
330	21.05	19.37
340	21.32	19.5
350	21.58	19.62
360	21.82	19.75
370	22.11	19.87
380	22.37	20
390	22.63	20.5
400	22.89	21
410	23.15	21.12
420	23.41	21.25
430	23.67	21.37
440	23.93	21.5
450	24.19	21.62
460	24.45	21.75
470	24.71	21.87
480	24.97	22
490	25.23	22.12
500	25.49	22.25

2496*i* 1902.

Tenth Annual Report of the Chicago Great Western Railway Company for the Fiscal Year Ending June 30, 1902.

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2496*k* Chicago Great Western Railway Company.

Tenth Annual Report for the Fiscal Year Ending June 30, 1902.

To the Shareholders:

The Directors submit the following report:

* * * * * * *

2496*l* TABLE VIII.—*Statistics.*

	Year ending June 30th—		
	1900.	1901.	1902.
Miles of railroad operated	929.51	929 51	929.51
Earnings—			
Freight	$5,128,658.75	$5,312,771.33	$5,549,808.18
Passenger	1,359,907.72	1,452,138.76	1,673,398.59
Mail	111,527.69	111,501.52	111,416.56
Express	86,323.79	90,182.97	96,786.24
Miscellaneous	34,619.11	29,876.55	37,054.73
Surplus of proprietary lines		17,390.56	81,224.34
Gross earnings	$6,721,037.06	$7,013,861.69	$7,549,688.64
Operating expenses	4,490,223.01	4,831,515.48	5,284,690.25
Net earnings	$2,230,814.05	$2,182,346.21	$2,264,998.39
Gross earnings per mile	$7,230.73	$7,545.76	$8,122.22
Operating expenses per mile	4,830.74	5,197.92	5,685.46
Net earnings per mile	2,399 99	2,347.84	2,436.76
Expenses to earnings, per cent	66.81	68.88	69.99
Total number tons freight carried	2,340,965	2,651,054	2,753,675
Average amount received for each ton carried	2.17	2.03	2.01
Average distance each ton was carried, miles	301.68	314.52	292.19
Number of tons of freight carried one mile	706,924,174	833,799,170	804,613,173
Average ton miles per mile of railway	760,542	897.031	865,632
Average rate per ton per mile, in cents	0.72	0.64	0.69
Total number passengers carried	1,363,785	1,493,609	1,716,083
Passengers carried one mile	61,255,609	66,052,117	75,768,267
Average passenger miles per mile of railway	65,901	71,061	81,514
Average rate per passenger per mile in cents	2.03	2.01	2.05
Average amount received from each passenger, cents	91.23	89.25	90.43
Average distance traveled by each passenger, miles	44.91	44.22	44.15
Number miles run by freight trains	2,707,988	2,663,964	2,766,115
Average earnings per freight train mile	$1.89	$1.99	$2.00
Number miles run by passenger trains	2,076,461	2,191,819	2,367,481
Average earnings per passenger train mile, cents	75.0	75.4	79.5
Number miles run by work trains	151,211	133,414	242,987
Total mileage of freight cars loaded and empty	66,316,601	70,937,912	77,509,884
Total mileage of passenger cars	9,033,371	9,630,265	10,456,422
Total number of miles run by engines	6,201,774	6,577,583	7,051,676
Total cost per mile run of engines, including repairs, cents	21.80	23.23	25.92
Total cost of engine service, including wages, fuel, supplies and repairs per 1,000 gross tons (car and loads), hauled one mile, cents	52.32	48.05	54.18

W. B. BEND, *Auditor.*

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2496*m* May 31, 1902.

Annual Report of the Chicago & North Western Railway Company for the Forty-third Fiscal Year.

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2496*n* May 31, 1902.

Annual Report of the Chicago and North Western Railway Company for the Forty-third Fiscal Year Ending May 31, 1902.

The results of the operations of the Chicago & North Western Railway Company for the fiscal year ending May 31, 1902, are as follows:

Average number of miles operated, $5,759\frac{61}{100}$.

Gross Earnings:		
From Passengers	$10,886,139 15	
From Freight	33,436,891 72	
From Express, Mail and Miscellaneous	2,321,090 62	
Total Gross Earnings		$46,644,121 49
Operating Expenses and Taxes:		
Operating Expenses ($61\frac{33}{100}$ per cent. of Gross Earnings)	$28,596,401 33	
Taxes	1,353,111 31	
Revenue Tax Stamps	56,130 13	
		30,005,642 77
Net Earnings, carried forward		$16,638,478 72

2496*o*

Brought forward		$16,638,478 72
Other Payments:		
Interest on Bonds and Interest	$6,406,038 08	

(NOTE.—This is the net amount after the usual deductions for dividends received on C. St. P. M. & O. Ry. preferred and common stock.)

Amount of expenditures for construction deducted from surplus Net Earnings for the year by authority of the Board of Directors, viz:

Cost of Minnesota Western Railway	$497,353 64	
Cost of Improvements and Permanent Additions to the Property, as see statement elsewhere	4,199,701 40	
		4,697,055 04

Sinking Funds	225,500 00	
Interest paid in advance of maturity on bonds taken up and funded into 3½ per cent. General Mortgage Gold Bonds of 1987	9,195 44	
		11,337,788 56
		$5,300,690 16
Add Income from Investments		577,080 00
		$5,877,770 16
Dividends		4,529,468 00
Net Income over all charges for the year		$1,348,302 16
As Compared with the Preceding Year:		
Passenger Earnings increased	$1,167,948 28	
Freight Earnings increased	2,071,946 32	
Express, Mail and Miscellaneous Earnings increased	305,639 78	
Increase in Earnings		$3,545,534 38
Operating Expenses increased	$2,744,711 98	
Taxes and Revenue Tax Stamps increased	30,932 37	
Increase in Operating Expenses and Taxes		2,775,644 35
Increase in Net Earnings		$769,890 03

* * * * * * *

2496*p* For the year ending May 31, 1902, the total Operating Expenses of the Company were $28,596,401.33; of this amount $6,098,358.82, or 21.33 per cent., was for expenditures pertaining to the Maintenance of Way and Structures. Included in these expenditures is the cost of 43,618 tons of steel rails laid in replacement of rails of lighter weight in 361 34 miles of track.

The expenditures on account of Maintenance of Way and Structures also include the cost of laying 1,620,222 new ties, the cost of ballasting 4.77 miles of track with crushed stone, 393.21 miles with gravel, and 21.36 miles with cinders and slag. During the year 150 new steel bridges on masonry, aggregating 5,864 feet in length and containing 3,225 tons of bridge metal, were erected in replacement of wooden structures; other wooden structures were replaced with masonry arch and box culverts and cast iron pipes, and the openings filled with earth. The wooden structures replaced by permanent work during the year, exclusive of those replaced in connection with the construction of second main tracks, aggregate 4,329 feet in length.

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2496q *General Summary of Operations.*

Fiscal year ending May 31, 1901.		Fiscal year ending May 31, 1902.
$7,825 92	Gross Earnings per mile	$8,098 49
4,944 47	Operating Expenses and Taxes per mile	5,209 67
2,881 45	Net Earnings per mile	2,888 82
16,944,372	Number of Passengers carried	18,648,845
483,273,248	Number of Passengers carried one mile	541,676,123
2 01/100 cents	Average Rate per Passenger per mile	2 01/100 cents
39 66/100	Average Number of Passengers carried per train per mile run	39 17/100
11 02/100	Average number of Passengers carried per passenger car per mile run	11 10/100
95 cents	Average Approximate Earnings per mile run by passenger trains	94 cents
25,271,726	Number of Tons of Revenue Freight carried	29,321,538
3,701,417,722	Number of Tons of Revenue Freight carried one mile	4,122,440,480
85/100 cents	Average Rate per Ton per mile	81/100 cents
232 37/100	Average Number of Tons of Revenue Freight carried per train per mile run	249 65/100
13 54/100	Average Number of Tons of Revenue Freight carried per loaded car per mile run	14 00/100
$1 98	Average Approximate Earnings per mile run by freight trains	$2 03
41,323,805	Total Mileage of Engines	43,953,894
3 76/100 cents	Repairs and Supplies for Engines and Tenders per mile run	4 23/100 cents
7 60/100 "	Engineers, Firemen, Wipers, etc., per mile run	7 67/100 "
28/100 "	Cost of Oil, Waste and Tallow per mile run	26/100 "
8 39/100 "	Cost of Fuel per mile run	8 32/100 "
20 03/100 "	Total Cost per mile run by Engines	20 48/100 "
	Fuel.	
2,170,293	Coal consumed (all purposes), Tons	2,340,255
14,324	Wood consumed (all purposes), Cords	15,775
$1 71	Average Cost per Ton of Coal consumed	$1 68
$2 48	Average Cost per Cord of Wood consumed	$2 57
68,698	Locomotive Coal on hand, Tons	115,679
7,563	Long Wood on hand, Cords	6,842
7,007	Short Wood on hand, Cords	6,232

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2496r

Operations per Mile

For the Five Fiscal Years Ending May 31, 1902.

Fiscal year ending May 31st—	Average Number of miles operated.	Gross earnings per mile	Operating expenses and taxes per mile.	Net earnings per mile.	Increase in average mileage operated.
1898	5,070.78	$7,109.47	$4,683 00	$2,426 47	40.00
1899	5,076.89	7,488.11	4,890.54	2,597 57	6.11
1900	5,218.62	8,230.30	5,172.63	3,057 67	141.73
1901	5,507.16	7,825.92	4,944.47	2,881 45	288.54
1902	5,759.61	8,098.49	5,209.67	2,888 82	252.45

* * * * * * *

For the Five Years Ending May 31, 1902.

Year ending—	Average mileage operated.	Total tons revenue freight moved.	Total tons revenue freight carried one mile.	Freight earnings.	Total number of passengers carried.	Total number of passengers carried one mile.	Passenger earnings.	Average rate per ton per mile.	Average rate per passenger per mile.
								Cents.	Cents.
1898	5,070.78	19,693,634	3,030,610,175	$27,035,105 39	14,036,388	360,562,986	$7,256,299 23	.89	2.01
1899	5,076.89	21,081,613	3,229,327,820	28,155,676 61	15,225,027	416,384,364	8,067,626 74	.87	1.94
1900	5,218.62	25,442,219	3,849,367,760	32,008,684 48	16,637,841	454,614,457	9,002,687 52	.83	1.98
1901	5,507.16	25,271,726	3,701,417,722	31,364,945 40	16,944.372	483,273,248	9,718,190 87	.85	2.01
1902	5,759.61	29,321,538	4,122,440,480	33,436,891 72	18,648,845	541,676,123	10,886,139 15	.81	2.01
		*	*	*	*	*	*		

2496*t* *Twenty-second Annual Report of the Directors to the Stockholders of the Chicago, Rock Island & Pacific Railway Company, April* 1, 1902.

* * * * * * *

2496*u* Twenty-second Annual Report of the Directors to the Stockholders of the Chicago, Rock Island & Pacific Railway Company.

The Board of Directors submits the following report for the year ending March 31, 1902:

Gross Earnings from Operation		$28,385,845.81
Operating Expenses	$17,333,104.44	
Taxes	921,620.75	
		18,254,725.19
Net Earnings from Operation		$10,131,120.62
Add Income from Loans and Investments		936,848.63
" Net Cash Receipts from Lands Sold		12,000.00
Net Income		$11,079,969.25

From this amount has been paid—

For Interest on Bonded Debt	$2,951,322.00	
" Rentals of Leased Lines	756,954.62	
" Rentals and Tolls Missouri River Bridges	150,751.25	
" Dividend on Capital Stock*	2,247,900.75	
		6,106,928.62
Surplus for the Year		$4,973,040.63

The Capital Stock and Bonded Debt of the Company is as follows:

Capital Stock issued	$59,955,800.00
Fractional Scrip convertible into Stock	6,160.00
Six per cent. Mortgage Bonds	12,500,000.00
Four per cent. General Gold Mortgage Bonds	58,581,000.00

* In addition to dividend there has been distributed to Stockholders $499,955.50 from Addition and Improvement Account, being one-quarter (¼) per cent. each on May 1, August 1, and November 1, 1901, and February 1, 1902, as a special dividend on the $50,000,000 Capital Stock outstanding prior to August 1, 1901.

* * * * * * *

2496*v* *Statement Showing the Details of Earnings and Percentage of Operating Expenses as Compared with the Previous Fiscal Year.*

	Year ending March 3[illegible] 1902.	Year ending March 31, 1901.
Gross Earnings:		
Passenger Transportation	$8,030,164.00	$6,400,014.03
Freight "	19,061,857.05	17,730,397.76
Mail "	662,559.95	642,889.00
Express "	463,706.82	435,134.50
Rents	160,640.22	149,448.16
Telegraph	6,917.77	6,811.67
Total Gross Earnings from Operation	$28,385,845.81	$25,364,695.12
Operating Expenses	$17,333,104.44	$16,224,064.31
Taxes	921,620.75	941,028.43
Total Operating Expenses and Taxes	$18,254,725.19	$17,165,092.74
Net Earnings from Operation	$10,131,120.62	$8,199,602.38
Percentage of Operating Expenses to Gross Earnings from Operation	61 6/100	63 96/100
Same, including Taxes	64 31/100	67 67/100

* * * * * * *

2496*w* Freight Earnings.—Freight earnings for the year increased $1,331,459.29, or 7 51/100 per cent.

The revenue from Through Freight (freight delivered to or received from connecting lines) increased $885,034.43, or 8 36/100 per cent., and the revenue from Local Freight increased $446,424.86, or 6 25/100 per cent.

2496*x* Of the entire Freight Earnings 60 20/100 per cent. was from Through Freight, and 39 80/100 per cent. from Local Freight.

The movement of freight earning revenue as compared with the previous year, shows an increase of 539,443 tons, or 7 per cent., and the rate per ton per mile has increased from 99/100 cents to 1 4/100 cents.

Gross Earnings from Operation show an increase — $3,021,150.69, or 11 91/100 per cent.

Operating Expenses show an increase of $1,109,040.13, or 6 84/100 per cent.

Taxes show a decrease of $19,407.68, or 2 6/100 per cent.

* * * * * * *

2496*y* *Statement of Traffic Movement and Earnings.*

	Year ending March 31, 1902.	Year ending March 31, 1901.
Passenger Traffic:		
Number of Passengers carried earning revenue..	8,228,579	7,406,909
Number of Passengers carried one mile.....	373,313,683	295,952,782
Average distance carried	45 Miles	40 Miles
Average amount received from each Passenger..	$.98	$.86
Average Receipts per Passenger per mile . . .	Cts. 2 115/1000	Cts. 2 81/1000
Earnings from Transportation of Passengers....	$7,872,932.09	$6,160,204.48
Earnings from Excess Baggage and Milk.....	$157,231.91	$138,315.27
Earnings from Dining Cars	.....	$101,494.28
Total Passenger Earnings	$8,030,164.00	$6,400,014.03
Freight Traffic:		
Number of Tons carried, of Freight earning revenue.....	8,245,978	7,706,535
Number of Tons carried, of Company Freight...	1,748,178	1,401,710
Total Number of Tons carried.....	9,994,156	9,108,245
Number of Tons carried one mile, of Freight earning revenue.....	1,839,127,297	1,789,092,549
Number of Tons carried one mile, of Company Freight.....	227,668,165	198,028,655
Total Number of Tons carried one mile.	2,066,795,462	1,987,121,204
Average distance carried, of Freight earning revenue	223 Miles	232 Miles
Average amount received from each Ton of Freight earning revenue.	$2.31	$2.30
Average receipts per Ton per mile, of Freight earning revenue.....	Cts. 1 4/100	Cts. 99/100
Total Freight Earnings.....	$19,061,857.05	$17,730,397.76

Dining Car Earnings, for the year ending March 31, 1902, not included in Passenger Earnings.

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2496z *Summary.*

	Year ending March 31, 1902.	Year ending March 31, 1901.
Number of Miles run by Passenger Trains	7,569,872	6,931,145
Number of Miles run by Freight Trains	10,348,780	9,850,204
Number of Miles run by Switching Trains	4,510,130	4,112,923
Number of Miles run by Gravel and Construction Trains	908,905	787,071
Total Number of Miles run	23,337,687	21,681,343
Number of Tons Freight earning revenue carried one Mile	1,839,127,297	1,789,092,549
Number of Passengers carried one Mile	372,313,683	295,952,782
Earnings per Mile run by Freight Trains	$1.84	$1.80
Earnings per Mile run by Passenger Trains	1.21	1.08
Expenses per Mile run, including Taxes	.78	.79
Percentage of Operating Expenses to Earnings	61 6/100	63 96/100
Percentage of Expenses and Taxes to Earnings	64 31/100	67 67/100
Amount received per Ton per Mile	.01 4/100	.00 99/100
Amount received per Passenger per Mile	.02 115/1000	.02 81/1000
Cost of Maintaining Repairs of Track and Bridges per Mile run	.16	.18
Number of Passengers carried one Mile for each Mile run by Passenger Trains	49	43

2497 I think will furnish that. I think I can get it.

Mr. BAXTER: You don't put in the report for June 30th, 1904.

Mr. COWAN: Yes, that has been introduced in Mr. Tomlinson's exhibits.

Mr. BAXTER: As you have not announced the purpose for which you are going to put that in, I wish to ask if you wish to show from that that under the head of "Stock Yards," the amount expended is shown as $151.43?

Mr. COWAN: I have not looked at that. Whatever is there would show.

Mr. BAXTER: In the event that you do introduce that I would like to have an opportunity to explain that item.

Mr. COWAN: I would not contend that that was all they expended.

The COURT: Let the record show then what you want to about it.

Mr. BAXTER: I want it to show that that item, instead of representing the amount expended by that company for stock yards and elevators during the year ending June 30th, 1904, represents according to the auditor, certain stock yards and elevators which were owned by that company and in the operation of which there was a loss of that amount, and that it does not contain the expenses of maintaining, building or operating the ordinary stock yards

2498 over the system.

The COURT: Let that be admitted and then that will cover it.

Mr. COWAN: If you make that statement as being correct, I will admit it.

Mr. BAXTER: I make it on the authority of a letter from Mr. Gouer, to me.

Mr. LYNDE: This paper that you last offered is not an independent offer, it is simply a compilation of certain figures from the annual reports.

Mr. COWAN: From the record before the Commission.

Mr. LYNDE: If it is offered as any part of the record before the Commission, I desire to make the objection—We all, I think agree that no portion of that is competent or will be admitted here. I want simply to preserve the point on the record.

The COURT: All right.

Mr. COWAN: I desire to offer particularly certain parts of the testimony of Mr. Bird which has already been introduced in evidence without reading, by counsel representing the Missouri Pacific. If you gentlemen will waive the reading it will save some time.

The COURT: All right, I guess they will waive it because it is already in.

Mr. COWAN: We also offer in evidence and file a copy
2499 thereof, of the basis of rates applicable in Central Traffic Association territory on hogs, cattle, calves and sheep except where commodity rates apply as copied from the statement in evidence before the commission, in the record which we have before us.

The COURT: Let that go in, it is under the same objection.

Mr. COWAN: A similar schedule of maximum rates for the transportation of live stock in the state of Illinois, for distances indicated, as published in the Railroad & Warehouse Commission report of the state of Illinois, as filed with the commission as evidence in the original record.

The COURT: And the same objection.

Mr. COWAN: Also a schedule of the maximum rates charged under the Iowa distance tariff as filed with the commission as original testimony.

Also a statement showing shipments of live stock from Kansas City, Leavenworth, Atchison and St. Joseph for August 15th to December 31st, 1901, and 1902, as a part of Mr. Bird's testimony, copied from the record before the commission.

(The statements referred to are marked "General Exhibits 6 and 7.")

We desire to offer in evidence now all the testimony

2499*a* Central Freight Association.

CHICAGO, *October* 25, 1900.

Basis for Rates Between Points in the Territory of the Central Freight Association.

First. The following minimum scale will govern distances from five to four hundred and fifty miles, both inclusive:

Classes—Rates in Cents Per 100 Pounds.

Class 5.	Class 5 Continued.
4	
4½	
5	
5	
5½	
6	
6½	
7	
7½	
7½	
7½	
7½	
7½	
8	
8	
8½	
8½	
9	
9	13
9	13½
9	14
9½	14½
10	15
10	15½
10½	16½
11	17
11	17½
11½	18
11½	
12	
12½	
13	
13	

2500 of Mr. Delano, taken before the Commission, and all of the testimony of Mr. Boyd.

The COURT: Can't you give their initials?

Mr. COWAN: We have handed it to the reporter to copy and they have copied it as a part of the record.

The COURT: Let it go in subject to objection.

Mr. LYNDE: In respect to the testimony of these witnesses, I make the special objection that those witnesses were all within the jurisdiction of the court and could have been produced as witnesses by the complainant here; and that therefore the testimony of such witnesses taken before the commission on the original hearing, is not admissible and that no foundation has been laid for it. That is true of Mr. Delano, Mr. Boyd and Mr. Burton Johnson.

Mr. COWAN: These gentlemen at that time were—Mr. Delano was General Manager of the C. B. & Q. Railroad Company and Mr. Boyd, General Freight Agent of the Chicago Rock Island & Pacific and Mr. Johnson, General Freight Agent of the Wisconsin Central.

Mr. LYNDE: Will you have it admitted on the record that those three witnesses whom you have named were in fact all available to you as witnesses and could have been produced by you on this hearing?

Mr. COWAN: I am not disposed to dispute your statement, if you say that that is true.

2501 Mr. LYNDE: I have no doubt as to Mr. Delano and Mr. Boyd. Mr. Johnson's office is in Milwaukee, but he could have been reached by a subpœna from this court.

Mr. COWAN: I assume that that is the case, in fact, I am sure that it is. In connection with the offer of Mr. Delano's testimony, I wish to state, and I believe that counsel will admit it, that he is now the President of the Wabash Railroad Company.

Mr. DAWES: I suppose so.

Mr. COWAN: That is what I thought. The Wabash is a defendant here, but not represented here. Mr. Biddle, whose testimony was introduced, is at present Vice President in charge of traffic for the Rock Island system. That is admitted to be correct, is it?

The COURT: Oh, yes.

(The testimony of the said witnesses Delano, Boyd and Johnson is in the words and figures following, to wit:)

2502 FREDERICK A. DELANO, a witness on behalf of the complainant, being duly sworn, testified as follows:

Mr. TOMLINSON: Will you kindly state your name and position?

Mr. DELANO: F. A. Delano, General Manager, C. B. & Q. R. R.

Mr. TOMLINSON: How long have you been connected with the C. B. & Q. Railroad?

Mr. DELANO: Eighteen years.

Mr. TOMLINSON: How long in your present capacity?

Mr. DELANO: A year and a half.

Mr. TOMLINSON: Before that what was your position with the C. B. & Q. Railroad?

Mr. DELANO: I have held various positions; was Superintendent of Terminals at Chicago some nine years and——

Mr. TOMLINSON: Your connection with the C. B. & Q. Road has been largely along the lines of the operation of a railroad, has it not?

Mr. DELANO: Yes, sir.

Mr. TOMLINSON: This is a question before the Commission relating both to the relation of rates on live stock and its products and also regarding the reasonableness of certain live stock rates. On the basis of the same rate on both the live stock and the
2503 product, which would you consider the more remunerative traffic from a railroad standpoint, a train of fresh meat or packing house products from the Missouri River destined to Chicago, or a train of live stock picked up at main line stations east of the Missouri River; and in your answer give, so far as possible, the reasons for such conclusions as you arrive at.

Mr. KELLOGG: I object. The witness does not show that he is competent or has made any figures as to the weight of cars, weight of load or knows what the pay freight is in the load or anything about it.

Mr. TOMLINSON: Mr. Delano is an operating man of long experience and in order to save time I have gone right to the meat of the question without prefacing it by certain questions which might lead up to that main inquiry?

Mr. KELLOGG: Well, go ahead.

Mr. DELANO: Did I understand the gentleman to say, which would be the more remunerative, a train of dressed meat from a Missouri River point or a train of live stock from intermediate points?

Mr. TOMLINSON: Yes, sir.

Mr. STICKNEY: At the same rate per hundred pounds?

Mr. TOMLINSON: Yes, sir; and the reasons for your conclusions.

Mr. HANSON: Are you assuming that he is hauling the same number of cars in each train?

2504 Mr. TOMLINSON: He can make that explanation when he makes his answer.

Mr. DELANO: That question reduces itself down to which is the cheaper to be handled per hundred pounds, because the remuneration to the railroad would be the difference between the cost of doing the work and the rate received for it.

Mr. STICKNEY: Would it not be the whole amount received?

—. It would be the gross remuneration, but as I understand, I was asked which was the more remunerative train of these two suppositious trains. That is a pretty difficult question to answer and I should think it was largely a matter of opinion, which would be arrived at by studying the ordinary conditions of handling the business. My judgment would be that the train of live stock would be the more remunerative of those two although the differences might not be so very great. My reason for that is that while there are a

good many expenses incident to the handling of live stock from local stations, the picking up of live stock on a division and gathering it into a train at a division point is not quite as expensive as hauling a train of the full size over the entire division. The cost per ton or per car is greater, but the total cost is not greater. The condition in handling live stock, although they are pretty severe and
2505 pretty difficult to meet have never been quite as severe or quite as difficult to meet as the conditions in hauling the dressed products.

Mr. TOMLINSON: Now, Mr. Delano, make the same comparison between a train of live stock from the Missouri River compared with a train of live stock picked up east of the Missouri River at the same rate.

Mr. STICKNEY: The same rate of freight per hundred pounds?

Mr. TOMLINSON: Yes, sir.

Mr. DELANO: I should say that the train picked up at stations east of the Missouri River, assuming that the business was moving eastward would be more remunerative than a solid train of the same number of cars and same weight picked up at the Missouri River terminal.

Mr. COWAN: You mean it would cost less to perform the service of gathering up at the local stations and bringing to Chicago than it would to bring the same size train from the initial point at the Missouri River?

Mr. DELANO: That is what I mean.

Mr. COWAN: That is your judgment from your experience in the business?

Mr. DELANO: It is.

Mr. COWAN: That is all.

Mr. TOMLINSON: That is all.

2506 Cross-examination:

Mr. STICKNEY: Is the question of the cost of either of those two trains a matter of judgment or guess or is it a matter of mathematics?

Mr. DELANO: The only thing we can determine by mathematics is the average cost of doing business. I do not think you can determine by mathematics the actual cost of a particular train or particular shipment.

Mr. STICKNEY: Here are two trains that start out, one a safe distance behind the other. Now, is the question of the cost of running those two trains a question of judgment of a man who has had long experience in running trains and never figured particularly about the cost anyway, or is it a question of mathematical facts? Is it not a question capable of mathematical solution? I mean the relative cost of the two?

Mr. DELANO: I do not think I could answer any better than I did before. All cost of doing business on a railroad is simply an average figure obtained from actual experience, and we can deduce formula

from that and arrive at a mathematical expression which will give us the comparative cost of doing business; but those conditions are changing and the question of opinion and judgment does enter into the thing, I should say, in determining.

Mr. STICKNEY: Here are two trains starting out, one 15
2507 minutes after the other and following along. Are the conditions changing as to them? Are there not the same conditions practically all the way?

Mr. DELANO: There is no doubt if you can take a suppositious case of two trains, one of one kind of commodity and the other of another, you can figure mathematically what the cost of handling those two trains is absolutely.

Mr. STICKNEY: The question asked you was, take a train of dressed meat and a train of live stock—a solid train of dressed meat from the stock yards and pick up a train of live animals locally. Now the question is—they run along in the same time and under the same conditions—which costs the most; which would be the most remunerative?

Mr. DELANO: In order to arrive at that, you have got to take the average conditions.

Mr. STICKNEY: There is no average where there is only one train. We have to have more than one to get an average. We are not talking about averages. We are talking about just two trains—no averages about it. We are talking about just two trains.

Mr. DELANO: I was simply explaining the reason for my first answer. If the question is now put referring to two trains, of course you cannot determine the cost of any two particular trains until they get to destination. If neither of them have come to grief or
2508 had an accident in transit and the conditions under which they have been handled can be exactly determined, there is no doubt, as Mr. Stickney says, you can determine the exact cost of both those trains.

Mr. STICKNEY: The relative cost?

Mr. DELANO: The relative cost.

Mr. STICKNEY: Now, what does that cost consist of?

Mr. DELANO: The cost consists of the direct items of engine and train service that can be charged to that train and the average cost, divided on a basis of tonnage handled for all the other items of road maintenance and repair.

Mr. STICKNEY: It is not necessary to figure those. They are the same for both, are they not?

Mr. DELANO: They are the same for both.

Mr. STICKNEY: Now, then, there is the fuel. Would it take any more conductors for one train than the other?

Mr. DELANO: No.

Mr. STICKNEY: No more engineers?

Mr. DELANO: No.

Mr. STICKNEY: No more firemen?

Mr. DELANO: No.

Mr. STICKNEY: No more brakemen?

Mr. DELANO: No.

Mr. STICKNEY: No more oil?

Mr. DELANO: Probably not.

Com'r FIFER: Any more fuel?

2509 Mr. DELANO: I estimate it would take less fuel in the case of a train that was picked up.

Mr. STICKNEY: It would take slightly less. Now, suppose you start from the Missouri River and come this way and pick up a load of live stock locally. You get out to the first station and you pick up one car there. You get on that car 23½ cents a hundred. Now, you come along to the next station. There is nothing there. You run along 50 miles and you get another car. You get 23 cents a hundred on that. You run 50 miles further and get another car. You might get 22 cents on that. You run along 50 miles further and get another car and you might get 20 cents on that; and by the time you pick it up all the way through, how about your revenue? Would it be as much as if you hauled them all the way through at a 23 cent rate?

Mr. DELANO: Not in the same case you cite.

Mr. STICKNEY: Is not that the way you pick up train loads?

Mr. DELANO: That is not the question as put to me. That is often the fact.

Mr. STICKNEY: You do not pick up stuff unless you do pick it up, do you? You do not pick up stuff when you have a full train all the way?

Mr. DELANO: That is not the question that was put to me. I am perfectly willing to have it read to me.

2510 Com'r FIFER: Repeat it as — understood it.

Mr. DELANO: As I understood, the rate on the picked up stuff per hundred pounds was assumed to be the same as the rate on the train from the terminal, the solid train.

Mr. TOMLINSON: Right here, I might clear the matter up if you will permit me. The record shows that 23½ cents, for example on hogs and cattle applies about 100 or 150 miles east of the Missouri River. The C. B. & Q. is a very large handler of live stock, was for a long time the largest handler of live stock into this market, and is to day. They handle not one train, but many trains——

Mr. KELLOGG: Let your witness testify to those things.

Mr. TOMLINSON: It is all in the record. How many trains of live stock do you handle in here a day, Mr. Delano?

Mr. DELANO: It varies different days in the week. On Monday and Wednesday morning we frequently handle 20 to 30 trains of live stock.

Mr. TOMLINSON: A caboose and engine, starting from western Iowa points, destined to Chicago, how far would it travel before it had a complete train, to the best of your opinion?

Mr. DELANO: Well, we usually never operate a pick up train over more than one division—from one hundred to one hundred and fifty miles. Some of our heavier stock divisions pick up
2511 over one half of a division and another train picks up over the other half.

Mr. TOMLINSON: You would pick up a full train within one hundred to one hundred and fifty miles in any event?

Mr. DELANO: Usually so. Our stock trains are usually scheduled on certain days of the week and the stock shippers at the local stations know of those days and are prepared for them. We do not run stock trains every day for pick up business.

Mr. COWAN: We have an exhibit here which states the actual amount of commissions collected at the yards taken from the books, and the actual amount of freight paid as shown at the stock yards.

Mr. HANSON: I would like to have a live stock man produce that so as to cross examine him.

Mr. COWAN: Mr. Tomlinson told me that he got that from the records.

Mr. KELLOGG: It is hearsay evidence and we object to it.

Mr. TOMLINSON: Well, we waive it.

Mr. COWAN: I want to make the remark in reference to the admissibility of this that I object to Mr. Bird's testimony. It was immaterial, but they having introduced that testimony and this being of precisely the same character, I took it that no technical objection would be made to prevent its admission.

2512 Com'r FIFER: Gentlemen, you will understand that in the hearing of evidence in these cases the rigid rules of evidence are necessarily greatly relaxed.

Mr. COWAN: This is of precisely the same character as was introduced——

Com'r FIFER: Of course I do not know what there is behind that testimony to authorize its going into the record. There must be somebody's sworn statement.

Mr. COWAN: I just wanted to make a formal offer of that before I leave. I have only a few minutes to make my train.

Mr. KELLOGG: It does not pretend to be a statement of freight paid. It seems to be Mr. Tomlinson's estimate of the amount collected per carload on cattle coming from a thousand or two thousand places. He does not give the freight at all.

Com'r FIFER: It has been tendered as evidence and we can pass upon it after this cross examination.

Mr. KELLOGG: Now, Mr. Delano, what you intended to say was that if you got the same rate for a short haul as for a long haul, each station paying identically the same rate, you thought it cost as much to haul the train load of dressed meat from the Missouri River, the same number of cars as it cost to haul the live stock into Chicago, the same number of cars. Is that what you intended to say?

2513 Mr. DELANO: I intended to say what I did say. The question asked me was, which was the more remunerative, and I said the train of stock picked up at intermediate stations amounting in total to the same weight as a train of dressed product would I thought be more remunerative.

Mr. KELLOGG: If it takes one hundred miles to pick up a train load of stock, for 50 miles you haul a half train and you are paying

the same wages, the same coal bill substantially as to haul the full load?

Mr. DELANO: Yes, sir.

Mr. KELLOGG: And you only get half as much out of it. Is not that true?

Mr. DELANO: That was not the question. I said the cost per ton per mile would be greater, but as the suppositi-ous question asked me was, we will say the train consists of any number of cars you want to say—forty cars—if you got paid for those forty cars whether you hauled them the whole distance or 80 per cent. of the distance, that would be cheaper than hauling a train of dressed meat.

Mr. KELLOGG: But no such case ever exists. You cannot haul a half train and get pay for the whole of it, can you?

Mr. DELANO: Of course it does exist in this way: If the same rates rule for a territory—we will assume the distance from here to the Missouri River is 500 miles—if the same rate rules for any-
2514 where from four hundred to five hundred miles, then all stock picked up at local points this side of the Missouri River up to where that line is will give us the same gross revenue.

Mr. KELLOGG: But it does not so rule, does it?

Mr. DELANO: I do not pretend to be posted on rates. I was answering simply the supposititious question put to me.

Mr. KELLOGG: You do not pretend to be an expert as to which business there is more profit in hauling, packing-house products or live stock, do you?

Mr. DELANO: Of course, I am supposed to know and pretend to know in my position something about the cost of doing business.

Mr. KELLOGG: But you are not testifying as to the profit in doing that business, are you?

Mr. DELANO: It was assumed that the rates per hundred pounds were the same on the two trains. The question reduced itself as to which was the cheaper of the two, because the net revenue to us was the difference between what we got and what it cost.

Mr. KELLOGG: The net revenue depends on the pay-load, does it not?

Mr. DELANO: Yes, sir.

Mr. KELLOGG: That depends on the weight of the car, the
2515 weight of the pay-load, the distance hauled and the rate, does it not, and many other things?

Mr. DELANO: Yes, sir.

Mr. KELLOGG: Very well. Now, you cannot haul local stock for 50 miles with a half load and make as much money as you can to haul it the whole hundred miles with the full load, can you?

Mr. DELANO: It actually occurs in practice——

Mr. KELLOGG: Will you answer the question?

Mr. DELANO: I think your question does not state the question that was put to me. I agree that you cannot say yes to your question, but that was not the question that I answered before.

Mr. KELLOGG: How many cars do you haul in your stock trains from western Iowa to Chicago?

Mr. DELANO: From western Iowa to Chicago?

Mr. KELLOGG: Yes, sir.

Mr. DELANO: In Iowa we do not haul over 30 to 35 cars; in Illinois 40 to 45.

Mr. KELLOGG: I am speaking of Iowa. What is the pay tonnage of a train load of hogs from Iowa on your western division, excluding the weight of the cars?

Mr. DELANO: We do not haul any train of stock directly from Iowa into Chicago without adding to the tonnage. We add on each division according to what we can haul on that division.

2516 Mr. KELLOGG: Do you know what the pay tonnage is of an ordinary stock train from Iowa points on the western division?

Mr. DELANO: You would have to ask that question as to some one division. It would be a varying amount on different divisions.

Mr. KELLOGG: Do you know what the pay tonnage is on the western division, say 150 miles east of the Missouri River?

Mr. DELANO: Yes, sir; about.

Mr. KELLOGG: Have you figured it, averaged it? Do your number of trains run so that you know, or are you guessing?

Mr. DELANO: I have not it in my head accurately. I see figures of that kind every day and could probably tell you pretty near what it is.

Mr. KELLOGG: It appears here in evidence that on the St. Paul Road, the same division, taking the whole number of trains for a month, the average is 740 tons.

Mr. DELANO: That is the gross train?

Mr. KELLOGG: That is the train tons.

Mr. DELANO: That is not what you asked.

Mr. KELLOGG: I am speaking of the gross now.

Mr. DELANO: That is about the same as ours.

2517 Mr. KELLOGG: Is not your dead freight almost double that?

Mr. DELANO: Easily double it.

Mr. KELLOGG: And all hauled with the same number of conductors, the same number of employees and with one engine?

Mr. DELANO: Yes, sir.

Mr. KELLOGG: And substantially the same expense?

Mr. DELANO: Yes, sir.

Mr. KELLOGG: Then, you do not pretend to say there is more money in hauling live stock than dead freight?

Mr. DELANO: We do not class packinghouse products as dead feight. Packinghouse products and meats are always classed by themselves.

Mr. KELLOGG: You mean dressed meat?

Mr. DELANO: Packinghouse products and dressed meats we put in a class by themselves.

Mr. KELLOGG: Do you pretend to say that packinghouse products outside of dressed beef do not load heavier per train than live stock?

Mr. DELANO: I do.

Mr. KELLOGG: Have you any hogs?

Mr. DELANO: Yes, sir.

Mr. KELLOGG: There is no more pay tonnage in a train-load of packinghouse products outside of dressed meats than there is in a train load of hogs?

2518 Mr. DELANO: You said before you were talking of gross tonnage. The gross tonnage on meat trains will not exceed on an average 500 tons. On our stock trains it will run in Western Iowa and on the Iowa lines from seven to eight hundred tons and in Illinois considerable heavier.

Mr. KELLOGG: It takes very much less time to pull a train straight through than to stop at local stations?

Mr. DELANO: Yes, sir.

Mr. KELLOGG: So you are paying for more time?

Mr. DELANO: Well, we do not have to pay overtime for our crews unless they get beyond a certain minimum. We rarely have to pay overtime on pick up stock trains.

Mr. KELLOGG: Now, at local stations in taking on stock, you have to stop and switch the car in for the shipper, do you not?

Mr. DELANO: Usually the train that picks up the stock does not do the switching.

Mr. KELLOGG: Don't you have to stop the train to switch in a car.

Mr. DELANO: Yes, sir.

Mr. KELLOGG: And you have to stop another train to switch it out?

Mr. DELANO: Yes, sir.

Mr. KELLOGG: Is it not a fact that at many stations you do not get but a single car of stock a day?

2519 Mr. DELANO: That is quite frequently the case.

Mr. KELLOGG: That is all.

Mr. TOMLINSON: What is the average cost of the stock yards facilities stationed on the Burlington System—the stock yards and chutes and scales?

Mr. DELANO: I would not like to answer that question without having looked it up particularly, and I have not done so.

Mr. TOMLINSON: Do all your stations have stock scales?

Mr. DELANO: Oh, no.

Mr. TOMLINSON: Most of them have none?

Mr. DELANO: I should say that probably a majority of them have not got stock scales.

Mr. TOMLINSON: As we do not desire to prolong the examination over today, if possible could you approximate what the stock yard facilities cost your company, or would you prefer to file a written affidavit with the Commission on that point.

Mr. KELLOGG: I object to any affidavits to the Commission.

Mr. DELANO: I prefer a good deal not to state it. It would be rather a wild guess on my part. The stock yards at these local stations vary a great deal; some are covered and some open; some are paved and some unpaved; and to arrive at an average for the whole road would take a good deal of figuring, and I did not pre-

2520 pare myself to submit to that inquiry.

Mr. TOMLINSON: That is all.
Mr. KELLOGG: That is all.
Com'r FIFER: What does an ordinary pair of scales cost?
Mr. DELANO: Stock scales?
Com'r FIFER: Yes, sir.
Mr. DELANO: Including the cost of putting them in?
Com'r FIFER: Yes, sir.
Mr. DELANO: I should say something like $150. new.
Com'r FIFER: That is all.

The witness was excused.

EXHIBITS
NOT
SUITABLE
FOR
MICRO-
FILMING

2523*b* E. B. BOYD, a witness called on behalf of complainant, having been duly sworn, testified as follows:

The CHAIRMAN: Before you begin to interrogate this witness let me ask you a question. If I understand the purpose of Mr. Cowan's questions to Mr. Bird, they had reference to showing that the actual average load considerably exceeded the minimum. You could not get at what a carload earned without knowing what it actually carried. Your complaint here is of a higher charge on the live animals than on the dressed product. Is it not an entirely safe presumption that in the case of live animal- the actual loading exceeds the minimum more than the actual loading of dressed meats and packing house products?

Mr. TOMLINSON: We think so; yes, sir.

Commissioner PROUTY: Mr. Stickney's testimony was to the contrary.

Mr. COWAN: The point I had in mind was this: It had been stated by Mr. Stickney that the cost of handling the packing house products was greater than on cattle and he instanced that by making certain figures as to the weight. Now, I was asking Mr. Bird the question with a view to determining whether or not that was correct, or knew anything about it, and whether he took it into consideration when they made the rates.

2524 The CHAIRMAN: You will observe that Mr. Stickney's testimony was confined to the month of September of this year, and that he stated as a matter of recollection and judgment, that the average for that month was a thousand pounds greater than the average had been for the year previous.

Mr. COWAN: Yes, sir; I remember that every distinctly.

The CHAIRMAN: In other words, it was rather my impression, taking what has been testified to here, in listening to what the witnesses have said, and bearing in mind some reasons why the packers would not be likely to load their cars much above the minimum, because they want to get the mileage, that probably the average load of live stock exceeds the minimum more than the average load of dressed meat and packing house products exceeds the minimum. Now, as you are complaining of the high rates on live stock, would it not be for the other side to explain? Do you need to pursue the question for your purposes as to the minimum on dressed meat and packing house products and the actual carload as bearing upon the reasonableness of the rate?

Commissioner PROUTY: Mr. Stickney testified this morning that the average loading for the month of September on dressed meats was 27,000 pounds, which was 7,000 pounds in excess of the minimum, and that was only 1,000 pounds in excess of what the
2525 actual loading in this country would be. So the testimony would be that it was about 26,000 pounds.

Mr. TOMLINSON: We quite agree with your statement, Mr. Chairman, that those are the facts. I wanted to show the facts as you state them.

The CHAIRMAN: I supposed that was the general fact and did not

suppose there was any doubt about it. It might not happen in a particular month. It would seem from a general knowledge of the subject that it must turn out to be the fact.

Mr. COWAN: It rather strikes me that the complaint here is that the published rates and the rate which is in fact charged is too great upon live stock and constitutes an undue preference, and that is based upon the fact that the published rates are upon the minimum weights.

Mr. TOMLINSON: Mr. Boyd, you have been sworn?

Mr. BOYD: Yes, sir.

Mr. TOMLINSON: You have been in the room and heard the testimony in this case?

The CHAIRMAN: Have you stated your name and business?

Mr. BOYD: Not yet.

Mr. TOMLINSON: Will you kindly state your name and position, Mr. Boyd?

Mr. BOYD: E. B. Boyd; General Freight Agent, Chicago Rock-Island & Pacific Railway.

Mr. TOMLINSON: At the time the Chicago Great-Western
2526 put in the rate of 16½ cents upon proportional shipments and 20 cents on local shipments to Chicago on both fresh meat and packing house products from Missouri River, what action did your company take?

Mr. BOYD: We met them.

Mr. TOMLINSON: At the time the Santa Fe put in its 12-cent rate, what action did your company take?

Mr. BOYD: We also met it as a proportional rate.

Mr. TOMLINSON: What is the average loading of cars of dressed beef or fresh meats?

Mr. BOYD: The best information I have been able to obtain from our own records is that fresh meat would run about 21,000 pounds; packing house products from 26,000 to 29,000 pounds; it depends upon the condition as to whether there are plenty of cars or not. The average, in my opinion, is somewhere about 27,000 to 28,000.

Mr. TOMLINSON: What is the average weight of refrigerator cars?

Mr. BOYD: That varies, some cars, 42,000, some 32,000, and the average I should judge, runs from 36,000 to 37,000 pounds.

Mr. TOMLINSON: What is the average weight of live stock cars?

Mr. BOYD: Our live stock cars are 22,000, 34 foot; and 32,000, 36 feet dimension.

Mr. TOMLINSON: You say there are 22,000 for 34-foot cars?

2527 Mr. BOYD: Yes, sir.

Mr. TOMLINSON: The average of your equipment used in the transportation of live stock,—what would be the average weight of the entire equipment?

Mr. BOYD: That is guess work. I do not know just now. We have been adding to our equipment and I do not know how the cars would average, but I assume 26,000 or 27,000 pounds would strike about an average.

Mr. TOMLINSON: How much ice and salt is transported in refrigerator cars carrying fresh meat?

Mr. BOYD: Not over 2,000 on an average.

Mr. TOMLINSON: Winter and summer?

Mr. BOYD: In winter of course, they do not require so much; in extreme weather in the summer they would require more.

Mr. TOMLINSON: On the basis of 18½ cents on fresh meat from the Missouri River to Chicago destined east, compared with a similar rate on cattle, which would you regard as the more desirable traffic?

Mr. BOYD: From the Missouri River?

Mr. TOMLINSON: Yes, sir.

Mr. BOYD: I would prefer at the same figure the cattle business.

Mr. TOMLINSON: Do you consider there is any more risk in the transportation of cattle than fresh meat?

2528 Mr. BOYD: Yes, sir, on a general way I do. What do you mean by the term "risk"?

Mr. TOMLINSON: I mean liability to damage en route.

Mr. BOYD: You mean incident to transportation?

Mr. TOMLINSON: Yes, sir.

Mr. BOYD: I think there is more opportunity to damage to live stock than there would be to fresh meat.

Mr. TOMLINSON: When you consider the extra value of the product, would that affect your conclusion, or would that off-set it?

Mr. BOYD: No, sir; not from an operating standpoint—railroad standpoint.

Mr. TOMLINSON: You mean to say that value does not constitute a very important element in fixing the rates?

Mr. BOYD: I do not say that—Any article is liable to be damaged, it makes no difference whether it is worth $1,000 or $1.

Mr. TOMLINSON: Your liability is greater.

Mr. BOYD: Our liability is greater, sure—according to the value of the shipment.

Mr. TOMLINSON: Is there any material difference in the service accorded live stock and its product; train service, I mean, speed of handling trains?

2529 Mr. BOYD: Well, yes. You take the time that live stock consumes in transportation—say, from origin—say the Missouri River to market; of course, it takes longer to reach Chicago than a trainload of fresh meat owing to numerous stops that stock trains must make in order to complete their loads, and it necessitates greater speed between stations; and there is greater strain on the equipment and more consumption of coal.

Mr. TOMLINSON: But the actual time involved——

Mr. BOYD: The actual time in the transportation of train from the point of origin to destination is generally greater on live stock than on fresh meat.

Mr. TOMLINSON: How many cars of live stock do you usually transport in a train?

Mr. BOYD: It depends on location.

Mr. TOMLINSON: What would be the maximum load?

Mr. BOYD: I would not say. Some engines are rated for a greater

load than others. Then, of course, you have got to take into consideration the curves and topography of the country.

Mr. TOMLINSON: The dead weight of a train is the factor which determines whether you can haul many or few cars,—entirely so?

Mr. BOYD: Yes, sir.

Mr. TOMLINSON: So far as your knowledge goes, is there any instance anywhere in the country where rates on fresh meat and
2530 packing house products are made the same or less than on live stock except the territory in dispute between the Missouri River and here?

Mr. BOYD: I do not recall such conditions. I think at Wichita at one time—I don't know but what they may exist to-day—there was a differential of 6 cents a hundred over the Missouri River rate. That I think possibly would have a tendency to make a lower rate on the live stock, but I am not sure that that applies to Chicago. It is a Southern differential.

Mr. TOMLINSON: I think it does from Wichita and I think another Kansas point you have the same condition, where a less rate applies on the product than applies on the live article. Which rate carries the largest amount of product, the 20 or 18½?

Mr. BOYD: I should judge the 18½ cent rate, naturally, because the bulk of the products manufactured at the Missouri River would hardly come to Chicago. That would be "carrying coals to Newcastle."

Mr. TOMLINSON: Mr. Boyd, do you know whether your rates between Iowa and Missouri stations and Chicago are on the same or less or greater scale on cattle, for example, than your rates in to South Omaha or Kansas City, or points on the Missouri River?

Mr. BOYD: I could not answer that question because the
2531 rates from Iowa points in to Chicago are so much greater in mileage than from Iowa points in to the Missouri River.

Mr. TOMLINSON: I am asking from Kansas and Nebraska points in to the Missouri River?

Mr. BOYD: As I recall the rates from Kansas points, a distance from 300 to 400 miles, or 350 miles, is about $60 or $65 a car.

Commissioner FIFER: Where to?

Mr. BOYD: To the Missouri River. The rate from the Missouri River for a distance of 500 miles under present conditions figures $30 to $36 a car and under normal conditions about $51 a car.

Mr. TOMLINSON: You are not quite certain of that, are you? The figures scarcely support you I think.

Mr. BOYD: You mean in Kansas?

Mr. TOMLINSON: Yes.

Mr. BOYD: It has been sometime since I had occasion to look up the tariff. I know when I looked up the rates they ran from $60 to $65 in Northwest Kansas. There may have been some changes.

Mr. TOMLINSON: Do you consider the rates in the Iowa Commissioners' schedule as fair.

Mr. BOYD: No, sir; I do not.

Mr. TOMLINSON: How about the Illinois Commissioners' schedule and classification?

2532 Mr. BOYD: I certainly think they are not fair.

Mr. TOMLINSON: Your company has prospered pretty well under those rates in effect.

Mr. BOYD: They have got along; the same as the others. They don't do it on the Illinois rates.

Mr. TOMLINSON: You take the position that all the rates are too low?

Mr. BOYD: I don't care to make any statement as to whether the rates are excessively high or excessively low without carefully going in to it.

Mr. TOMLINSON: You are aware of the fact that there is a large movement of live stock from Western Iowa in to Omaha via your lines and other lines?

Mr. BOYD: Yes, sir.

Mr. TOMLINSON: There is——

Mr. BIRD: When did you put in a rate of 18½ and 20 cents on packing house products?

Mr. BOYD: I do not recall the exact date. I think sometime in August.

Mr. BIRD: Why?

Mr. BOYD: Competition.

Mr. BIRD: You met the rate made by another road?

Mr. BOYD: Yes, sir.

Mr. BIRD: When did you put in the rate of 12 cents on the live stock?

2533 Mr. BOYD: I do not recall that rate?

Mr. BIRD: Why did you put it in?

Mr. BOYD: The same reason.

Mr. BIRD: You didn't put in that rate of 12 cents on live stock because it was your idea that it was the proper thing to do?

Mr. BIRD: No, sir.

Mr. TOMLINSON: Do you consider the 12-cent rate pays you any net revenue on live stock from the Missouri River to Chicago? If so, give us your basis for that conclusion.

Mr. BOYD: We think that as long as we are forced to run trains from the Missouri River to Chicago on fast schedule time that any tonnage we can get that will assist in reducing the cost of that train is just so valuable to us. In itself I doubt very much if you can figure any revenue net on the 12-cent rate. But it will pay for the service. But so long as our trains were not filled in tonnage, we felt at the time that it was an advantage to us to get that as long as we could not get anything more.

Mr. TOMLINSON: Has your line a double track between here and the Missouri River?

Mr. BOYD: No, sir.

Mr. TOMLINSON: Under ideal conditions, if you were permitted to make them, how would you adjust the rates on live stock?

2534 Mr. BOYD: I think the packing house products would take a higher rate than the raw material.

Mr. TOMLINSON: That is the theory upon which rates are generally adjusted.

Mr. BOYD: Yes, sir; the generally accepted theory.

Commissioner PROUTY: You say that this 12-cent rate is a proportional rate?

Mr. BOYD: Yes, sir.

Commissioner PROUTY: What do you mean by that?

Mr. BOYD: Applicable on stock coming from points west of the Missouri River.

Commissioner PROUTY: Do you apply it to anything else?

Mr. BOYD: Not so far as my knowledge goes.

Commissioner PROUTY: What pains do you take to ascertain whether the stock does come from West of the Missouri River?

Mr. BOYD: You will have to ascertain that from our Agent at the Missouri River.

Commissioner PROUTY: What instructions do you give about it?

Mr. BOYD: I do not know of any particular instructions that are given except what is in the tariff. I have had general talk with our live stock agent and told him that he must ascertain whether the live stock came from West of the Missouri River.

2535 Commissioner PROUTY: Do you apply that rate to intermediate points?

Mr. BOYD: Yes, sir; we have applied that on stock cattle to intermediate points.

Commissioner PROUTY: Do you apply it to intermediate points, or from intermediate points to Chicago?

Mr. BOYD: No, sir.

Commissioner PROUTY: Name me some station on your line 25 miles this side of Kansas City.

Mr. BOYD: The nearest station we have is about 50 miles this side of Kansas City, which is Cameron.

Commissioner PROUTY: What is the rate from Cameron to Chicago?

Mr. BOYD: Twenty-three and a half cents.

Commissioner PROUTY: What is the rate from Cameron to Kansas City?

Mr. BOYD: I do not recall; 8 or 9 cents, I believe: somewhere along there.

Commissioner PROUTY: Could live stock be taken from Cameron to Kansas City and shipped back from there at the 12-cent rate?

Mr. BOYD: Not so far as I am able to say. Possibly that stock might go in to the Missouri River and be mixed up in pens with stock from the West and not be identified.

2536 Commissioner PROUTY: You ship stock for anybody from Kansas City to Chicago at 12 cents?

Mr. BOYD: Yes, sir.

Commissioner PROUTY: So it amounts to all practical purposes to a flat rate of 12 cents?

Mr. BOYD: There are no shipments that originate so far as I have been able to ascertain at the Missouri River. All the stock that comes in there, comes in with the market privilege. It was formerly the practice to bill to Chicago with the market privilege at Kansas City, enabling the shipper to avail himself of the market there and

if not satisfactory to come on. That necessitated the holding of way bills and prevented the Agent from closing his account. It developed in to another practice so that stock was brought in to the Missouri River and the charges collected and then adjusted on the out-bound movement. But I do not know of any stock locally at the Missouri River that comes in without the assistance of the railroads.

Commissioner PROUTY: I suppose no stock originates strictly at Kansas City. But in what respect does your 12-cent rate differ from a flat rate applicable to all stock from Kansas City to Chicago?

Mr. BOYD: A flat rate would apply to all stock coming from east of the river. It would apply as a maximum.

Commissioner PROUTY: You might put in a 12-cent rate at
2537 Kansas City. It might not be a local rate. In what respect does this 12-cent rate differ from a flat rate at Kansas City with respect to its practical use?

Mr. BOYD: What I have just stated, so far as we are concerned, we are confining it to stock west of the Missouri River, and so far as that stock is concerned, it practically has the effect of a flat rate.

Commissioner PROUTY: Do you undertake to confine it to stock west of the Missouri River?

Mr. BOYD: As far as my knowledge goes, the Agent is supposed to exercise his judgment.

Commissioner PROUTY: You do not require a through way bill?

Mr. BOYD: Way bills are taken up. We require evidence from our Agent to show that it came in from West of the Missouri River. He can get it from commission firms, so he informs me. I am not posted as to the details of handling that business there locally at the Missouri River.

Mr. COWAN: I will suggest to the Commission that the witnesses have all testified that there is no live stock originating at the Missouri River. I would like to ask Mr. Boyd a question. Perhaps there is a little misunderstanding about that. Is it not a fact that the feeders from Kansas and the points above quarantine line in Kansas
2538 are shipped in to Kansas City, St. Joe, and some from Missouri, Colorado and Nebraska to Omaha and there sold as feeders to parties who take them out to the feed lots and those feed lots are situated, many of them, in the comparatively near vicinity of Kansas City, St. Joe, Leavenworth and along the Missouri River?

Mr. BOYD: There may be. I do not know of any feed lots in the vicinity of Kansas City or St. Joe.

Mr. COWAN: Within 15 or 20 miles, do they not feed a great many cattle clear up to Atchison?

Mr. BOYD: Cattle are fed all along there.

Commissioner PROUTY: Is that a transit privilege?

Mr. BOYD: I think so.

Mr. COWAN: One point about feeders stopping on a feeding privilege. The feeders brought in and sold in the markets there, is it not true that they are not stopped at Missouri River points and fed in Kansas, but only farther back in Kansas, and it does not apply to Kansas City?

Mr. BOYD: I do not remember whether the rules for transit privileges apply west of the River or not, I have forgotten.

The CHAIRMAN: I understood you to say that at the same rate on both, you would prefer to haul live stock rather than dressed meat?

Mr. BOYD: So long as the rate is reasonable.

2539 The CHAIRMAN: I understood you to say the same rate on both, you preferred the live stock business?

Mr. BOYD: Yes, sir.

The CHAIRMAN: Will you explain why you make that answer?

Mr. BOYD: In the first place a train from the Missouri River, live stock for instance, brings to Chicago an equipment that in a great many cases can be loaded back. We have ties, rails, lumber, coal, coke and various commodities that frequently can be loaded back in live stock cars. Such is not the case with refrigerators. Besides there is a difference in dead weight, which is also in favor of the live stock, and whenever you can load back your trains and produce revenue in both directions, you materially reduce the cost.

The CHAIRMAN: The mileage you pay on the car is more than the interest on the cost of your cars?

Mr. BOYD: I think the item of mileage should also be considered. An an average of 6 mills on equipment of that kind, you still have a balance of 4 mills.

Mr. KELLOGG: Mr. Boyd, your local rate is 23½ cents from Kansas City to Chicago, is it not?

Mr. BOYD: Yes, sir.

Mr. KELLOGG: What is the local from Topeka to Kansas City?

Mr. BOYD: I do not remember.

2540 Mr. KELLOGG: Can you tell me about what it is?

Mr. BOYD: About Twenty to twenty-five dollars—something like that.

Mr. KELLOGG: I mean per hundred pounds.

Mr. BOYD: Eight and a half cents.

Mr. KELLOGG: Eight and a half cents. That makes your rate from Topeka to Chicago by way of Kansas City market 32 cents, does it not?

Mr. BOYD: On a combination of locals.

Mr. KELLOGG: What is your rate from Topeka to Chicago—the through rate?

Mr. BOYD: Twenty-nine and a half cents.

Mr. KELLOGG: Now, as a matter of fact all the rates from Texas, Kansas, Colorado and Nebraska reached by your road—from all points to Chicago, the through rate is less than the sum of the locals, is it not?

Mr. BOYD: Yes, sir.

Mr. KELLOGG: That is for the benefit of the Chicago market, is it not?

Mr. BOYD: It is.

Mr. KELLOGG: If a man wants to ship in to the Kansas City market, he must pay the local rate, must he not?

Mr. BOYD: Yes, sir.

Mr. KELLOGG: From Topeka?

Mr. BOYD: Yes, sir.

2541 Mr. KELLOGG: The rates to-day are in favor of the Chicago market, are they not, on live stock? Is not that so?

Mr. BOYD: I think so. I do not know that they necessarily favor the Chicago market as against any other market.

Mr. KELLOGG: They are certainly as favorable, are they not?

Mr. BOYD: Yes sir, they are.

Commissioner PROUTY: I do not understand that they are complaining of the rates from Kansas City. They say that it is when they get farther north they do not bear the same relation to each other that the Kansas City rates do.

Mr. KELLOGG: They do. On the rates from Montana to Chicago on through business, the proportion from St. Paul to Chicago is 15 cents, while the local rate is a great deal more. Chicago is favored by every single long distance tariff in this country as a cattle market.

Mr. BOYD: I want to make a statement in order that I may not be misunderstood. In answering a question that I would prefer a train load of cattle at the same rate to a train load of dressed beef, it must be taken into consideration that there is a vast different in my opinion in taking a train load of cattle from Western Iowa to Chicago with all the incidents as against one from the Missouri River.

2542 The CHAIRMAN: I understand you to say from the Missouri River.

Commissioner PROUTY: I would like to know why it cost you so much more when you pick up a train load in western Iowa?

Mr. BOYD: We have all the stops to make, and that is not an inconsiderable item in operating a train. It is well known—I am not up technically in those matters—that it is more expensive to run a train when there is a great many stops. It has been estimated how much more coal it takes. If a train starts from the Missouri River it makes no stops other than those necessary for changing crews, or at crossings, or things where safety requires it. Then every time you stop a train, you have switching to perform.

Commissioner PROUTY: I suppose there would be more expense, but I did not know why it would be so much more. You start from Kansas City and have just a caboose and nothing else, and you take a couple of cars at the first station, and a couple from another station, and so on up to Chicago. From most of those stations the rate is 23½ cents. It does not cost as much to haul the caboose as the full train. It does not cost as much to haul two cars as the full train. That in some respects off-sets the difference, does it not.

2543 Mr. BOYD: I would not undertake to say what that difference would be, but it is very apparent to me that any stop would subject a train to, whether heavily or lightly loaded, means an expense against direct service.

Commissioner PROUTY: Do you stop and take on a part of a car load or always a full car load.

Mr. BOYD: A full car load. It may be a part of a car load, but at the full car load rates.

1725

Mr. TOMLINSON: It is not an unusual condition for you to get a full train load out of a couple of stations, is it?

Mr. BOYD: We do not often have that east of the Missouri River, but West of the River, it is true. One man out there used to brag that he wanted to load clear when he commenced to ship.

Mr. TOMLINSON: You would get more than an average of two cars at a stop, would you not?

Mr. BOYD: I would not undertake to say.

Mr. TOMLINSON: Would you not think so?

Mr. BOYD: I would not undertake to say.

Mr. TOMLINSON: You have, say, half a dozen live stock trains coming to Chicago on any busy day. Naturally all those trains could not start from the same territory. Your train from Western Iowa probably did not run over 100 miles in getting its full quota of cars and probably for the balance of the distance it ran through without any stops?

2544 Mr. BOYD: Under that condition, how would you take care of Eastern Iowa?

Mr. TOMLINSON: By another train that started east.

Mr. BOYD: When we start a train in Western Iowa, we avoid as much as possible transferring stock on local trains for the Chicago market.

Mr. TOMLINSON: Do you know what an average train load of live stock cars is? How many cars would be in a train?

Mr. BOYD: I do not know what the average would be. It varies according to conditions.

Mr. TOMLINSON: You have much more than one train into the yard a day, do you not?

Mr. BOYD: Yes, sir.

Mr. COWAN: One question I want to ask. So far as the unloading of the cattle is concerned, that is compensated for in the terminal charge, is it not, charged against the shipper?

Mr. BOYD: It does not compensate us. We have to pay that.

Mr. COWAN: But it is added to the through rate, the 12 or 23-cent rate. Two dollars is added to that and in that is embraced the cost of unloading, is it not?

Mr. BOYD: No, I do not think it is; not with us. It costs us, I understand, 40 cents a car. I had it figured out, and it cost about $2.40 for our cars and engines.

2545 Mr. TOMLINSON: Do you assess the terminal on local fresh meat and packing house products in here?

Mr. BOYD: Yes sir.

Mr. TOMLINSON: I understand that the Santa Fe and some others do not.

Mr. BOYD: I understand so.

Mr. TOMLINSON: Do you get any of this 20-cent business under that rate?

Mr. BOYD: I do not recall.

Mr. TOMLINSON: You don't think you get it on the 20-cent basis?

Mr. BOYD: We had some on the 20-cent basis. I do not know whether any went to the Stock Yards.

Mr. KELLOGG: Mr. Boyd, when a train load of stock is loaded, or packing house products is loaded at the Missouri River, is there very much more money in hauling that straight through than when you pick it up?

Mr. BOYD: You are sending a load of packing house products from the Missouri River against local points?

Mr. KELLOGG: Yes sir.

Mr. BOYD: I am not competent to answer that.

Mr. KELLOGG: You know that on a long haul of a thousand miles, more money can be made at a very much lower rate.

Mr. BOYD: Yes, sir; that is a theory of rate making.

Mr. KELLOGG: Now, you say that some of your refrigerator
2546 cars weigh 38,000 pounds?

Mr. BOYD: I said that the dressed beef and packing house product cars we haul run from 32,000 to 42,000 pounds.

Mr. KELLOGG: You think the average loading is 21,000 pounds?

Mr. BOYD: Our records show 21,000 to 21,500 pounds per car.

Mr. KELLOGG: You do not haul many big cars?

Mr. BOYD: I do not know.

Mr. KELLOGG: You do not know whether your cars would average 32,000 pounds? Do you think they would average more than 32,000 pounds weight, the cars?

Mr. BOYD: I do not know.

Mr. KELLOGG: Then, this is a mere impression of yours that you have as to the weight of the cars?

Mr. BOYD: It is not an impression. It was told me by parties who are supposed to know their business.

Mr. KELLOGG: They said they would weigh that.

Mr. BOYD: In some cases 42,000 and in some cases 32,000. I think the Kansas City Dressed beef line, the information I got from them was that they would average between 35,500 and 40,000.

Mr. KELLOGG: You don't know anything about it yourself?

Mr. BOYD: No sir.

Mr. KELLOGG: That is all.

(Witness excused.)

2547 BURTON JOHNSON, a witness on behalf of the complainant, being duly sworn, testified as follows:

Mr. TOMLINSON: Will you kindly state your name?

Mr. JOHNSON: Burton Johnson, General Freight Agent, Wisconsin Central Railroad.

Mr. TOMLINSON: At the time the Great Western and other lines put in the 18½ and 20 cent rates on fresh meats and packing house products to Chicago, what action did you take at South St. Paul?

Mr. JOHNSON: We reduced the rate from South St. Paul correspondingly.

Mr. TOMLINSON: To what figures did that reduce the rate, if you remember?

Mr. JOHNSON: To 17 cents on dressed meats and 15 and a fraction on packing house products.

Mr. TOMLINSON: That is the local, and on the proportional?

Mr. JOHNSON: Fifteen and fourteen. I have the figures here (producing paper). The proportional rate on packing house products was 14.6 cents, and on dressed beef 15.7 cents.

Mr. TOMLINSON: How did you arrive at that?

Mr. JOHNSON: By making the same proportional reduction
2548 from South St. Paul as from the Missouri River.

Mr. TOMLINSON: How are the rates on packing house products and fresh meats from Chicago to St. Paul made—I mean northbound?

Mr. JOHNSON: I do not know.

Mr. TOMLINSON: They are higher than the southbound rates are they not?

Mr. JOHNSON: Yes, sir.

Mr. TOMLINSON: Do you know why they are made higher?

Mr. JOHNSON: I have no idea. It is a rate so little used that the fact of its existence is not know- except to some one especially interested to look it up.

Mr. TOMLINSON: How does it happen that from St. Paul you make a higher rate on fresh meat than on packing house products?

Mr. JOHNSON: It is the same relative basis as from other packing house points.

Mr. TOMLINSON: From the Missouri River they are both the same.

Mr. JOHNSON: Well, there has always been a difference at St. Paul. I do not know how it came about.

Mr. TOMLINSON: In every other section of the country except between the Missouri River and Chicago, there has been a decided difference between the rate on fresh meat and packing house products.

2549 Mr. JOHNSON: I do not know what the genesis of that difference was.

Mr. TOMLINSON: And in most sections of the country the universal rule has been to make the rates on the product somewhat higher than on live stock.

Mr. JOHNSON: Yes, sir.

Mr. TOMLINSON: What are the rates on live stock from St. Paul and intermediate territories to Chicago?

Mr. JOHNSON: I think the St. Paul rate is 25 cents on the cattle.

Mr. TOMLINSON: And on hogs?

Mr. JOHNSON: Twenty-seven cents.

Mr. TOMLINSON: And on sheep, 27?

Mr. JOHNSON: That is right.

Mr. TOMLINSON: That applies from a pretty good zone of territory, does it not?

Mr. JOHNSON: It applies from St. Paul proper, but as a matter of fact it is not brought into use, because there are no shipments from St. Paul proper.

Mr. TOMLINSON: It is really for a considerable zone of territory.

Mr. JOHNSON: Yes, it covers a large portion of Wisconsin.

Mr. TOMLINSON: As compared with the packing house rate of

14.6, for example, is it not possible and is it not a fact that a
2550 great deal of live stock from Southern Minnesota and Wisconsin moves back into St. Paul, is slaughtered and subsequently comes east under those very low rates?

Mr. JOHNSON: Yes, sir.

Mr. TOMLINSON: It just permits that movement. Have you any information as to average weight of the live stock cars used by your company?

Mr. JOHNSON: The weight of the cars?

Mr. TOMLINSON: Yes, sir.

Mr. JOHNSON: I should think about 19,000 pounds.

Mr. TOMLINSON: That is the weight of the car?

Mr. JOHNSON: The weight of the car.

Mr. TOMLINSON: What is the average weight of refrigerator cars?

Mr. JOHNSON: About 30,000 pounds.

Mr. TOMLINSON: The medium carload weight of live stock as published in your tariff is 22,000 pounds on cattle and 17,000 pounds on hogs, and more frequently than otherwise they exceed the minimum, do they not?

Mr. JOHNSON: Slightly.

Mr. TOMLINSON: Do you know what the average loading of refrigerator cars is with dressed beef?

Mr. JOHNSON: What we haul?

Mr. TOMLINSON: Yes, sir.

Mr. JOHNSON: It runs about 21,000 or 21,500 pounds.

2551 Mr. TOMLINSON: And on packing house products?

Mr. JOHNSON: About 26,000 or 28,000 pounds?

Mr. TOMLINSON: At equal rates, which would you rather haul, a train of live stock or of fresh meats from St. Paul to Chicago?

Mr. JOHNSON: Live stock, and I will tell you why; because we own our own live stock cars and do not own our own refrigerators. That is the main reason.

The CHAIRMAN: Is that the main reason for your answer?

Mr. JOHNSON: Yes, sir.

The CHAIRMAN: Owning your own cars, ought you not charge as against the rate something for interest on the cost of those cars and the depreciation and keeping them in repair?

Mr. JOHNSON: Yes, but even with that I think it is preferable to haul the live stock.

The CHAIRMAN: It appears here that 6 mills has been used for certain calculations because that is the rate that is paid as between one road and another, but what, according to your experience or observation and knowledge, is a fair charge for mileage to cover the interest on cost, depreciation and repairs of cars owned by the company?

Mr. JOHNSON: I would say as to that, I do not think I am competent to fix that. That is a matter of operating and economies with which I am not directly interested and with which I have no familiar knowledge.

2552 The CHAIRMAN: It would seem that you have assumed something of that sort.

Mr. JOHNSON: The cost of 6 mills for an ordinary car or stock car and 10 mills for a refrigerator, added to the difference in weight we have to haul in transporting or hauling a refrigerator car as against the ordinary car, the difference to my mind is so largely in favor of the common car against the refrigerator car that I do not hesitate to state it.

The CHAIRMAN: What you meant was, that paying 1 cent a mile for the car of somebody else, and charging 6 mills against your own car, that difference of 4 mills is enough to give you a reason for answering that you would rather carry the stuff that comes in your own cars?

Mr. JOHNSON: Yes, sir; and another reason is that we are carrying 10,000 pounds less dead weight.

Commissioner FIFER: Suppose your company owned both the refrigerator and stock cars, which would you prefer?

Mr. JOHNSON: The live stock, because we would haul 10,000 pounds less dead weight, eliminating the question of mileage entirely.

Commissioner PROUTY: Do you get any back loads for your stock cars?

Mr. JOHNSON: Yes, we can load lumber in them and bark and a dozen commodities which we cannot load into refrigerator
2553 cars.

Commissioner FIFER: Do you think packing house products ought to carry a higher rate than live stock?

Mr. JOHNSON: Yes, sir.

Commissioner FIFER: How much higher?

Mr. JOHNSON: Well, that is a pretty hard thing to say, Mr. Commissioner, without going into it very thoroughly, and it would depend on the locality largely.

Commissioner FIFER: Under all conditions?

Mr. JOHNSON: I should say from three to five cents difference per hundred pounds.

Commissioner FIFER: You heard Mr. Stickney's statement?

Mr. JOHNSON: Yes, sir.

Commissioner FIFER: You do not agree with that?

Mr. JOHNSON: Not on the whole. I do not like to differ with Mr. Stickney because he knows a great deal more than I do, but on some things I do not agree with him.

Commissioner FIFER: What exceptions do you take to his figures? He reduced it, or tried to reduce it to a mathematical demonstration.

Mr. JOHNSON: There may have been some special reason for that particularly heavy loading with Mr. Stickney. I know that sometimes in the transportation of other commodities the loading will run, the average, very much higher for one month than for other
months. For instance, last month in the transportation of
2554 flour out of Minneapolis there was a scarcity of cars. Our average loading of flour per car ran from 46,000 to 57,000 pounds, simply because there was a scarcity of cars. That may have been the condition with Mr. Stickney during September. There may have been a scarcity of cars, a shortage of refrigerator

cars. Those things have to be taken into consideration and no single month is a fair test for anything. You have to run through an extended period.

Mr. TOMLINSON: Mr. Bird dropped the remark a little while ago that the shippers out at South St. Paul did not want the South St. Paul rates reduced. Is that correct?

Mr. BIRD: I understood the shipper did not think it best to reduce the rate. It was only one man I referred to.

Mr. TOMLINSON: Do you know anything about that, Mr. Johnson?

Mr. JOHNSON: I do not know. Maybe Mr. Bird was closer to him than I was. But whether they wanted it or not, we, acting as our duty was, for the interest of the railroad and not the interest of the shipper, have taken such action as to our judgment seemed best.

Commissioner PROUTY: Why did you reduce that rate if the shipper did not want you to?

Mr. JOHNSON: I did not know he did not want us to. What I wanted to establish and continue was the co-relation between
2555 St. Paul and the Missouri River, which had always obtained.

Commissioner PROUTY: Why?

Mr. JOHNSON: If I had not, when the time came for normal restoration, they would possibly want to push St. Paul up higher. That has been our experience in the past, and we did not want them to repeat it.

Commissioner PROUTY: What difference did it make to you if the shipper was dissatisfied?

Mr. JOHNSON: We did not know he would be dissatisfied.

Commissioner PROUTY: Is there any reason, except to satisfy the shipper, that you should want the rate to bear a relation to the Missouri River rate?

Mr. JOHNSON: Yes, to satisfy ourselves. On any commodity manufactured where we are vitally interested as against a similar commodity manufactured and controlled at a point where we have no interest at all, we want to preserve the co-relation of rates between the points where we have an interest and the place where we have not an interest.

Commissioner PROUTY: It satisfied you because in order to promote the business of killing stock at that point you have to put in that rate? That is the reason?

Mr. JOHNSON: Yes, sir.

Commissioner PROUTY: And puttin- in that rate does tend to increase the killing of stock at that point.

2556 Mr. JOHNSON: Yes. The same with flour. Assuming the mills at Topeka get a reduction for export, or to Chicago, we would feel it incumbent on us to make a corresponding reduction in our rate to equalize commercial conditions and enable people with whom we are associated to distribute their product.

Commissioner PROUTY: Is it a fact that there is only one packer at St. Paul?

Mr. JOHNSON: So far as I know, yes, sir; there used to be two, but I think the other house shut up.

Mr. TOMLINSON: Was there an attempt made on the part of the Chicago-St. Paul lines May 15th, to advance the packing house rates or reduce the live stock rates?

Mr. JOHNSON: I do not recall.

Mr. TOMLINSON: You, of course, are aware of the fact that as the rates are adjusted now in Wisconsin and Minnesota territory to Chicago as compared with fresh meats and packing house products, you are not complying with the principles laid down in the case of the Chicago Board of Trade against the Chicago & Alton Road?

Mr. JOHNSON: We are trying to as well as we can. We have made the rate on cattle 15½ cents.

Mr. TOMLINSON: I understand that is on business beyond. A large portion of this business at St. Paul comes from the East and South.

2557 Mr. JOHNSON: Not with us.

Mr. TOMLINSON: Not with you, but you testified that it did probably by other lines. Naturally the existence of a 25 and 27-cent rate would be a gross prejudice against the people operating here at the yard, don't you think so? Is not that almost a mathematical certainty?

Mr. JOHNSON: Well, I am not good on mathematics. I could not tell you.

Mr. TOMLINSON: Does it not have a tendency to draw business in to St. Paul?

Mr. JOHNSON: Not by our road.

Mr. TOMLINSON: Other lines have the business?

Mr. JOHNSON: Naturally where the live stock exists, it would be the tendency. The same prevails in Iowa as to stock going to Kansas City and Omaha.

Mr. TOMLINSON: Do you know how far south in Iowa on some of these other lines the St. Paul market draws stock?

Mr. JOHNSON: Probably as far south as Mason City.

Mr. TOMLINSON: The packing at St. Paul has increased considerably the last four or five years, has it not?

Mr. JOHNSON: As it has everywhere else. I do not think it has unduly increased.

Mr. TOMLINSON: Do you know whether your rates on live stock from Wisconsin and Minnesota points are higher than for equal distances out in Iowa and Missouri?

2558 Mr. JOHNSON: They are higher in Wisconsin.

Mr. TOMLINSON: Is there any justification for the higher rate?

Mr. JOHNSON: The justification is fixed by the railway commission.

Mr. TOMLINSON: Do railway commissioners usually fix them higher?

Mr. JOHNSON: I do not know, but the railroad commissioners in our State *has* authorized a certain basis of rates.

Mr. TOMLINSON: Interstate rates?

Mr. JOHNSON: No, State rates.

Mr. TOMLINSON: I am referring to the rates from Minnesota and Wisconsin into Chicago.

Mr. JOHNSON: I cannot speak of Minnesota rates, but Wisconsin rates, I think, run higher than from Illinois points.

Mr. TOMLINSON: Or Iowa points.

Mr. JOHNSON: Yes, sir. There are stations in Iowa—and I am entirely familiar with that, because I handled stock out in Iowa for 15 years—there are stations in Iowa where we will pick up three or four cars of stock every day in the shipping season and there are stations in Wisconsin where you will not get but very little.

Mr. TOMLINSON: I am referring to the general density of traffic by your line.

2559 Mr. JOHNSON: It is not as great in Wisconsin as in Iowa.

Mr. TOMLINSON: Are you quite certain of that?

Mr. JOHNSON: Quite certain. There is not as much population. It is not as thickly settled.

Mr. TOMLINSON: There are not as many miles of railroad.

Mr. JOHNSON: There is no reason why there should be.

Mr. TOMLINSON: What is the per ton density per mile of road?

Mr. JOHNSON: I do not know.

Mr. TOMLINSON: Would you have any objection to filing your annual report in this case?

Mr. JOHNSON: Not the slightest.

Mr. TOMLINSON: May I consider that in evidence.

The CHAIRMAN: Yes, and it may be marked as an exhibit in connection with Mr. Johnson's testimony.

(The same is hereto annexed and marked, "Exhibit No. 8, Johnson.")

Mr. BIRD: You said the rates in Wisconsin were fixed by the Commission, the Wisconsin rates. The rates from all points in Wisconsin to Milwaukee, the chief market city of that State, are the maximum rates made by the Commission, are they not?

Mr. JOHNSON: Yes sir.

Mr. BIRD: With the exception of a small circle in the vicinity of Milwaukee, are the rates from all Wisconsin points to Chi-

2560 cago the same as they are to Milwaukee? Is not the Milwaukee rate the maximum to Chicago for short distances where a distance tariff would make it less?

Mr. JOHNSON: That is right.

Mr. BIRD: So that so far as rates on live stock from Wisconsin to Chicago are concerned——

Mr. JOHNSON: They are the same as to Milwaukee except for a limited territory. That is right.

Commissioner PROUTY: Suppose you were compelled in some way to make the live stock rates the same as the packing house rates, what would you do—reduce the live stock or advance the other?

Mr. JOHNSON: In the case of the St. Paul rate?

Commissioner PROUTY: Yes sir.

Mr. JOHNSON: I would advance them both, because I think the

basis on which we are hauling them is lower than a compensatory basis. I do not go quite as far as Mr. Bird does in saying that all the rates are too low, but there are quite a number that are too low. I have a rate in mind that I think is a fair rate, the rate on dressed poultry.

Commissioner PROUTY: That is the first-class rate?

Mr. JOHNSON: Dressed poultry in car loads, and butter and eggs from St. Paul to Chicago are 40 cents a hundred. I think that is a fair rate, justified by commercial conditions and justified by
2561 the risk attending the transportation of the property. Dressed poultry is transported in the same kind of cars and under the same kind of conditions as to safety for the preservation of the property as fresh beef. We get 40 cents for transporting dressed poultry and relatively only 18 or 20 cents for dressed beef, and when you go to a butcher shop you buy the poultry for 18 cents and pay 22 for the dressed beef. There is a condition that I do not think right. I think the rate on dressed poultry is fair and the rate on dressed beef is too low.

Mr. COWAN: Does it not take a good many chickens to make a train load of poultry?

Mr. JOHNSON: Yes, sir.

Mr. COWAN: It is a very rare occurrence to have a train load of dressed poultry.

Mr. JOHNSON: Yes, I am speaking of St. Paul. The car load is the measure there.

Commissioner PROUTY: You say that in your opinion the rate on packing house products ought to be higher than that on stock and still you are making rates considerably lower. How do you justify that?

Mr. JOHNSON: In this way: We are making a rate lower on packing house products from St. Paul than we do on live stock from St. Paul, but there is no live stock originating at St. Paul. Neither did this packing house product, from our point of view, originate
2562 at St. Paul. It originated west of St. Paul on the hoof and was made into packing house products at St. Paul. *Ergo*, it is not packing house products really, but live stock.

Commissioner PROUTY: You justify the present conditions of things by looking to the point of origin of the traffic.

Mr. JOHNSON: The change of form from live stock to packing house product is merely an incident of the manufacture. That live stock did not originate at St. Paul, but it originated beyond and it must be considered not with our local from St. Paul on live stock, which is a dead letter, but with the proportional on live stock.

The CHAIRMAN: That is to say, having reference to actual movement of the traffic, your rate on the live animal is only slightly in excess of the rate on the dressed beef.

Mr. JOHNSON: Yes, very slightly.

The CHAIRMAN: So, if the Commission should rule in this case that the rate on the live animals should in no case exceed the rate on dressed products and you are obliged to conform to that ruling,

you could do it and would not go out of the dressed meat business, as Mr. Bird intimated his company would?

Mr. BIRD: I would like to ask Mr. Johnson if that opinion is not bases largely on the fact that he has scarcely any live stock business originating this side of St. Paul that would be affected.

2563 Mr. JOHNSON: Very little. It does not amount to 1 per cent. of our live stock business—hardly 1 per cent.

Mr. BIRD: The conditions that would affect you might be very unlike the conditions that affect the St. Paul Road at *at* Omaha and Sioux City.

Mr. JOHNSON: True.

Mr. BIRD: In other words, one case the effect would be enormous, and in the other, insignificant.

Mr. JOHNSON: That is right.

Mr. BIRD: I want to make it plain that the rates on live stock from all points in Wisconsin to the chief markets in that State are not only satisfactory to the Commissioners, who have reviewed them for years past, but they are not the subject of any complaint by the producer or consumer there, and notwithstanding that fact those rates are as substantially applied to Chicago for nearly 100 miles additional service; so that rates that are satisfactory to the people and State authorities in Wisconsin are applied to Chicago and the haul is 85 to 100 miles farther.

Mr. JOHNSON: That is right.

Mr. BIRD: Chicago is practically on a parity with Milwaukee and you have wiped out the question of distance.

Mr. JOHNSON: Yes, that is right.

Mr. TOMLINSON: On rates from the West to Chicago, and Milwaukee, Milwaukee takes the same rate as Chicago, does it not.

Mr. JOHNSON: Yes sir.

The CHAIRMAN: That seems to be all.

(The witness was excused.)

2564 Mr. COWAN: I wish to introduce in evidence, as a part of Mr. Peabody's testimony, two statements which he has furnished, one showing the relative number of cars shipped from August 31st, to December 31st, for the year 1902, 10,801 cars; the year 1903, 10,801 cars and the year 1904, 12,890 cars with the percentages of the Atchison, Topeka & Santa Fe cars used in the shipments. Also a statement which he was requested by the court to furnish, of the total amount of loss and damage claims on dressed meats and packing-house products during the year ending June 30th, 1905, total $3,892.00.

(The statements were marked General Exhibit No. 8.")

Mr. BAXTER: He also shows that all of that *expect* $8.60 was paid on account of wrecks.

Mr. COWAN: We will have for the purpose of offering in evidence

as a part of Mr. Crosby's testimony, the statements which he was requested to furnish.

Mr. DAWES: He will be here later with them.

Mr. COWAN: He will be here later in the day.

Mr. DAWES: I expect him any minute.

Mr. COWAN: I will leave them until he comes in. We also have statements of the train consists on the Chicago & North Western that have been made up by them and they will be introduced formally to-day and it is possible that it may not be necessary to
2565 have any witness in either case as we have agreed to introduce them together with certain explanations which go along with the statement.

There were some tariffs introduced in evidence as a part of the testimony of Mr. Mahoney, and I understood from Mr. Mahoney that he wanted to get the tariffs out in order to make some explanation of some typewritten statement that was contained therein, or make some copy of it or something of the sort. I presume that they were however refiled with his testimony. In addition to that there will be possibly, two or three different tariffs that we may want to use. I would like any of the gentlemen who desire to use any tariffs that they have not introduced—I am willing to concede that they may do so without objection, if they will make the same concession to us.

The COURT: Yes, I guess so. Now, are you through?

Mr. COWAN: I have a witness here, Mr. Ryan from Iowa, the Secretary of the Meat Producers Association of the state of Iowa, who wrote us a letter saying that he desired to appear and testify in the case and we wrote him to come on and he is here. We will be a very short witness and I would like to have him testify and then there are a few questions to ask Mr. Tomlinson and some exhibits which, in the hurry of Friday, were not introduced, and Mr. Witten
2566 has some explanatory statements called for, and with those things, I think our evidence will be concluded.

Mr. BAXTER: The defendants desire to put in evidence table XLVIII, page 86 of the appendix G of the Sixteenth Annual Report of the Interstate Commerce Commission. I omitted to put that in when I was putting in the other tables from the same report.

The COURT: All right.

W. S. WITTEN, having been duly sworn as a witness on behalf of the complainant in rebuttal, resumed the stand for further direct examination by Mr. Cowan, and testified as follows:

The COURT:

Q. Where do you live?

A. The Transit House, Union Stock Yards.

Mr. COWAN:

Q. You were asked the other day to produce a statement showing the actual time that trains were on your tracks which bore live stock

Documentary Evidence for Defendants.

1566a

Appendix G. to 16 Ann. Rep. I. C. C.

Table XLVIII.—Freight Rates Charged for the Transportation of Live Stock and Dressed Meats from Chicago to New York via All-Rail Lines from March 26, 1872, to April 1, 1902.

Date.	Rates in cents per 100 pounds.							Date.	Rates in cents per 100 pounds.						
	Cattle.	Hogs.	Sheep.	Horses and mules.	Dressed beef.	Dressed beef, in refrigerator cars.	Dressed beef, common cars.		Cattle.	Hogs.	Sheep.	Horses and mules.	Dressed beef.	Dressed beef, in refrigerator cars.	Dressed beef, common cars.
1872—Mar. 26					90			1887—Nov. 28	50	30	21	60	34½	34½	34½
Nov. 20					90			Nov. 28	10	30	10	60	17½	17½	34½
1874—Dec. 1					70			Dec. 30	25	30	25	60	25	25	25
1875—Nov. 2					70			1888—May 14	25	29	25	60	25	25	25
1876—Nov. 18					65			June 18	10½	25	25	60	25	25	25
1877—Apr. 30					85			June 27	10½	25	45	60	30	30	30
Sept. 4					75			June 28	10½	25	25	60	25	25	25
Oct. 22					75			June 29	10½	25	25	60	30½	30½	30½
1878—Sept. 2					90			July 2	10½	25	25	60	30½	30½	30½
1879—June 9	35	35	60	60	67½			July 3	12½	25	25	60	25	25	25
June 26	35	35	60	60	56			July 5	11	30	25	60	25	25	25
Aug. 4	50	40	60	60	80			July 6	10	30	25	60	17½	17½	17½
Aug. 7	50	45	60	60	80			July 7	10	30	25	60	17½	17½	17½
Oct. 12	50	50	60	60	80			July 9	10	30	25	60	12½	12½	17½
Nov. 10	55	55	65	65	88			July 10	10	30	25	60	12	17	17
1880—Mar. 1	55	60	65	65	88			July 11	10	30	25	60	10½	10½	10½
Apr. 14	55	60	65	65	88			July 12	10	30	25	60	9	9	9
Sept. 20	55	55	65	65	88			July 15	10	30	25	60	17½	22½	22½
Nov. 1	55	60	65	65	88			July 14	10	30	25	60	17	17	17½
1881—Mar. 14	50	55	60	60	80			Aug. 8	10	30	25	60	17½	17½	17½
Apr. 1	50	55	60	60	80			Aug. 20	10	30	25	60	25	25	25
May 9	55	55	60	60	80			Aug. 25	10	30	25	60	25	25	25
June 8	55	60	60	60	80			Sept. 24	10	30	25	60	25	25	25
June 15	55	55	60	60	80			Oct. 15	15	30	25	60	25	25	25
1882—Mar. 13	55	60	60	60	80			Oct. 22	15	30	25	60	25	25	25
Apr. 17	60	60	60	60	84			Nov. 7	15	30	25	60	30	30	30
Dec. 1	60	55	60	60	84			Dec. 17	22½	30	30	60	30	30	30
1883—Apr. 23	60	60	60	60	84			1889—May 1	20	30	30	60	45	45	45
Nov. 26	60	55	60	60	84			1890—Jan. 25	20	35	30	60	45	45	45
1884—Jan. 5	40	35	50	60	64			June 16	22½	35	30	60	45	45	45
Jan. 14	40	35	50	60	64			June 20	22½	35	30	60	50	50	50
Mar. 14	40	35	50	60	64			June 28	21	35	30	60	50	50	50
Mar. 21	40	30	50	60	64			June 30	18½	35	30	60	50	50	50
May 5	30	25	40	60	48			July 3	18	35	30	60	50	50	50
June 24	30	25	40	60	48			July 11	18	28	30	60	45	45	45
July 21	30	30	40	60	48			Nov. 24	26	30	30	60	45	45	45
Sept. 1	30	30	40	60	72			1891—Apr. 20	25	30	30	60	45	45	45
Dec. 8	40	30	50	60	79			1892—June 16	25	30	30	60	45	45	45
1885—Mar. 23	40	25	50	60	79			Oct. 10	25	30	30	60	45	45	45
May 5	30	25	40	60	52½			1893—Dec. 11	25	224	30	60	45	45	45
July 1	25	30	40	60	43½			Dec. 18	25	30	30	60	45	45	45
July 13	25	25	40	60	43½			1894—Jan. 1	25	30	30	60	45	45	45
Nov. 23	25	30	40	60	43½			Sept. 4	25	30	30	60	45	45	45
1886—Jan. 1	25	30	35	60	43½	35	35	Sept. 22	25	30	30	60	45	45	45
Mar. 1	35	30	45	60	65	35	50	1895—June 27	25	25	30	60	45	45	45
Dec. 20	35	35	45	60	65	35	50	July 1	25	30	30	60	45	45	45
1887—Apr. 22	35	35	45	60	65	35	50	July 28	25	30	30	60	45	45	45
June 1	35	35	45	60	65	45	60	1899—Feb. 1	25	25	25	60	45	45	45
Nov. 21	31½	30	36	60	56½	39½	54	1900—Jan. 1	25	30	30	60	45	45	45
Nov. 23	22½	20	22½	60	52½	52½	48	1901—July 29	25	30	30	60	45	45	45
Nov. 24	22½	20	22½	60	47	47	43	1902—Jan. 1	25	30	30	60	45	45	45
Nov. 25	25	30	26	60	42½	42½	39	Apr. 1	25	30	30	60	45	45	45
Nov. 26	20½	30	23½	60	38½	38½	35								

Note.—For changes in the minimum carload weights governing the commodities shown above (from 1867), in carloads, see Table IV.

in to the stock yards in Chicago, and showing the average number of cars in a train.

A. Yes sir.

Q. And possibly there were some other statistics that you were asked to prepare by the defendants' counsel. Have you those statements?

A. Yes sir.

(Here follows Appendix G, marked p. 2566*a*.)

2567 Q. Will you introduce them as a part of your testimony and explain what they show as briefly as you can.

A. Yes. I was to show the size of the trains and the time the trains were on our tracks.

Q. Speak out, so we can hear you.

A. And the time consumed in hauling those trains over our tracks. I believe that is as near as I can remember the statement.

The COURT:

Q. Well, what does it show?

A. A summary showing the number and size of all stock trains, received from the railroads named at the stock yards, Chicago, during all the Mondays and Wednesdays of August, 1905; the time consumed in handling the same from terminal tracks to our unloading chutes as shown by train sheets of Chicago Junction Railway. Now, this has been divided off into sections, showing the number of trains of 5 cars or less, the number of trains of 6 cars to 15 cars, the number of trains 16 to 25, the number of trains, 26 to 35 and the number of trains of 36 cars and over. The C. B. & Q. received 19 trains of 5 cars or less.

Mr. DAWES: That is you received them from the Q.?

A. We received from the C. B. & Q., *of* 5 cars or less, 19 trains consisting of 53 cars or an average of 2.8 cars per train. The
2568 time consumed on our tracks to set to the chutes——

The COURT: Well, is it necessary to read all that? Why don't you just file this?

Mr. COWAN: I don't think it is necessary to read them.

Mr. DAWES:

Q. Have you averaged them up there?

A. I have the average of each road and the general average.

Q. What is the average of time consumed on the tracks for each road there?

A. The average time for each road, you mean? I have the average time for all the roads or for each road.

Q. Well, take all of them.

A. The average time for each road was 29.5 minutes in and 24.8 minutes back.

The COURT:

Q. That is where?

A. On our tracks pulling in and out. The unloading is not included at all.

Mr. LYNDE:

Q. The period covered by this statement is August, is it?

A. Yes.

Q. You have not got anything to show any winter average, have you?

A. No sir.

Q. Is it not a fact that the time in the winter is very much
2569 longer and that you are more liable to have snow storms and blockades?

A. Yes, some longer.

Q. Is it not also true that the movement of cattle into Chicago is much heavier from January on, in the winter time, than it is in August?

A. August, September and October are about the heaviest months we have.

Q. Other witnesses have testified that the heavy movement was in the——

A. Of all kinds of stock?

Q. Commencing from January first on?

A. Of all kinds of stock?

Q. I am talking about cattle.

A. Well, about the largest receipts we have are in September, October and November, of cattle.

Q. August is not then a representative period?

A. It is more than the average, yes sir.

Q. As showing what the movement is?

A. I think it is a little more than the average of cars of cattle received but, of course, it is, the weather being good, we would handle it a little faster in August than in the winter time.

Q. A good deal faster, wouldn't you?

A. No sir, I could not tell exactly but it would be some faster, yes sir.

Mr. DAWES:

Q. Is it not a fact that your tracks during the winter
2570 months are occupied with traffic, congested with traffic to a greater extent, much greater than in August?

A. I think they are but I could not state positively.

cattle, and other delays, would be—The delay would be increased for the larger movement of other freight, would it not?

A. Well, to some extent, but not in proportion, I don't think, to the number of cars received.

Q. There are many more cars received on your tracks during the winter months than during August, are there not?

A. There are some more.

Q. Of all kinds, I mean?

A. In my opinion there are some more, yes sir.

Q. Can't you give some estimate of that?

A. No sir, I cannot, because I have not anything to do with it, only with handling of the stock.

Q. How did you happen to select August?

A. You asked me to.

Q. Who?

A. I was asked to select that month.

Q. Do you remember who asked you to?

A. No sir, I do not.

The COURT: Well, file your statement.

Mr. BAXTER:

Q. The time that you have shown on those shipments, as
2571 being the time occupied by the trains, I understand is only the time occupied on your own tracks?

A. Yes sir.

Q. And it does not include the time from leaving the termini of these different roads that enter Chicago, until the cars get back to their rails?

A. Yes sir.

Mr. DAWES: What do you mean by that, it does or it does not?

A. It just gives the time that they are on our own terminals.

(The statement produced by the witness is marked "Written's Exhibit A, October 11, 1905 F. B. D.")

(Witness excused.)

T. W. TOMLINSON, having been duly sworn as a witness on behalf of the complainant in rebuttal, resumed the stand for further direct examination by Mr. Cowan, and testified as follows:

Q. Are you ready to proceed?

A. Yes.

Q. When the court adjourned Friday you were filing some exhibits relative to the cost of handling fresh meat and packing-house product, compared with live stock and you

General Summary showing the number and size of Stock trains received from the railways named at the Union Stock Yards Chicago, during all the Mondays and Wednesdays of August 1905, and time consumed in handling same over terminal tracks to and from unloading chutes as shown by train sheets of Chicago Junction Railways.

Size of Trains	5 Cars or less.						6 to 15 Cars.						16 to 25 Cars.						26 to 35 Cars.						36 Cars or over						Total - All trains.						Percentages.	
	Cars.			Avg time per train			Cars			Avg time per train			Cars			Avg time per train			Cars			Avg time per train			Cars			Avg time per train			Cars			Avg time per train			Total	Total
R. R.	No. of trains	No. of Cars	Avg No Cars per train	In	Out	Total	No. of trains	No. of Cars.	Avg No Cars per train	In	Out	Total	No. of trains	No. of Cars.	Avg No Cars per train	In	Out	Total	No. of trains	No. of Cars	Avg No Cars per train	In	Out	Total	No. of trains	No. of Cars	Avg No Cars per train	In	Out	Total	No. of trains	No. of Cars	Avg No Cars per train	In	Out	Total	Trains %	Cars %
C.B.Q.	19	53	2.8	m. 19.3	m. 17.6	m. 36.9	18	193	10.7	m. 19.0	m. 17.6	m. 36.6	17	366	21.5	m. 19.8	m. 22.8	m. 42.6	25	751	30.0	m. 24.2	m. 24.6	m. 48.8	55	1566	46.2	m. 30.6	m. 24.1	m. 54.7	134	3929	29.3	m. 24.2	m. 22.3	m. 47.5	30.5	36.3
C.M.St.P.	10	17	1.7	m. 37.2	m. 19.6	m. 56.8	9	112	12.4	m. 45.2	m. 22.2	m. 67.5	26	567	21.8	m. 41.2	m. 19.6	m. 61.6	33	1022	31.0	m. 46.2	m. 21.0	m. 66.2	18	694	38.5	m. 54.6	m. 50.3	m. 104.9	96	2412	25.1	m. 48.2	m. 26.1	m. 74.3	21.9	22.2
C.M.&St.P.	3	6	2.0	m. 24.2	m. 52.2	m. 76.2	26	291	11.2	m. 31.8	m. 46.2	m. 77.8	23	475	20.6	m. 22.2	m. 37.5	m. 59.5	32	960	30.0	m. 25.6	m. 29.2	m. 54.8	15	609	40.6	m. 32.2	m. 40.1	m. 72.3	99	2341	23.7	m. 27.8	m. 32.8	m. 60.6	22.6	21.6
C.&W.	15	41	2.7	m. 27.4	m. 28.6	m. 56.0	8	93	11.6	m. 26.5	m. 22.2	m. 48.7	8	149	18.6	m. 23.2	m. 31.2	m. 54.4	2	58	29.0	m. 35.5	m. 10.5	m. 46.0	1	37	37	m. 20.0	m. 9.0	m. 29.0	34	378	11.1	m. 26.2	m. 26.2	m. 55.2	7.7	3.5
C.R.I.&P.	6	18	3.0	m. 9.3	m. 5.2	m. 14.5	17	133	11.2	m. 17.5	m. 9.2	m. 26.7	21	460	21.9	m. 14.2	m. 6.2	m. 20.4	6	184	31.0	m. 17.2	m. 6.2	m. 23.4	17	502	41.2	m. 29.2	m. 7.5	m. 37.7	57	1277	22.2	m. 17.2	m. 6.2	m. 24.2	13.0	12.0
Ill. Cent.	—	—	—	—	—	—	3	32	10.7	m. 21.3	m. 18.2	m. 39.5	6	119	19.8	m. 21.2	m. 22.2	m. 43.4	7	215	30.7	m. 48.1	m. 15.6	m. 63.7	3	111	37	m. 39.6	m. 17.2	m. 57.8	19	477	25.1	m. 34.2	m. 18.5	m. 52.7	4.3	4.4
Total	53	135	2.5	m. 24.2	m. 21.6	m. 45.8	76	854	11.2	m. 27.1	m. 27.0	m. 54.1	101	2136	21.1	m. 25.1	m. 22.6	m. 47.7	105	3190	30.4	m. 32.7	m. 23.0	m. 55.7	104	4519	43.5	m. 35.2	m. 28.2	m. 63.4	439	10834	24.7	m. 29.5	m. 24.5	m. 54.0	100.0	100.0

Trains of 5 Cars or less - - - -	53	135	2.5	m. 24.2	m. 21.6	m. 45.8	12.1	1.2
Trains of 6 to 15 Cars each - - - -	76	854	11.2	m. 27.1	m. 27.0	m. 54.1	17.3	7.9
Trains of 16 to 25 Cars each - - - -	101	2136	21.1	m. 25.1	m. 22.6	m. 47.7	23.0	19.7
Trains of 26 to 35 Cars each - - -	105	3190	30.4	m. 32.7	m. 23.0	m. 55.7	23.9	29.5
Trains of 36 Cars or over - - -	104	4519	43.5	m. 35.2	m. 28.2	m. 63.4	23.7	41.7
Total - - - - - -	439	10834	24.7	m. 29.5	m. 24.5	m. 54.0	100.0	100.0

(Exact Origin) Indirect Delay in Minutes to Trains at Chicago Junction Yards

Statement showing the number and size of Stock Trains received from the Chicago, Burlington & Quincy Railway at Union Stock Yards, Chicago, during all the Mondays and Wednesdays of August, 1905 and time consumed in hauling same to and from unloading chutes as shown by train sheets of Chicago Junction Railway.

C B & Q Ry

E. J. & E. Ry.

Date	Trains of 5 Cars or less: Engine No.	No. Cars	Brighton to Set	Empty to Brighton
8/7 '05	1912	1	18. Min	10 Min
" "	1924	1	11. "	10 "
" "	1420	3	15 "	30 "
8/9 '05	1800	4	27 "	12 "
" "	1961	5	20 "	37 "
8/14 '05	1390	2	25 "	20 "
" "	1965	2	9 "	14 "
8/16 '05	1917	4	12 "	10 "
" "	1814	5	20 "	14 "
" "	1438	2	50 "	18 "
8/21 '05	1935	1	23 "	11 "
" "	23	1	16 "	33 "
" "	1408	4	15 "	30 "
8/23 '05	1809	5	18 "	14 "
8/28 '05	1420	1	35 "	10 "
" "	1933	3	12 "	10 "
" "	1414	2	16 "	25 "
8/30 '05	1922	2	15 "	15 "
" "	1929	5	13 "	11 "
Total	19	53	368	334

Date	Trains of 6 to 15 Cars: Engine No.	Car No.	Brighton to Set	Empty to Brighton
8/2 '05	1133	11	15 Min	16 Min
" "	1967	13	18 "	14 "
" "	1965	11	28 "	37 "
8/7 '05	1900	15	14 "	11 "
8/9 '05	1177	8	16 "	16 "
" "	1925	6	16 "	26 "
8/14 '05	1966	11	33 "	10 "
" "	1904	8	12 "	17 "
" "	1408	7	10 "	25 "
8/16 '05	1966	9	13 "	10 "
" "	1914	14	37 "	16 "
8/21 '05	1902	14	29 "	13 "
" "	1923	10	23 "	36 "
" "	1809	7	21 "	20 "
8/23 '05	1174	10	15 "	9 "
" "	1976	13	15 "	12 "
" "	1831	15	15 "	18 "
8/30 '05	1916	11	12 "	11 "
Total	18	193	342	317

Date	Trains of 16 to 25 Cars: Engine No.	Car No.	Brighton to Set	Empty to Brighton
8/2 '05	1932	22	10 Min	10 Min
8/7 '05	1946	23	42 "	11 "
8/14 '05	1913	24	12 "	16 "
8/16 '05	1968	25	18 "	12 "
" "	1831	23	11 "	47 "
8/21 '05	1965	18	8 "	11 "
" "	1926	23	8 "	14 "
" "	1390	17	23 "	45 "
8/23 '05	1133	18	12 "	19 "
" "	1939	22	21 "	11 "
8/28 '05	1938	24	11 "	13 "
" "	1923	18	25 "	25 "
8/30 '05	1965	22	13 "	11 "
" "	1944	22	13 "	17 "
" "	1831	19	49 "	31 "
" "	1928	24	44 "	52 "
" "	1800	22	17 "	42 "
Total	17	366	337	387

Date	Trains of 26 to 35 Cars: Engine No.	No. Cars	Brighton to Set	Empty to Brighton
8/2.05	3119	35	17 Min	38 Min
8/7.05	1923	28	15 "	10 "
8/9 '05	1974	27	17 "	16 "
" "	1906	35	18 "	13 "
" "	1965	28	18 "	11 "
" "	1930	29	34 "	14 "
" "	1927	34	22 "	60 "
8/16.05	1184	31	20 "	13 "
" "	1929	30	12 "	15 "
" "	1820	26	21 "	12 "
" "	1937	26	15 "	22 "
" "	1977	31	20 "	30 "
" "	1909	30	80 "	35 "
8/21'05	1966	30	20 "	10 "
" "	1967	31	32 "	30 "
" "	1150	32	24 "	16 "
" "	1921	27	21 "	10 "
" "	1975	29	12 "	23 "
" "	1932	34	15 "	13 "
8/23'05	1936	30	50 "	10 "
" "	1921	28	15 "	14 "
" "	1912	30	14 "	12 "
8/28'05	1937	35	20 "	10 "
8/30'05	1967	27	38 "	9 "
" "	1939	28	32 "	17 "
Total	25	751	602	616

Date	Trains of 36 Cars or Over: Engine No.	Car No.	Brighton to Set	Empty to Brighton
8/2.05	1928	37	10 Min	15 Min
" "	1927	55	20 "	26 "
" "	1978	52	24 "	24 "
" "	1975	39	22 "	15 "
" "	1917	59	48 "	14 "
" "	1923	47	28 "	15 "
" "	1935	40	26 "	25 "
8/7 05	1925	55	41 "	20 "
" "	1932	56	67 "	22 "
" "	1914	44	79 "	25 "
" "	1910	53	12 "	18 "
" "	1935	63	28 "	27 "
8/9 '05	1976	37	20 "	10 "
" "	1912	39	15 "	13 "
" "	1977	51	14 "	86 "
" "	1922	53	60 "	43 "
" "	1934	49	78 "	14 "
8/14 05	1935	48	19 "	10 "
" "	1976	39	18 "	11 "
" "	1920	60	34 "	23 "
" "	1916	39	16 "	15 "
" "	1414	38	23 "	27 "
" "	1922	43	14 "	12 "
" "	1921	40	19 "	21 "
" "	1914	46	18 "	19 "
" "	1903	41	15 "	15 "
8/16 05	1920	38	20 "	15 "
" "	1916	37	20 "	18 "
8/16 05	1935	44	21 Min	29 Min
" "	1927	46	24 "	47 "
" "	1912	36	51 "	10 "
" "	1931	52	36 "	19 "
" "	1978	46	43 "	8 "
8/21'05	1910	49	17 "	9 "
" "	1916	43	20 "	15 "
" "	1977	70	40 "	50 "
" "	1913	60	20 "	17 "
" "	1930	44	38 "	14 "
8/23'05	1921	58	25 "	18 "
" "	1967	42	18 "	12 "
" "	1902	40	20 "	11 "
8/28'05	1965	36	15 "	55 "
" "	1974	44	26 "	16 "
" "	1979	54	23 "	15 "
" "	1916	47	39 "	9 "
" "	1931	38	51 "	7 "
" "	1939	46	37 "	11 "
" "	1976	40	53 "	11 "
" "	1978	56	21 "	16 "
8/30'05	1976	38	45 "	22 "
" "	1921	45	35 "	8 "
" "	1935	52	39 "	34 "
" "	1900	49	27 "	20 "
" "	1978	50	32 "	102 "
" "	1908	42	54 "	145 "
Total	55	2566	1678	1328.

Summary

Size of Trains	No. of Trains	Cars	Ave. No. Cars per Train	Ave. Time per min. Out	Total
5 Cars & less	19	53	2.8	18	36
6 to 15 Cars	193	1763	9.1	17	34
16 to 25 Cars	337	7667	22.7	24	46
26 to 35 Cars	602	19,274	32	27	59
36 Cars or over	1678	58,724	35	27	62
Total	2829	87,481			

Statement showing the number and size of Stock Trains sent from Chicago C. & North-Western Railway to Union Stock Yards, Chicago, during all the Mondays and Wednesdays in August, 1905, and

C. & N. W. Ry

times consumed in handling same on or through inbound tracks as shown by train sheets of

Chicago Junction Railways

C. & N. W. Ry.

Date	Trains of 5 Cars or less: Engine No.	Cars	Time Left	Time Arrived Brighton	Trains of 6 to 15 Cars: Date	Engine No.	Cars	Time Left	Time Arrived Brighton	Trains of 16 to 25 Cars: Date	Engine No.	Cars	Time Left	Time Arrived Brighton	Trains of 26 to 35 Cars: Date	Engine No.	Cars	Time Left	Time Arrived Brighton	Trains of 36 Cars or Over: Date	Engine No.	Cars	Time Left	Time Arrived Brighton
8/2 '05	770	1	44. Min	42. Min	8/2 '05	210	15	73. Min	57. Min	8/2 '05	230	16	21. Min	10. Min	8/2. 05	267	39	57. Min	31. Min	8/2 '05	919	35	72. Min	33 Min
" 7 "	346	2	84 "	9 "	" "	275	10	57. "	23. "	8/7. 05	1015	24	21. "	19. "	" "	513	32	35 Min	49. "	8/7 '05	878	40	36 "	35. "
8/9. '05	870	1	50. "	18. "	" "	442	14	95 "	19 "	8/7 '05	332	24	48 "	21. "	8/7.05	880	34	30 "	11. "	8/7 '05	866	40	78 "	30. "
8/14. '05	878	2	24 "	17 "	8/9 '05	263	15	39 "	14. "	8/7 '05	1135	21	33 "	9. "	8/7.05	181	34	40. "	11. "	8/7 '05	905	36	40 "	19. "
8/21. '05	308	2	48 "	16 "	8/16 '05	206	7	55 "	12 "	8/9. '05	46.	22	47. "	23 "	8/7.05	16.	35	29 "	18. "	8/7 '05	46.	43	95. "	30 "
8/23. '05	255	3	18 "	15. "	8/23.05	66.	8	32. "	11 "	8/9 '05	867.	24	29. "	13. "	8/9 '05	86.	32	45. "	13. "	8/14 '05	181	46	63. "	12 "
8/23 '05	181	1	30 "	15. "	8/21.05	819.	15	34 "	33 "	8/14 '05	206.	24	23 "	18. "	8/9.05	880	33	57. "	10 "	8/14 '05	267.	39	59. "	30 "
8/23 '05	235	1	25 "	16. "	8/28.05	1147.	13	54 "	27 "	8/14 '05	210.	20	28. "	13. "	8/9.05	209.	31	73 "	14 "	8/14 '05	86.	40	35 "	32 "
8/28 '05	284	1	30 "	30 "	8/30.05	1163	15	29 "	18 "	8/16 '05	1018.	24	28 "	13. "	8/9.05	861.	28	53 "	39. "	8/14 '05	866.	41	31. "	48 "
8/30.05	14	3	23 "	18. "	Total	9	112	496 "	207 "	8/16.05	346.	23	24 "	17 "	8/14.05	96.	33	35. "	21. "	8/16.05	132.	49	101. "	210 "
Total	10	17	372 "	196 "						8/16.05	1148.	15	35. "	16. "	8/14.05	343.	30	33. "	23. "	8/21.05	46.	39	35 "	53 "
										8/16.05	267.	25	31. "	17. "	8/16.05	261.	28	59. "	22. "	8/21.05	1125	28	92. "	17 "
										8/16.05	184.	24	60. "	11 "	8/16.05	866.	33	33. "	16. "	8/21.05	261.	37	57. "	77 "
										8/16.05	1125	23	39. "	15. "	8/16.05	281.	28	64. "	49. "	8/30.05	747.	39	48. "	18 "
										8/21.05	337.	25	55. "	14 "	8/21.05	763.	35	28. "	12. "	8/28.05	267.	37	65. "	17 "
										8/21.05	867.	19	30. "	13 "	8/21.05	86.	30	32. "	13 "	8/28.05	216.	36.	49 "	23 "
										8/23.05	1109.	16	59. "	16 "	8/21.05	1148.	30	32. "	15 "	8/30.05	1077.	36	53 "	76 "
										8/28.05	878.	19	47. "	18. "	8/24.05	116.	27	53 "	15 "	8/30.05	1001.	38	58 "	73 "
										8/23.05	861.	21	33. "	14. "	8/27.05	83.	31	44. "	17 "	Total	18	694	983 "	406 "
										8/28.05	919.	24	49. "	23. "	8/24.05	331.	25	57 "	22 "	Trains of 36 Cars or Over				
										8/28.05	867.	23	35. "	21 "	8/27.05	189.	33	40 "	12 "	8/28.05	72.	35	39 Min	12 Min
										8/28.05	336.	20	61. "	19 "	8/28.05	209.	29	48 "	20 "	" "	883.	27	75 "	29 "
										8/28.05	77.	35	73. "	22 "	8/28.05	885.	31	27 "	57 "	" "	1141.	30	70 "	21 "
										8/30.05	264.	21	50 "	23 "	8/28.05	337.	26	26 "	15 "	" "	12	29	70 "	10 "
										8/30.05	77.	25	67 "	24 "	8/28.05	889.	35	49 "	11 "	8/30.05	867.	29	74 "	13 "
										8/30.05	16.	20	98 "	90 "	8/28.05	763.	27	23 "	12 "	" "	86.	30	83 "	54 "
										Total	26	567	1092 "	509 "	8/28.05	265.	28	34 "	20 "	Total	27	842	1129 "	552 "
															Total	27	842	1129 "	552 "	Total	33	1612	2051 "	1491 "

Summary

	Engines	Cars	Time Left	Time Arrived	Remarks
Trains of 5 Cars or less	10	17	372 "	196 "	
Trains of 6 to 15 Cars	9	112	496 "	207 "	
Trains of 16 to 25 Cars	26	567	1092 "	509 "	
Trains of 26 to 35 Cars	27	842	1129 "	552 "	
Trains of 36 Cars or Over	33	1612	2051 "	1491 "	
Total	105	3150	5140 "	2963 "	

Ended Sept 14 1905

* Note Hold by C. & N. W. Ry on account 35 cars arriving at 2 o'clock for Presentation Aerators. Received & Forwarded 11th

Statement showing the number and size of Work Trains passed from Chicago, Milwaukee & St. Paul Railway at Union Depot Yards, Chicago, during all the Working Days of August 1905, and

C. M. & St. P. Ry.

Time consumed in handling cabins over terminal tracks to and from unloading tracks as shown by train sheets of Chicago Junction Railway.

C.M.&St.P.R.

Date	Trains of 5 Cars or Less	Engine No.	No. of Cars	Engine & Caboose Delay in Set	Engine & Caboose Delay in Brigston	Trains of 6 to 15 Cars	Engine No.	No. of Cars	Engine & Caboose Delay in Set	Engine & Caboose Delay in Brigston	Trains of 16 to 25 Cars	Engine No.	No. of Cars	Engine & Caboose Delay in Set	Engine & Caboose Delay in Brigston	Trains of 26 to 35 Cars	Engine No.	No. of Cars	Engine & Caboose Delay in Set	Engine & Caboose Delay in Brigston	Trains of 36 Cars or Over	Engine No.	No. of Cars	Engine & Caboose Delay in Set	Engine & Caboose Delay in Brigston
8/7 1905	1	1179	4	40 min	72 min	8/2 05		352	8	10 min	14 min	8/2 05		457	24	15 min	62 min	8/2 05		452	30	12 min	20 min	8/2 05		469	38	33 min	22 min
8/14 "	1	408	1	15 "	10 "	" "		1184	13	16 "	62 "	8/7 "		457	25	13 "	12 "	" "		359	34	14 "	92 "	8/9 "		452	43	61 "	30 "
8/28 "	1	1173	1	19 "	74 "	" "		363	14	11 "	20 "	" "		460	20	73 "	30 "	8/7 "		364	33	10 "	25 "	8/14 "		368	37	13 "	18 "
Total		3	6	74 "	156 "	" "		1167	11	21 "	114 "	8/9 "		1173	16	21 "	15 "	" "		458	27	17 "	30 "	" "		1167	38	18 "	140 "
						8/7 "		453	11	23 "	12 "	8/14 "		1169	22	16 "	55 "	" "		1172	29	20 "	29 "	8/16 "		358	48	19 "	16 "
						8/9 "		450	9	88 "	20 "	" "		364	20	10 "	48 "	" "		359	33	37 "	9 "	8/21 "		353	31	26 "	20 "
						" "		459	10	15 "	13 "	" "		353	24	12 "	19 "	" "		365	27	74 "	16 "	8/23 "		358	41	15 "	16 "
						" "		364	13	34 "	12 "	" "		1171	22	14 "	15 "	" "		455	29	62 "	33 "	" "		366	43	19 "	20 "
						" "		455	9	26 "	9 "	" "		1184	20	14 "	111 "	" "		408	26	13 "	14 "	8/28 "		358	40	14 "	17 "
						" "		1176	6	18 "	25 "	8/16 "		1179	16	15 "	155 "	8/9 "		361	34	17 "	18 "	" "		452	36	50 "	22 "
						8/14 "		454	14	23 "	13 "	" "		1163	22	22 "	28 "	" "		458	29	15 "	13 "	" "		497	47	73 "	36 "
						" "		452	9	20 "	32 "	" "		351	18	41 "	26 "	" "		365	34	40 "	13 "	8/30 "		1167	38	16 "	47 "
						8/16 "		640	14	103 "	17 "	8/21 "		1171	25	13 "	21 "	8/14 "		357	35	15 "	10 "	" "		459	42	49 "	82 "
						" "		365	10	22 "	35 "	" "		358	24	29 "	18 "	" "		356	33	15 "	13 "	" "		362	41	34 "	27 "
						" "		1184	10	22 "	145 "	" "		355	17	23 "	18 "	" "		365	32	26 "	21 "	" "		1163	39	51 "	88 "
						" "		452	13	22 "	51 "	8/23 "		486	22	20 "	24 "	" "		351	26	14 "	34 "	Total	15	609	491 "	601 "
						8/21 "		366	14	24 "	16 "	" "		1172	17	15 "	25 "	8/16 "		454	32	22 "	28 "						
						" "		1165	15	33 "	71 "	8/28 "		457	25	21 "	20 "	" "		356	34	15 "	48 "	Trains of 26 to 35 Cars Cont'd					
						8/23 "		1163	7	24 "	122 "	" "		451	20	15 "	13 "	8/21 "		1168	28	15 "	12 "						
						" "		1184	13	16 "	13 "	" "		453	16	36 "	65 "	" "		1184	30	16 "	33 "	8/28	05	450	30	26 min	57 min
						" "		481	14	24 "	18 "	" "		1162	18	21 "	29 "	" "		408	26	17 "	16 "	" "		366	29	43 "	27 "
						8/28 "		1173	10	86 "	70 "	8/30 "		1179	25	20 "	27 "	" "		460	26	68 "	30 "	" "		1161	28	29 "	22 "
						" "		355	13	26 "	30 "	" "		429	20	27 "	33 "	" "		359	26	17 "	27 "	8/30 "		1169	35	20 "	30 "
						8/30 "		365	12	23 "	13 "	Total		23475	506		863 "	" "		352	34	30 "	37 "	" "		1161	31	35 "	98 "
						" "		457	9	56 "	85 "							8/28 "		1173	27	17 "	35 "	Total	32	960	830 "	936 "
						" "		1176	10	40 "	165 "							" "		1167	27	12 "	26 "						
						Total		26	291	822	1197 "							" "		1184	24	33 "	20 "						

Carried forward to next Column

Summary

Kind of Trains	No. of Trains	No. of Cars	Engine & Caboose Delay in Set	Engine & Caboose Delay in Brigston
5 Cars or Less	3	6	74	156
6 to 15 Cars	26	291	822	1197
16 to 25 Cars	506	23475	863	1169
26 to 35 Cars or over	32	960	830	936
Total	567	24732	2589	3458

Consumption per train

	No. of Trains	Coal	Coke	Coal	Coke
East	547	23475	2-3	42.9	4.3
West	20	1257	1-3	62.8	3.1
Total	567	24732		43.6	4.2

Statement showing the number and size of stock trains received from Chicago Great Western Railway at Union Stock Yards, Chicago, during all the Mondays and Wednesdays of August, 1905, and time consumed in hauling same over terminal tracks to and from unloading chutes as shown by train sheets of Chicago Junction Railway:

Chicago Grt. Westn. Ry.

Chic. Gr. West. Ry.

Date	Trains of 5 Cars or less: No. Engine	No. Cars	Brighton to Set	Empty to Brighton
8/2 1905	232	5	30 min	74 min
" "	254	1	16 "	24 "
8/7 "	231	1	37 "	44 "
8/9 "	260	4	63 "	35 "
8/14 "	237	3	28 "	12 "
8/16 "	237	3	10 "	14 "
" "	235	2	44 "	9 "
" "	254	2	15 "	16 "
8/21 "	235	2	35 "	11 "
" "	126	3	30 "	17 "
8/23 "	263	3	36 "	19 "
" "	237	2	19 "	18 "
8/28 "	263	5	13 "	30 "
8/30 "	269	4	12 "	94 "
" "	277	1	23 "	12 "
Total	15	41	411	429

Date	Trains of 6 to 15 Cars: No. Engine	No. Cars	Brighton to Set	Empty to Brighton
8/7 05	269	14	13 min	17 min
" "	232	9	19 "	13 "
8/14 "	252	12	17 "	12 "
" "	281	14	31 "	19 "
8/16 "	281	11	15 "	27 "
8/21 "	260	13	20 "	14 "
8/28 "	262	7	39 "	28 "
8/30 "	278	13	58 "	48 "
Total	8	93	212	178 "

Date	Trains of 16 to 25 Cars: No. Engine	No. Cars	Brighton to Set	Empty to Brighton
8/2 05	239	16	20 min	68 min
8/9 "	277	16	27 "	29 "
8/16 "	259	16	35 "	21 "
8/23 "	274	22	13 "	26 "
8/28 "	277	19	19 "	17 "
" "	278	16	18 "	20 "
" "	287	19	26 "	45 "
8/30 "	255	25	26 "	22 "
Total	8	149	184 "	248

Date	Trains of 26 to 35 Cars: No. Engine	No. Cars	Brighton to Set	Empty to Brighton
8/2 05	259	32	15 min	10 min
8/7 "	239	26	56 "	11 "
Total	2	58	71	21 "

Date	Trains of 36 Cars & Over: No. Engine	No. Cars	Brighton to Set	Empty to Brighton
8/21 05	274	37	20 min	9 min
Total	1	37	20 "	9 "

Summary:

Size of Trains	No. of Trains	Cars No. of Cars	Avg. No. Engine Train	Average Time per Train: In	Out	Total
5 Cars or less	15	41	27.4 m	27.4 m	28.6 m	56.0 m
6 to 15 Cars	8	93	11.6	26.5	22.2	48.2
16 to 25 Cars	5	149	18.6	23.0	31.0	54.0
26 to 35 Cars	2	58	29.0	35.5	10.5	46.0
36 Cars or over	1	37	37.0	20.0	9.0	29.0
Total	34	378	11.1	26.4 m	26.0 m	52.4 m

Statement showing the number and size of Stock trains received from the Chicago, Rock Island & Pacific Railroad at Union Stock Yards, Chicago, during all the Mondays and Wednesdays of August, 1905 and time consumed in handling same over terminal tracks to and from unloading Chutes as shown by Train sheets of Chicago Junction Railway.

C.R.I.&P.Ry. C.R.I.&P.Ry. C.R.I.&P.Ry.

Trains of 5 Cars or less

Date	No. Engines	No. Cars	Mins. Cars to Set		Empty to Hold Track
8/7 05	145	5	9	min	5 min
" "	103	1	10	"	5 "
8/9 "	109	2	10	"	6 "
8/23 "	99	2	10	"	5 "
8/28 "	196	5	7	"	5 "
8/30 "	101	3	10	"	5 "
Total	6	18	56	"	31 "

Trains of 6 to 15 Cars

Date	No. Engines	No. Cars	Mins. Cars to Set		Empty to Hold Track
8/2 05	107	7	12	min	5 min
8/7 "	118	10	7	"	4 "
" "	109	10	30	"	35 "
8/9 "	71	8	8	"	5 "
" "	195	15	9	"	6 "
8/14 "	148	13	30	"	10 "
" "	98	9	7	"	6 "
" "	103	11	11	"	5 "
8/16 "	195	14	15	"	5 "
" "	148	10	14	"	15 "
8/21 "	195	11	8	"	4 "
8/30 "	196	15	60	"	7 "
Total	12	133	211	"	107 "

Trains of 16 to 25 Cars

Date	No. Engines	No. Cars	Mins. Cars to Set		Empty to Hold Track
8/2 05	118	24	10	min	5 min
" "	146	21	24	"	5 "
8/7 05	146	16	10	"	6 "
" "	107	25	30	"	4 "
" "	71	25	20	"	4 "
8/9 "	118	18	15	"	35 "
" "	118	17	10	"	5 "
8/14 "	104	21	8	"	5 "
" "	102	25	13	"	5 "
" "	196	25	12	"	4 "
8/16 "	147	25	16	"	4 "
" "	196	22	22	"	5 "
8/21 "	118	20	11	"	5 "
" "	144	24	7	"	5 "
" "	118	22	12	"	4 "
8/23 "	118	16	7	"	5 "
8/28 "	118	25	9	"	4 "
" "	196	25	25	"	5 "
" "	146	25	19	"	5 "
" "	195	22	7	"	4 "
8/30 "	98	17	10	"	5 "
Total	21	460	297	"	129 "

Trains of 26 to 35 Cars

Date	No. Engines	No. Cars	Mins. Cars to Set		Empty to Hold Track
8/2 05	195	35	11	min	5 min
8/7 "	195	32	19	"	7 "
8/14 "	147	28	10	"	7 "
8/21 "	196	30	10	"	7 "
8/28 "	110	26	35	"	5 "
8/30 "	195	33	17	"	5 "
Total	6	184	102	"	36 "

Trains of 36 Cars & Over

Date	No. Engines	No. Cars	Mins. Cars to Set		Empty to Hold Track
8/2 05	144	44	50	min	6 min
8/7 "	126	43	50	"	5 "
" "	196	36	53	"	9 "
8/9 "	196	41	16	"	12 "
" "	146	36	10	"	10 "
8/14 "	118	39	9	"	6 "
" "	195	40	11	"	4 "
8/16 "	108	44	9	"	6 "
" "	146	45	32	"	9 "
8/23 "	146	47	18	"	7 "
8/28 "	144	42	45	"	8 "
8/30 "	146	45	50	"	10 "
Total	12	502	353	"	92 "

Summary.

Size of Trains	Total	Date 8/2	Date 8/7	Date 8/9	Date 8/14	Date 8/16	Date 8/21	Date 8/23	Date 8/28	Date 8/30
5 Cars or less	6									
6 to 15 Cars	12									
16 to 25 Cars	21									
26 to 35 Cars	6									
36 Cars or over	12									
Total	57									
Engines	57	8	8	8	8	8	8	8	8	8
Cars	1171	195	195	196	196	195	196	146	144	146
Mins. Cars to Set	1171	502	424	344	133	184	140	47	42	31
Empty to Hold Track	427	92	92	92	18	42	42	13	27	31
Mins. Engines Coupled to Cars	1478	247	247	247	247	247	247	247	247	247
Mins. Engines Coupled to Cars	1478	247	247	247	247	247	247	247	247	247
Mins. Engines Coupled to Cars	1478	247	247	247	247	247	247	247	247	247
Mins. Engines Coupled to Cars	1478	247	247	247	247	247	247	247	247	247

1717

Statement showing the number and size of Stock Trains received from Illinois Central Railway at Union Stock Yards, Chicago, during half of Mondays and Wednesdays of August, 1905, and the time consumed in hauling same over terminal tracks to and from unloading chutes as shown by train sheets of Chicago Junction Railway.

Ill. Cent. Ry

2376 Ill. Cent. Ry

Trains of 5 Cars or Less

Date	No. Trains	No. Cars	Time Consumed in Transit to Yards	Time Consumed in Transit to Bridgeton

Trains of 6 to 15 Cars

Date	Hrs Engine Cars	No. Cars	Time Consumed at Yards to Set	Time Consumed in Transit to Bridgeton
8/9 05	669 9	27	min 29	min
8/16 "	737 10	22	" 12	"
8/23 "	669 13	15	" 13	"
Total	3 32	64	" 54	"

Trains of 16 to 25 Cars

Date	Hrs Engine Cars	No. Cars	Time Consumed at Yards to Set	Time Consumed in Transit to Bridgeton
8/2 05	775 16		18 min	70 min
8/14 "	737 21		25 "	10 "
" "	669 19		26 "	9 "
8/21 "	737 23		19 "	17 "
" "	668 23		19 "	17 "
8/28 "	737 17		20 "	12 "
Total	6 119	127		135 "

Trains of 26 to 35 Cars

Date	Hrs Engine Cars	No. Cars	Time Consumed at Yards to Set	Time Consumed in Transit to Bridgeton
8/2 05	669 32		65 min	29 min
8/7 05	41 31		27 "	12 "
" "	737 32		80 "	10 "
8/14 "	669 27		22 "	12 "
8/16 "	669 34		40 "	26 "
8/28 "	669 29		50 "	11 "
8/30 "	669 30		53 "	9 "
Total	7 215	337	"	109 "

Trains of 36 Cars & Over

Date	Hrs Engine Cars	No. Cars	Time Consumed at Yards to Set	Time Consumed in Transit to Bridgeton
8/7 05	757 36		76 min	10 min
8/9 "	737 36		23 "	23 "
8/21 "	669 39		20 "	20 "
Total	3 111	119	"	53 "

Summary

Kind of Trains	No. of Trains	Cars No. of Cars Each Train	Hrs No. of Hrs Each Train	Average Time of Trains at Yards	Cent Total
5 cars & less	—	—	—	—	—
6 to 15 Cars	9	37	3 32	21	39
16 to 25 Cars	6	119	6 119	1 48	36
26 to 35 Cars	7	215	7 215	1 39	63
36 Cars or over	3	111	3 111	1 17	53
Total	19	477	19 302	3 45	191

1748

2572 were to furnish, in addition to the statements filed, supplemental statements showing the comparisons, certain comparisons which you either suggested or which were requested of you, I don't recollect. Have you made the statements?

A. Yes.

Q. Will you please state briefly what it shows and file it?

A. After the deduction shown in the statement filed last Friday, covering the cost and earnings of cattle and fresh meat, hogs and packing-house products respectively, the remaining freight train earnings per mile on cattle were $2.05, on hogs $1.49.6, fresh meats $1.35 and on packing-house products, $1.61.

Assuming that three trains of cattle are hauled for every two trains of hogs, and that two trains of fresh meat are hauled for each train of packing-house products, the average train mile earnings would be on that basis on cattle and hogs, $1.82.8 and on fresh meat and packing-house product $1.43.6. Converting these earnings into percentages the results are that, based on the cost shown in that statement, that the rate on the product should be 27.2 cents higher than the rate on live stock, or stated conversely, that the rate on the live stock should be 21 per cent. less than the rate on the product.

Mr. DAWES: You said 27.2 cents. Did you mean that?

A. 27.2 per cent.

2573 Mr. DAWES: Then it should not be 75%?

A. That is on the basis of the cost. Another statement, viewing it in a slightly different aspect, on the basis of a rate of 20 cents, train tonnage 800 gross tons, using the results shown in the exhibits filed Friday, the product moving 500 miles and the live stock moving 400 miles, the gross train earnings per mile, according to the statements filed on Friday were; on cattle, $3.33; on hogs, $2.72; on fresh meat, $2.20 and on packing-house product, $2.39. Assuming that the same number of trains of each were handled, the average would be, for cattle and hogs, $3.02 and for fresh meat and packing-house products $2.29. Converting these receipts into percentages, it results in the conclusion that the rate on the product should be 32% higher than on live stock or that the rate on the live stock should be 24.2% less than on the product.

Mr. COWAN: File that as a part of your testimony and give the number of the exhibit.

(The statement so filed is marked "Tomlinson's Exhibit 54.")

Q. During the giving of your testimony on Friday, you were giving certain reasons why the rates on live stock in Iowa were too high. Have you prepared or have you any statement showing any comparison of facts explanatory of your reasons?

A. Yes, I have.

2573*a* On basis of the earnings per train mile after certain deduction as shown in Tomlinson's exhibits relative to cost and earnings on trains of live stock and its product, gross train tonnage of 800 tons, distance 500 miles, rate 20 cents.

Freight train earnings per mile:

Cattle.	Hogs.	F. M.	P. H. P.
2.05	1.596	$1.35	$1.61

Assuming that 3 trains of cattle are hauled for every 2 trains of hogs and that 2 trains of *r*ach meat are hauled for each train of P. H. P., the average train mile would be:

On cattle and hogs..... $1.828
On F. M. and P. H. P..... $1.436

Converting these earnings into percentages the results are:

That the rate on the product should be 27.2% higher than rate on live stock,

Or

That the rate on live stock should be 21% less than rate on the product.

Tomlinson *54*.

2573*b* TOMLINSON (55).

Statement of average Revenue per ton per mile, average Freight Earnings per train mile, average distance each ton of freight was handled, and the average number of tons of revenue freight carried per train mile; compared with the actual revenue per ton per mile and the actual train earnings per train mile on shipments of Cattle and Hogs on the same revenue tonnage and moving substantially the same distance at the actual rate in effect to Chicago. In this comparison the station used is Elwood, Iowa, on the C. M. & St. P. Ry., distance from Chicago 180 miles, and the actual rate on Cattle 16 cents and on Hogs 17 cents; average figures for the C. M. & St. P. Ry. are taken from the annual report of that Company for the year ending June 30, 1905, page 35.

	C., M. & St. P. statistics.	Actual results from shipments of Cattle.	Hogs.
Average distance each ton of revenue freight was carried, in miles	175.14	180	180
Average number of tons of revenue freight per freight train mile	264.62	264.62	264.62
Average revenue per ton per mile, in cents	.8813	1.77	1.88
Average revenue per freight train mile	$2.332	$4.70	$4.99

The 264.62 tons of revenue freight shown as an average is equivalent on a loading of 22,000 lbs. of cattle per car to 24 cars of cattle per train, and on a loading of 17,000 lbs. of hogs per car would be equivalent to 31 cars of hogs per train.

2573c Comparison of same statistics as applies to shipments of cattle and hogs to Chicago, Ill., from Dawson, Iowa, distance 371 miles, rate on cattle 23½ cents, hogs 23½ cents per 100 lbs.

	C., M. & St. P. statistics.	Actual results from shipments of Cattle.	Hogs.
Average distance each ton of revenue freight was carried, in miles	175.14	371	371
Average number of tons of revenue freight per freight train mile	264.62	264.62	264.62
Average revenue per ton per mile, in cents	.8813	1.267	1.267
Average revenue per freight train mile	$2.332	$3.352	$3.352

2574 Q. Introduce it in evidence with as brief an explanation as possible.

A. This is a statement of the average revenue per ton per mile, average freight earnings per train mile, average distance each ton of freight was handled and the average number of tons of revenue freight carried per train mile.

Mr. DAWES: On what road?

A. I am coming to that in a minute. (Continuing answer)—compared with the actual revenue per ton per mile and the actual earnings per train mile on shipments of cattle and hogs, on the same revenue tonnage moving substantially the same distance at the actual rate in effect to Chicago.

In this comparison, the station used is Elwood, on the C. M. & St. P., the distance from Chicago is 180 miles, the actual rate on cattle 16 cents and on hogs, 17 cents. Compared with the average figures for the C. M. & St. P., taken from the annual report of that company for the year ending June 30th, 1905, at page 35.

According to the C. M. & St. P. annual report, the average distance each ton of revenue freight was carried in miles was 175.14. The point from which the comparison is made is 180 miles from Chicago, which is the closest approximation to 175.14 that I could make.

2575 According to the C. M. & St. P. Annual report, the average number of revenue freight tons per freight train mile was 264.62.

In making the comparison I have used the average live stock train carrying that amount of revenue freight. The results are that

the average revenue per ton per mile for the average of all freight on the C. M. & St. P. is eight mills and eight tenths. The actual result of the 16 cent rate on cattle is 1.77 cents; on hogs, one and eighty eight hundredths of a cent, more than double the average. On the same basis, the average revenue per through train mile on the C. M. & St. P. is 2.33. The actual results on the basis which I have indicated and which is shown in this statement would be, on cattle, $4.70 and on hogs, $4.99. The 264.62 tons of revenue freight shown as the average is equivalent, on a loading of 22,000 pounds of cattle per car, to 24 cars of cattle per train and on a loading of 17,000 pounds of hogs it would be equivalent to 31 cars of hogs per train. On the same basis I have compared the rate on cattle from Dawson, Iowa, also a station on the St. Paul Railway, 371 miles from Chicago. The rate on cattle to Chicago is 23½ cents and on hogs, 23½ cents, and the results are that the average revenue per ton per mile on the cattle would be 1.26 cents and on hogs eight tenths of a cent for the average St. Paul earnings per ton per mile. The average
2576 revenue per freight train mile on the cattle from Dawson, Iowa, would be $3.35 and on hogs, the same, whereas, the average revenue per freight train mile covering all freight on the C. M. & St. P. Railway is $2.33 per freight train mile.

Mr. DAWES: Why did you happen to take the St. Paul road?

A. Because the St. Paul Railway published more elaborate statistics regarding their operation than any other company involved in this suit and because I previously submitted some figures showing that the St. Paul Railway correctly represented an average of the statistics of operating as published for Group Six in the Interstate Commerce Statistical Reports.

Q. When did you testify to that?

A. On last Friday, and I filed statements and exhibits showing that fact.

Mr. COWAN:

Q. Some of the witnesses for the defendants have submitted statements showing the earnings per car on various commodities, together with other statistical information, that is, commodities other than live stock. I will ask you to state whether you have examined those statements and whether or not they correctly reflect the actual movement of the traffic and the actual earnings on shipments
2577 of those commodities?

A. They do not correctly represent the actual movement or the actual earnings.

Q. Explain why you say that, and, in that connection, what those statements are to which you refer?

A. I refer, for example, to a statement filed by Mr. W. E. Keepers, showing the average loading of grain, or showing at least the loading of wheat from Omaha to Chicago to be 70,000 pounds, and the rate to be 17 cents and total earnings as one hundred nineteen per car mile. The rate is 12 cents and I doubt whether there was any grain ever moved on 17 cents.

Mr. DAWES: That is a proportional rate, isn't it?

A. Yes.

Q. It is not a local rate?
A. There is no local grain originates at Omaha.
Q. And there is not any local cattle originates there, either, is there?

Mr. COWAN: I think if counsel would wait till the witness gets through and then cross-examines, it would be better.
Mr. LYNDE: He makes so many statements that it would take a month to cross-examine if we waited till he got through.
Mr. COWAN: All right, I will withdraw my statement.

The COURT: Go ahead.
The WITNESS: A statement filed, I believe, by Mr. Calkins,
2578 shows the average loading per car of 66,000 pounds on a number of commodities except live stock. According to the annual report of the C. M. & St. P. Railway the average loading per car is something over 13 tons and therefore, if their heavy commodities load 33 tons on the basis shown in his exhibit, it is quite patent that either the annual report is wrong or the figure is misleading.
Mr. DAWES: Why?
A. Because the tonnage of the heavy commodities which are used as a basis for comparison, represents so large a proportion of the total tonnage of the C. M. & St. P. Railway that to apply that mathematically there must be a lot of cars moving without any loads, if the heavy commodities loading 66,000 pounds if they load that, as shown by this exhibit.
Q. Have you got the figures showing the proportion of heavy loads on the St. Paul to their whole traffic?
A. The annual report shows that, yes sir.
Q. Does that exhibit the-e show it?
A. I have not attempted to do it, it is in evidence in the St. Paul exhibit, yes sir.

Mr. DAWES: Your Honor, it seems to me that he is not testifying to anything he knows, but it is an argument based on the testimony.
The COURT: Let it go in. That is the best way and then
2579 you can argue about it later.

Mr. COWAN:

Q. As a matter of fact, Mr. Tomlinson, have you investigated and do you know whether grain ever moves from Omaha on the 17 cent rate, and if not, on what rate does it move?
A. It never moves on the 17 cent rate, it moves on the balance of the rate or the proportional rate.
Mr. COWAN: File your explanatory statement as another exhibit and give the number.
A. This is a copy of exhibits, I have no statement to file in this connection.
Mr. DAWES: You don't file any statement or exhibit in connection with the statement you made a moment ago about the loading on the St. Paul road?
A. No sir.
Mr. DAWES: Then I move to strike that out.

The COURT: He says the figures are in evidence.
Mr. COWAN: They are in the annual reports.
The COURT: He is an expert.
Mr. DAWES: I was not making the objection on that ground but I thought he had some statements there.
The COURT: So did I.
The WITNESS: This is for my own information, that is all.

Mr. COWAN:

2580 Q. Have you any statement showing the density of traffic and comparative train loading for the various lines of railway, defendants in this case, for a series of years? If so, file it as an exhibit to your testimony giving the number of the exhibit and such explanation as is necessary.
The COURT: Suppose you leave off that last part, let him file it and you can argue about it when you come to it.
Mr. COWAN: Well just file it.
Mr. DAWES: State what it is.
A. It is a table showing the volume and density of the traffic, the comparative car loading, the train loading, tons per loaded car mile, per train mile, etc., for the Atchison, Topeka & Santa Fe, the Chicago & Alton, the Chicago North-Western, The Chicago, Burlington & Quincy Railroad, the Chicago Great Western Railway and the Chicago Milwaukee & St. Paul for the years 1892, 1898, 1903 and 1904.

Mr. DAWES:

Q. Where were the statistics taken from?
A. From reports made to the Interstate Commerce Commission.

Mr. COWAN:

Q. At the hearing on Friday you stated approximately the amount of the receipts of live stock from points east of the

(Here follows fac-simile marked p. 2580*a*.)

2580a (1)

Table showing the volume and density of traffic, corporation car loading, train loading, tons per loaded car mile, per train mile, passenger car and train mileage for mile of road, for the years 1892, 1898, 1903 & 1904 — Ending June 30.

Name of road	year	Mileage Operated	Tons Carried	Tons Carried 1 mile	Tons 1 mile per mile of road	Tons per train mile	Tons per loaded car mile	Average distance haul of 1 ton	Loaded cars per train mile	Empty cars per train mile	Per Cent of empty to total car mileage	Passenger car miles per mile of road	Passenger car miles per mile of road	(Direction of Traffic) Mileage of loaded freight Northern East	Southern West	Revenue per ton per mile	Freight Earnings per train mile	Passenger Earnings per train mile
Atchison, Topeka & Santa Fe Ry	1892 ✓	4.587.12 ✓	6.224.294	1.090.948.391	369.032	180	11	272	14	6	27.57		1.346	87870276	80955790	1.130	152.446	98855
	1898	4.564.73	6.889.657	1.958.306.289	430.644	153	11	284	14	6	29.51		1.336	89443420	87953751	964	147669	104652
	1903	4.871.34	9.953.407	2.991.438.944	615.827	762	14	301	19	8	28.88	10.021	1.857	100587360	117033153	901	236197	176624
	1904	5.030.74	9.513.801	2.931.269.565	582.716	719	14	308	18	8	29.41	10.257	1.843	103460202	110337188	981	245164	138376
Chicago & Alton Ry.	1892 ✓	843.40	3.548.052	562.183.354	666.568	157	17	158	13	7	35.53		2.527	20781940	17705832	973	147796	131457
	1898 ✓	843.54	2.996.498	643.443.867	644.242	175	17	181	14	8	36.92		2.830	28277925	15024071	866	151455	107441
	1903	915.41	5.877.995	1.102.792.462	1.204.698	361	19	188	19	9	33.27	15.735	3.140	36488324	21580080	599	216128	118888
	1904	915.23	6.121.333	1.099.971.284	1.201.834	339	18	180	19	10	35.00	15.943	3.141	36986178	23467200	677	229268	136247
Chicago & Northwestern Ry.	1892	4.273.14	15.768.548	2.301.831.804	538.624	142	10	146	14	6	28.81		1.878	97289090	123863445	1.013	145341	107397
	1898	5.085.62	19.971.686	3.036.202.061	597.184	190	12	152	16	6	28.64		2.074	124863282	127431979	894	172858	87888
	1903	7.365.63	30.498.440	4.047.188.810	636.118	250	14	133	17	7	29.60	11.108	2.395	136468544	144081580	889	227686	93998
	1904	7.411.77	28.128.810	4.066.140.832	549.184	245	14	145	17	7	29.69	10.122	2.158	134693185	145908634	917	224915	99038
Chicago, Burlington & Quincy Rlt	1892	5.440.74	12.418.634	2.173.005.644	399.395	150	10	175	15	5	25.46		1.461	2219435831		987	148276	117027
	1898	5.859.70	13.678.221	2.392.918.394	408.369	164	10	175	16	6	28.37		1.308	2398137149		934	160990	108271
	1903	8.306.75	19.716.127	4.873.589.691	586.822	271	15	264	18	7	27.03	8.859	1.779	3299252230		864	234746	118992
	1904	8.322.16	19.779.915	5.101.521.088	612.975	284	15	258	18	7	28.14	8.694	1.734	3298488909		858	244145	125539
Chicago Great Western Ry. ✓	1892 ✓																	
	1898	932.01	1.814.750 ✓	✓	✓	532 ✓	— ✓	—	17	4	19.28		2.179	218584230	197641174	✓	167528	62281
	1903	932.01	2.768.307	759.916.612	817.545	275	14	275	19	6	23.84	11.970	2.633	277013066	250191064	741	204301	81003
	1904	818.73	2.625.601	805.221.416	922.171	271	15	265	18	6	24.80	13.530	2.861	301795648	246158958	722	195376	81092
Chicago, Milwaukee & St. Paul Ry.	1892	5.159.09	11.568.930	2.265.993.968	393.464	153	10	196	15	5	26.91		1.374	184519274	101513481	1.026	157882	115141
	1898	6.191.00	14.230.144	2.621.348.371	423.413	178	11	184	16	7	29.21		1.327	1354768744	1041339774	972	173545	102995
	1903	6.837.97	21.304.638	4.021.735.418	591.703	240	13	189	18	7	28.85	8.584	1.660	1571391573	1461354375	865	208339	112106
	1904	7.130.61	21.267.370	3.938.402.552	561.676	237	13	185	18	8	29.61	8.846	1.707	1351002430	1421179386	891	211673	108690

✓ From report of Atchison, Topeka and Santa Fe R.R.
✓ From report of Chicago and Alton R.R.
✓ Estimated.
✓ Cannot furnish.

2581 Missouri river, at Missouri river markets. Have you made any calculations showing what percentage of the total receipts those shipments represent, and if so, state what it was, and if you have a statement in that connection, file it.

A. During the year 1904, there was received at Kansas City, St. Joe and South Omaha, from points east of the Missouri river, 1,864,895 head of hogs, representing 30% of the total receipts.

Mr. RANSOM: A little bit louder.

A. Representing 30% of the total receipts of hogs at those markets. Sioux City is not included. During the same year there was received 533,863 head of cattle and calves, which represents 14.5 per cent of the total receipts at that market.

Mr. COWAN:

Q. That is those were received from east of the river.

A. Yes. During 1901 the percentage of the receipts east of the Missouri river, compared to the total receipts, were on cattle 19.1 per cent. and on hogs, 28.5 per cent.

Mr. COWAN: File that, Mr. Tomlinson.

The WITNESS: There is nothing to be filed, it is just the figures.

Q. You also testified regarding the receipt of live stock at Chicago from eastern lines and you were questioned particularly what
2582 the percentage was. Have you ascertained the figures showing the actual amount received at Chicago from points east thereof?

A. I stated, I believe that the receipts of live stock from points east of Chicago aggregated around,—somewhere around 2% or between two and three per cent.

I have since compiled a statement of the receipts of live stock at Chicago from eastern points, arriving here over the B. & O., the Chicago & Erie, the Grand Trunk Western, the Lake Shore & Michigan Southern, the Michigan Central, the N. Y. C. & St. L., the Pierre Marquette the Pan Handle & Fort Wayne Companies and a number of cars was 4,789 which represents 1.6 per cent. of the total receipts via cars at the Chicago market.

Q. What is the natural movement of live stock product that is destined east for consumption, and give your reasons for such statement as you may make?

A. You mean the natural movement of live stock?

Q. What is the natural movement of live stock, the product of which is destined east for consumption, the movement of live stock the product of which is destined east?

A. The natural movement of live stock, where the product is destined east for consumption would be eastwardly, unless, by reason of the condensation of the product there might be less units of
2583 service performed by it moving westwardly and thence eastwardly.

If the units of service on the live stock westwardly added to the units of service on the products moving eastwardly for consumption is greater than the units of service on the live stock from the point of

origin to the eastern market, then the movement west bound would be unnatural in my opinion.

Q. Explain by actual illustration what you mean by "units of service?"

A. I mean——

Q. Take some example and explain it?

A. Well, take a carload of cattle originating 100 miles east of the Missouri river. The gross tons moved a mile for the movement into Omaha would be 1100 tons. Assume that this car of cattle was slaughtered at the Missouri river and the product shipped eastwardly, the gross ton miles would be 7,700, a total of 8,800.—No, I want to correct that. The gross tons on the product moved eastwardly would be 3,850 instead of 7,700 and the total gross ton service would be 4,950 on the live stock westwardly and the product east. The total gross ton service on the live stock from the point of shipment eastwardly to, say Chicago, would be 4,400, a difference of 550 gross tons service or 12½%. According to this, there would be 12½% more units of service performed on the west bound movement of the live stock into the Missouri river and the product east than on
2584 shipping the live stock direct to an eastern market.

Q. Under what conditions would it be the natural movement to ship to the river markets?

2585 A. Where the shrink and the gross tons service would be less than on the shipment to Chicago, or Eastern markets.

Q. The industries at St. Paul, South Omaha, Sioux City and Cedar Rapids claim that the present adjustment of rates is fair as between the various markets, and that any change would result in a preference against them. From your knowledge and investigation of the situation, state whether or not you regard the present adjustment as fair?

A. No sir, I do not.

Q. Why?

A. Under the present adjustment the Chicago and Eastern markets are discriminated against; so also are the shippers of live stock located at intermediate points.

The COURT: Those located at intermediate points?

A. Yes sir.

Mr. COWAN:

Q. What is the difference between the train loading of live stock and other classes of freight, or the average of all freight, including live stock?

A. Very little difference.

Q. Are you able to state Mr. Tomlinson, the basis on which rates are made?

A. Well, rates on highly competitive traffic are made on the basis of about all the roads can get.

Mr. DAWES: Well, I object to that your Honor. It is cer-
2586 tainly a conclusion based upon nothing but surmise. He cannot tell what actuates the minds of the freight people on these different roads, except from the figures.

The COURT: You can cross examine on that. Go ahead. Tell

things that you can give a reason for when they come to cross examine you.

A. The rates on other traffic for example, that may be local to a line and which they desire to put into competition with other traffic on other lines are adjusted on about the basis of what the traffic will stand. Local and non-competitive traffic is charged what the roads think proper.

Mr. DAWES: Now, please right there, please tell me how you know that to be true with reference to the Chicago, Burlington & Quincy Railroad Company.

The COURT: Yes.

A. From my general knowledge of how rates are made.

Mr. DAWES:

Q. Well, who made the rates in existence on the Chicago, Burlington & Quincy Railroad in their department—on their road?

A. I cannot say.

Q. So what was actuating him, or what prompted his mind to institute any particular rate, you don't know?

A. The factors which I have enumerated.

Q. You don't know who he was in the first place?

2587 A. No, sir.

Q. Now, you are going to tell what prompted his mind.

A. My opinion about it, yes sir.

Q. I want to know what facts you know about it?

A. The facts I have enumerated.

Q. That is, you know no facts whatever, do you, except from the rates themselves, which lead you to think that the principle you have testified to prevailed in the making of the rates you speak of?

A. That is substantially my conclusion on the basis of the rates themselves and from my general knowledge of the basis on which they are made, not as applied to any particular road or any particular class of traffic.

The COURT:

Q. What makes you think they make them that way?

A. Simply from my general knowledge obtained through conversation with numerous traffic men; my general knowledge as to what the traffic pays and what the railroads claim they wish to have it pay, what they would like to charge on it.

Mr. DAWES:

Q. And you undertake on that basis to testify that the rates made by these defendants are made upon the lines and in the method that you have described, do you?

A. Yes sir.

Q. And swear to it?

A. Yes sir.

Q. All right.

2588 Mr. COWAN:

Q. Mr. Tomlinson, I understood you to say that the rates from highly competitive points were made on what the roads could get?

A. Yes sir.

Q. Do you mean by that, what they can get and yet participate in the business?

A. What they can get, and——

Mr. DAWES: I object now your Honor.

The COURT: I will sustain the objection, and also as to the last question, I am inclined to strike that all out. Let the record show that is all stricken out.

Mr. COWAN:

Q. Mr. Tomlinson, have you read the books on the subject of railroad operation?

Mr. LYNDE: What is that?

Mr. COWAN: I ask him if he has read the books that are extant on the subject of railroad operation, and if he has read the testimony that has been taken before the various investigations of Congress given by railroad men throughout the United States.

A. Yes sir.

Q. There seems to be some doubt cast upon the means of your information.

Mr. DAWES: Oh, no.

Mr. COWAN:

2589 Q. I will ask you how extensively it has been asserted in these cases that you have read that competitive rates are made on compromise and by competition.

Mr. DAWES: I object to that.

The COURT: The objection is sustained because there is no dispute about it in this case, as I understand; that is one reason, and for the reason that it is hearsay.

Mr. DAWES: We admit this is a qualified witness and that is all that would go to.

Mr. COWAN:

Q. Do you know whether the published rates from the St. Paul territory before the reduction, complied with the Interstate Commerce decision in what is known as the Board of Trade case?

Mr. DAWES: I object to that.

The COURT: The objection is sustained.

Mr. COWAN:

Q. What in your opinion would be a resonable rate on live stock from the zone of territory east of the Missouri River which now takes the 23½ cent rate?

Mr. DAWES: I object; he has gone over that.

The COURT: Hasn't he gone over that?

Mr. COWAN: He has not given what he thought the reasonable rate would be.

The COURT: Well answer the question.

A. Twenty cents on cattle and hofs.

2590 Mr. COWAN:

Q. And the same question with regard to St. Paul?

A. Eighteen cents.

The COURT: That is you think, cattle and hogs and fresh meat ought to be alike?

A. No; I think the rate on live stock ought to be less than on the product.

Q. If live stock is 20 cents, what do you put the product including fresh meat?

A. If I were suggesting ideal conditions, I would put the rate on fresh meat at 150 per cent. of the rate on live stock, and the rate on packing house product say, 115 per cent. of the rate on live stock; that is on the basis of the cost of service alone.

Q. That is the cost of service to the railroad?

A. Yes, sir. It costs them that much more to handle the product than it does the live stock.

Mr. DAWES: Are you taking other things into consideration when you say the rate ought to be 115 per cent.?

A. Nothing except cost of service and allowing to each class of product its fair proportion of the fixed charges.

Q. That is your conclusion of the whole matter then, that it ought to be 20 cents from the Missouri River on live stock, and 15 per cent. greater on packing house products, what would that make it, 23½ cents on packing house products, would it?

2591 A. No; my conclusion is that the rates from the zone of territory about which Mr. Cowan interrogated me, should be 20 cents on live stock.

Q. Yes.

A. And I stated in response to a question of his Honor, that the rate on the product ought to be—on fresh meat, ought to be 150 per cent. thereof.

Q. 150?

A. Yes, sir.

Q. Pardon me, I thought you said 115.

A. And the rate compared with that on packing house product, ought to be 115.

Q. So the rate on dressed meat would be 30 cents, according to you?

A. Yes sir.

Q. And on packing house product, 23 cents?

A. Yes sir, that is right.

Q. Then suppose you were called upon to carry out the order of the Commission that these rates should be equal, where would you put them?

A. Without considering any considerations as to the contracts in effect?

Q. Yes. Where would you put them?

A. If I was asked to adjust those rates, I would put them on that basis.

Q. But you have sued here, your Company has sued here, to compel these railroad companies to make these rates alike, that is to conform to the order of the Interstate Commerce Commission
2592 which says they shall be alike. Now, where would you put them, how would you conform them to that and do justice to the railroads?

A. I represent no company whatever.

Q. I did not mean to insert that. I don't think you will deny being the prime mover in this case.

(The pending question was then read.)

Mr. DAWES: How would you put them, to do justice to the railroad companies?

A. If I was called upon to carry out the order of the Commission, I would necessarily have to make them alike.

Q. Where would you put them?

The COURT: At 20 cents or 23½ cents?

Mr. SHAVER: The order of the Commission requires that the rates shall not be higher on live stock than on the product, not that they shall be the same.

Mr. DAWES: If one is not higher than the other, the general result would be that they would be alike.

Mr. SHAVER: One might be lower under the order of the Commission. The product might be higher than the live stock under the order of the Commission.

The COURT: Have you answered the question?

A. I think I have answered all I care to.

Mr. BAXTER: I don't understand the witness to have answered the question.

2593 (Previous answer read as follows: "If I was called upon to carry out the order of the Commission, I would necessarily have to make them alike.")

Mr. DAWES:

Q. Where would you put them?

A. Not necessarily alike.

Q. Assume that the Commission's order requires them to be alike, we won't argue that question, where would you put them and do justice to the railroad companies?

A. At the present figures, 18½ and 20 cents.

Q. You have just testified that the railroad is entitled to 20 cents on cattle.

A. That is from intermediate territory in Iowa.

Q. You say that this rate which we are now discussing ought to be 20 cents?

A. That is the rate from the zone of territory east of the Missouri River, yes sir.

Q. Well, that is what we are talking about?

A. Yes sir.

Q. Now, if you say you reduce it down to 18 cents or 18½ cents, you do wrong to the railroads by a cent and a half, don't you, according to your conclusions?

A. The 18½ cent rate——

Q. Now, answer that please.

A. The 18½ cent proportional rate from the Missouri River, applying on the product destined east of the Indiana-Illinois State line——

2594 Q. Now, treat my inquiry fairly.

A. Your question is not fair Mr. Dawes.

Q. I am assuming now that under your petition, the petition in this case, the bill in this case, his Honor is required to either confirm or deny the order of the Commission making these rates alike. I am assuming that, I may be wrong, but assuming they have got to be alike—you say if you were to carry that out, you would put them at just where they are now—what is it—you would put the cattle rate down to 18½ cents where it is now, that is what you said, didn't you?

A. Well——

Q. Well, state it any way you want to.

A. Let me state, the proportional rate from the Missouri River markets and St. Paul——

Q. Please answer the question and then explain about it. I am not talking about movement of stock, anything about that.

A. I would put the rate on live stock from intermediate stations out in Iowa, not to exceed 20 cents.

Q. Yes.

A. Now, can I make a further explanation?

Q. Why, centainly Mr. Tomlinson.

A. The present proportional rate on fresh meat and packing house products from the Missouri River destined to Eastern points, is 18½ cents. That is also applied on Live Stock. Twenty cents is the local rate, that is also applied on live stock when origi-

2595 nating on Western lines. My answer comprehended the intermediate territory where I say a 20-cent rate would be reasonable.

Q. Well, it is reasonable from intermediate territory——

Mr. COWAN: Let him make the explanation. He asked to be permitted to make it, let him go along.

Mr. DAWES: Excuse me Mr. Tomlinson, I didn't mean to interrupt you.

A. From the St. Paul territory, the rate on fresh meat and packing house product is 17 cents to Chicago.

Q. Pardon me, won't you confine yourself to the Missouri River, one illustrates as well as the other.

A. One will not illustrate as well as the other.

The COURT: Haven't you stated enough. You have said how you would do it. Make this matter short. You men want to argue pretty soon.

Mr. DAWES: Having put the live stock rate at 20 cents as you

say, from the Missouri River intermediate points, where would you put the packing house product, 20 cents?

A. Yes sir.

Q. Then you would do wrong on dressed beef by 10 cents to the railroad companies, wouldn't you, and by 3 cents on packing house products?

Mr. COWAN: I don't think that is a fair question. He assumes in the first place, that the Commission has ordered these rates to be made the same.

2596 Mr. DAWES: I am assuming that.

Mr. COWAN: Then he asks if Mr. Tomlinson were going to do it, how he would do it, if he did that sort of thing, and then he turns around and says, "You would be doing a wrong to the railroad company," having already laid down the premises that the rate should be the same.

Mr. DAWES: Is that unfair?

Mr. COWAN: Yes; in my judgment, entirely so.

The COURT: Well, go on.

The WITNESS: I wish to say in explanation, in addition to that that the St. Paul rates and interior Iowa point rates are entirely different so far as the relative adjustment of rates is concerned between live stock and packing house product. That should be taken in addition to my answer.

Mr. DAWES: What has that got to do with it?

The COURT: You and Mr. Cowan can argue this later. What else?

Mr. COWAN:

Q. What is the rate on lumber paid per ton mile, or per car mile from Texas points to Chicago?

Mr. DAWES: I object.

Mr. COWAN: Now, they have introduced in evidence a number of statements here that show the comparative earnings on lumber, but they have introduced it in places where lumber does not move in any considerable amount.

2597 The COURT: You can tell me that when you come to argue it as well as this man. The objection is sustained. And these other gentlemen won't deny it if you have an open fact.

Mr. COWAN: My argumentative statement would not be evidence.

Mr. LYNDE: That is what we object to Mr. Tomlinson's statement because it is argumentative.

The COURT: I think you better end up this controversy.

Mr. DAWES: You have got everything in the world in there, now leave that out.

Mr. COWAN: It isn't in.

The COURT: You say it is true, and they don't deny it, so we will assume it is true. Go on with something else.

Mr. COWAN:

Q. Do you know what proportion of the total value of the live stock product is exported?

A. About 20 per cent.

Q. Have you investigated the matter so as to determine what the expense is of the terminal service of the various railroads in delivering live stock at the Union Stock Yards in Chicago?

A. Yes sir.

Q. What is that expense stated on the average, of the various roads?

A. About $2.30 on live stock per car.

Q. That includes the trackage and what else?

A. It includes everything—includes service into the yards
2598 trackage, cleaning cars, unloading and every incidental expense—station service—it is according to the statements filed by the railroads, sworn to.

Q. Have you estimated what is the weight of bedding and manure in live stock cars?

A. Yes sir.

The COURT:

Q. Where were those statements filed, in this case or before the Interstate Commerce Commission?

A. Before the Interstate Commerce Commission.

Mr. LYNDE: In another case. He testified about this the other day, I think he had it all here, the statements and your Honor ruled it out.

Mr. COWAN: I had it here and offered to introduce it and it was excluded. Now I ask him if he has made an investigation himself to determine what the cost is. He testified to that, but that part of the statement where he says it is according to the sworn statements filed, I am willing that should be stricken out.

The COURT: That is already in, let it go for what it is worth.

Mr. COWAN:

Q. What are the actual distances on which traffic moves under the Iowa Schedule and the Illinois Schedule?

Mr. DAWES: I object.

The COURT: What is that?

2599 Mr. COWAN: What is the actual distance the traffic moves. They have got a schedule which runs up to 500 miles, but the actual movements the schedules are made for only cover a certain distance considerably less. I want to show that fact, because those schedules are filed and it is explanatory of the actual application of the schedule.

Mr. LYNDE: There is nothing to show that this witness knows anything about it.

The COURT: The record shows that he knows a good deal about railroad matters.

Mr. LYNDE: He does, but this is the actual movement of the

traffic in the State of Illinois. That is something that requires some knowledge besides a guess.

The COURT: Do you know?

A. Yes sir.

Q. How do you know?

A. The fact that the Illinois Central tariff publishes rates from Chicago clear down to the southern part of the State. That shows the actual distances that the Illinois Schedule rates are applied.

Mr. DAWES: That is not the question you are asked.

Mr. COWAN: I am asking the actual distance applied.

Mr. DAWES: Do you know the distance which the traffic moves.

A. The traffic moves from the Southern part of Illinois to Chicago, live stock on those rates; yes, sir.

Mr. COWAN:

Q. Now, what are the actual distances which live stock
2600 moves in the State of Iowa, on the Iowa Distance Schedule?

A. I can give no actual instance in that, my opinion would be——

Mr. DAWES: Well, I object, that is a fact, it is not a matter of opinion.

The COURT: The objection is sustained.

Mr. COWAN:

Q. What does it cost for cleaning cars, have you investigated that matter?

A. Slightly; yes sir.

Q. Well, do you know what it costs?

Mr. DAWES: I object your Honor, unless it appears that this witness has cleaned a car. The record is full of evidence on that. We can make up our minds on that just as well as he can, I should judge.

The COURT: Did you get your information from which you make this, on the statement of any one?

A. By general inquiry and seeing some men cleaning cars.

The COURT: Well, the objection is sustained.

Mr. COWAN:

Q. Will you file a statement showing what the term "fresh meat" includes, and what the term "packing house product" includes?

Mr. DAWES: I object to that because witnesses, expert beef men have testified to that very thing on this stand, his own witnesses.

2601 Mr. COWAN: Giving what applied to each?

Mr. DAWES: Yes.

Mr. COWAN: You are very much mistaken.

The COURT: I cannot understand the question.

The WITNESS: It is in evidence in the tariffs.

Mr. COWAN: The question is: To what does the term "fresh meat" apply, and to what does the term "packing house product"

EXHIBITS

NOT

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apply. Now, he says it is in the tariffs. I want a reference made to that.

The COURT: Go ahead then.

The WITNESS: It is shown in the tariffs on file.

Mr. COWAN:

Q. Mr. Tomlinson, these various statements that you have filed, schedules and one matter and another as exhibits, have they been correctly prepared from the data and memoranda at your command that you have spoken of from time to time?

A. Yes sir, to the best of my knowledge and belief.

Q. Have you a statement from the Interstate Commerce Commission showing the comparative cost of the repairs of freight cars, repairs and renewals of freight cars, repairs and renewals of locomotives of these railway defendants taken from their annual reports?

A. Yes sir, I have.

Q. Covering what period?

A. Covering the period from 1893 to 1904 inclusive.

2602 Q. Please file that as an exhibit to your testimony.

(The document produced by the witness was filed, marked, "Tomlinson Exhibit No. 58.")

Mr. COWAN: That is all, your Honor.

The WITNESS: Here is an exhibit showing the receipts of live stock at the Union Stock Yards, Chicago, Illinois, for the years 1900 to 1905, which I promised to file, and which I now do.

(The document here filed by the witness, was marked "Tomlinson Exhibit No. 59.")

Cross examination by Mr. BAXTER:

Q. Does that (Exhibit No. 59) show stock coming from Iowa?

A. Yes sir, it shows the number of cars.

Q. You speak of the average receipts per train mile on some road, did you arrive at that average by including the movement of empty cars?

A. I accepted the average shown in the annual reports of the railroad companies, or the Interstate Commerce Commission wherever I have used it.

Q. Well, the Interstate Commerce Commission report, in arriving at the receipts per train mile, includes movement of the empties on the whole system, doesn't it?

(Here follows fac-simile marked p. 2602*a*.)

2603 A. Yes sir, wherever empties move. It includes the movements of trains both ways, loaded or empty.

Q. You spoke of an adjustment of rates, or rather as to how rates were adjusted in your opinion. I understood you to say that where an article was not subject to any local competition, or any competition, the railroads charged what they pleased on it. Is that about the substance of what you said?

A. About. Under such conditions, they charge what they conceive to be a fair return for the service.

Q. Well, now, Mr. Tomlinson, do you know of any article shipped from any local railroad station in the State of Indiana, the rates upon which are not affected by competition either between carrier and carrier, or between product and product?

The COURT: Do you mean Indiana or Iowa?

Mr. BAXTER: Indiana or Iowa either.

A. I think all the less than car load rates, would not be materially, they might be slightly, but not to any appreciable extent, affected by competition.

Q. Well, will you name some one article that would fall in that category.

A. Well, take dry goods, groceries, boots and shoes, moving in less than car load quantities, and frequently in small packages, 100 pounds, I wouldn't think they were influenced much by competition.

2604 Q. Would you think that a merchant located at a local station on a particular road in Illinois, where there is a parallel line about ten miles distant from him, would pay a materially higher rate upon his less than car load shipments of merchandise than were paid by a merchant, or for the same kind of merchandise on a parallel line?

A. No, I would not think so.

Q. Then that would be influenced by competition between carrier and carrier, wouldn't it?

A. Yes sir, in the abstract it would. Of course, the rates are all checked in by the carriers on a certain basis, and there would not be any condition where a station ten miles from another would have a different rate.

Q. On all rates, both on less than car load as well as car load, they are not only affected by competition between carrier and carrier, but they are actually checked in by competing carriers and placed at the same figure for the same distance, is that not true?

A. That is true so far as being checked in. I cannot subscribe entirely to your statement about the competition, because I do not think there is a great deal of competition on less than car load stuff to local stations, but the rates in all this territory in Iowa are checked in by the different lines.

Q. Different competing lines?

A. Different competing lines, yes sir.

2605 Q. The object being to have about the same rates for opposite stations on parallel lines.

A. Yes sir, that is the idea.

Q. I wish you would state the rate from Kansas City, St. Joseph, Atchison and Leavenworth to Chicago on cattle and hogs, which originate beyond the Missouri River and are destined to New York or other points east of the Illinois-Indiana State line?

A. Originating on connecting lines west of the Missouri River?

Q. Yes, sir.

A. Eighteen and a half cents to Chicago, and Chicago junction points.

Q. Now, state the rate from said Missouri River cities to Chicago, on packing house product and fresh meat which originate at said Missouri River cities and are destined to New York and other points east of the Illinois-Indiana State line. All your packing house product originate on the River.

A. The rate to Chicago?

Q. Yes.

A. The rate to Chicago or Chicago junctions is 18½ cents.

Mr. SHAVER: Is that the proportional rate?

A. Yes, sir.

Mr. BAXTER: Yes.

Q. The local rate on packing house product is 18½ cents?

Mr. DAWES: Twenty on packing house product.

Mr. BAXTER:

Q. This is destined to New York.

2606 The WITNESS: Eighteen and a half cents is correct.

Mr. BAXTER:

Q. That is what I want. Then is it not true that the rate from said Missouri River Cities to Chicago on cattle and hogs, which originated beyond the Missouri River destined to New York and other points east of the Illinois-Indiana State line, is the same as, or not higher than the rate from said Missouri River cities to Chicago, on packing house product and fresh meats which originate at said Missouri River cities and are destined to New York and other points east of the Illinois-Indiana State line?

A. Yes, sir.

Q. What is the rate from Chicago to New York on cattle?

A. That is with one correction—except Sioux City.

Q. Well, except Sioux City.

A. And except of course, St. Paul and these intermediate Iowa points.

Q. St. Paul is not on the Missouri River though.

A. Yes; I understand.

Q. Now, what is the rate from Chicago to New York on cattle?

A. Twenty-eight cents.

Q. What is the rate on Hogs from Chicago to New York?

A. Thirty cents.

Q. What is the rate on packing house product and cured meat from Chicago to New York?

A. Cured meats in bulk, the rate is 35 cents, and on what
2607 is known as packing house product is 30 cents.

Q. Look at that tariff and see if you are correct about that, is it not 39 (handing paper to witness)?

A. Meats, fresh, dressed beef, sheep or hogs, 45 cents; meats, cured in bulk, car loads, per official classification, 35 cents.

Q. What is the rate on fresh meat from Chicago to New York?

A. Forty-five cents.

Q. Add the rate of 18½ cents on cattle from said Missouri River cities to Chicago, to the rate of 28 cents from Chicago to New York, and what is the total rate on cattle from said Missouri River cities via Chicago to New York on cattle?

A. Forty-six and a half cents.

Q. Now, add to the rate, 18.5 cents on hogs from Missouri River points to Chicago, the rate of 30 cents on hogs from Chicago to New York, and state what the total rate is on hogs from said Missouri River cities via Chicago to New York.

A. Forty-eight and a half cents.

Q. Add said rate of 18.5 cents on packing house product from said Missouri River cities to Chicago, to the rate of 35 cents from Chicago to New York, and state what the total rate on packing house products is from said Missouri River cities to New York?

A. Fifty-three and a half cents.

Q. Add said rate of 18.5 cents on fresh meats from said Missouri River cities to Chicago, to the rate of 45 cents from Chicago
2608 to New York, and state what the total rate from said Missouri River cities to New York is on fresh meat.

A. Sixty-three and a half cents.

Q. Then is it not true that said total combination rates on cattle and hogs from said Missouri River cities via Chicago to New York, are less, or at least not higher than the total combination rates on packing house products and fresh meats from said Missouri River cities via Chicago to New York?

A. Yes sir. On what is known strictly as packing house products, they would be the same, but on what is known as cured meats in bulk and fresh meats, the combination of the two rates would be less on the live stock.

Q. Are not the combination rates from said Missouri River cities via the Mississippi River crossings to New York, the same as are the above combination rates from said Missouri River cities via Chicago to New York?

A. Yes sir.

Q. In the case of dressed meat shipments, what amount of ice and other preservatives is necessary to be used?

A. About 6,000 pounds.

Q. How is it with reference to packing house products?

A. Somewhat less, between 3,000 and 4,000 pounds for the year around.

Q. Does the railroad company or the packer ice the car?

A. The packer.

2609 Q. What would you say is the value per ton of the ice and salt, or other preservatives used in a car of dressed meat?

A. I would not know accurately.
Q. Can you approximate it, Mr. Tomlinson?
A. No, I don't believe I could with any amount of accuracy.
Q. I wish you would refer to your brief before the Commission, page 8, and read in to this record what the term "packing house products" includes as used in the tariffs of the defendants.
A. That is in the record through the tariffs now on file.
Q. Is it?
A. Yes sir.
Q. Well, then, I will not burden you.
Mr. COWAN: He stated awhile ago that the tariffs gave it.
Mr. BAXTER: I wanted to get a description of those products, the question is withdrawn.
Q. You testified in this case before the Commission in November, 1902, did you not?
A. Yes sir.
Q. Please refer to page 405 and 406 of the stenographer's report of your testimony on that occasion, here handed you, and see if you did not state in effect that a published rate of 23 cents and a half on live stock, and an 18½-cent actual rate on packing house product had existed for ten or twelve years at the time you gave your testimony in that case. Take your time.

2610 A. I would like to read this.
Q. Certainly, take your time. My question was brief, I just want to get the substance of what you stated, or you can read the whole of it into this record if you desire to do so.
(Question read.)
A. Yes sir, those were the published rates in effect at that time, and had substantially been in effect for ten or twelve years with this exception, if you will permit me——
Q. Certainly.
A. The 23½-cent rate on live stock from the Missouri River is a basing rate, and no live stock moves under it. It was the published rate at that time, and is to-day.
Mr. COWAN: Judge Baxter, if you will permit me to ask him to explain at that point what he meant by the 18½-cent rate—whether you meant a published rate or whether you meant the actual net revenue paid.
A. The question referred to the actual rate on fresh meat and packing house product, which I stated was 18½ cents. The published rate during the major part of the ten or twelve years, in fact during nearly all that time, had been 23½ cents, but the actual rate was somewhere around 18½ cents.
Q. Explain how the difference came to be made, secretly or publicly?

2611 Mr. DAWES: I object.

A. By means of concessions, secret concessions, in the rate.
The COURT: That was on packing house products and dressed meat?
A. Yes, sir.

Mr. BAXTER.

Q. Now, Mr. Tomlinson, does your information satisfy you that those secret concessions from the published rates to which you have just referred have been going on during that ten or twelve years?

A. Yes, sir.

Q. They were concessions on the packing house rates?

A. Yes, sir; packing house and fresh meats.

Q. Now, I notice the following colloquy between you and Commissioner Prouty on that occasion:

"Commissioner PROUTY: Now, the testimony rather tends to show that the rate for ten or twelve years past has been 18½ cents on packing house products, the actual rate; what has been the rate on live stock for ten or twelve years?

"Mr. TOMLINSON: About the same.

"Commissioner PROUTY: So the discrimination has existed all these years against you?

"Mr. TOMLINSON: Yes, sir. No one has taken advantage of it. The packers have not opened up their houses or availed themselves of the discrimination which undoubtedly has existed."

2612 Is that correct as I have read it, Mr. Tomlinson?

A. Substantially, yes sir, that represents my present views.

Q. And your views then?

A. Yes sir.

Q. Mr. Tomlinson, you have in your brief at page 8, referred to a while ago, not only enumerated the articles which are classified as packing house products, but you have mentioned various packages in which they are shipped, such as barrels, boxes, tierces, and so forth. Are you able to give us the weights of those different barrels, boxes and so forth, used in the transportation of packing house products?

A. Not accurately. I would not be the most competent witness on that. I would estimate from the best information I can get that the weight of the packages in the average car load of packing house product would not be over two or three per cent. The weight of the barrel, containing barrel pork, is very heavy, it would probably weigh from 40 to 50 pounds, but there is such a small percentage of barrel pork made that, compared with the total tonnage, it would not amount to any appreciable figure.

Q. Well, would you say the same of boxes, casks and crates in which bacon is packed?

A. I would say that the boxes and crates in which bacon was packed would not represent to exceed 5 per cent. of the total weight of the package.

2613 Q. Now, lard seems to go in crocks, buckets, boxes and barrels, what would you say as to the weight of the packages as compared to the weight of the lard contained in them?

A. In the case of tin buckets of lard, the weight would not be over 4 or 5 per cent., and in barrels it would be larger, probably 10 per cent. Lard, when shipped between markets, or to large distributing points, frequently moves in tank cars, and it only moves in buckets when it is ready for final consumption.

Q. Mr. Tomlinson, have you filed as a part of your original testimony in this case, a copy of the Iowa Distance tariff?

A. I have filed an extract showing the rates on cattle and hogs under the Iowa Distance tariff. I did not file the entire tariff. I filed the schedule on cattle and hogs for the distances shown in that tariff.

Q. Well, have you a copy of it that you could spare to file in this record?

A. Yes, sir.

Q. Will you do so?

Mr. COWAN: It is such a big book, is the reason we did not file it.

Mr. BAXTER: If you will do this, I would rather have it than the book: Will you furnish a statement showing the rates under the Iowa tariff on cattle and hogs, and the distances from the following stations on the Chicago & Northwestern Railway to
2614 Cedar Rapids, namely: Norway, Blairstown, Belle Plaine, Ottumwa and Le Grand, Iowa.

A. To what points?

Q. To Cedar Rapids. Those stations are on the C. & N. W. railway, and I want a table to show the distance from each of those stations to Cedar Rapids, and the rates on cattle for those distances under the Iowa tariff?

A. I will do that with pleasure.

Q. Thank you, sir.

A. I will have to take the distances out of the Northwestern time table, or the official guide.

Q. That is all right. Either will do. Do you know any of the years Armour and Swift located their packing houses at Omaha. To refresh your memory, was it between 1888 and '90? I don't know that that is so.

A. I don't know accurately, no sir.

Mr. RANSOM: It was 1898 that Armour located at Omaha.

The WITNESS: I was thinking so. 1898 comports with my knowledge of when Armour went in there.

Mr. BAXTER:

Q. Well, when did Swift go in?

Mr. RANSOM: Swift has been there much longer than that.

The WITNESS: Much longer; I could not give the exact year.

Mr. BAXTER:

Q. Do you know when the Cudahy house was located at Sioux City?

A. That was I think, in 1900, or 1901, I am not quite certain.

2615 Q. Mr. Tomlinson, a good deal has been said in this case about an arbitration by which the rates on live stock and packing house product and fresh meat and so forth from Chicago to New York was adjusted. Who did you say were the arbitrators that acted on that occasion, Judge Cooley?

A. Albert Fink and Judge Cooley, that was the arbitration in 1883.

Q. Did they publish their award?

A. It was published in a pamphlet, yes sir.

Q. Did the arbitrators publish their opinion setting forth the reasons that controlled them?

A. Yes sir.

Q. Have you got that document?

A. Yes, sir.

Q. Will you file it in this case?

A. I have got it in the shape of part of the original records in the Squire case.

Q. That case has been decided and ended. I reckon we might as well import it into this case.

A. That is a matter for Mr. Shaver.

Mr. COWAN: It is a lengthy document and it is a part of the original record.

Mr. BAXTER: Will you allow it to be used in argument, that is all I want, I don't want to take it away from you, I just want to get at it.

Mr. COWAN: I would not like to do that because when we offerred Mr. Tomlinson's explanation in regard to it, it was
2616 objected to, and the objection sustained.

The COURT: If they want to use it——

Mr. BAXTER: I only wanted to use it in argument.

Mr. COWAN: If I knew what points you desired to use in argument, then I might want some explanations from Mr. Tomlinson relative to it.

The COURT: Let Mr. Tomlinson tell you, and then you can tell the Court in the course of your argument.

Mr. BAXTER: The only thing I have, is this: I have no concealment to make about it. I want to see the reasoning by which the arbitrators reached their conclusion in that case.

Mr. COWAN: You are very welcome to examine it, more than welcome to examine it.

Mr. BAXTER: That is all I want.

Q. Mr. Tomlinson, do the expert buyers, and buyers for the Eastern slaughterers that buy here in Chicago, do they belong to the Chicago Live Stock Exchange, or are they outside of that?

A. A large number of them are members of the Live Stock Exchange. There may be some who are not, they probably are.

Mr. LYNDE: That is, of the buyers here in Chicago market?

A. Yes, sir.

Mr. BAXTER:

Q. Mr. Tomlinson, please look at page 70 of the statistics of
2617 railways of the United States for the year 1903, and at the map showing the division of the United States into traffic groups, published as an appendix to that volume and state which of the groups covers what is known as Central Freight Association territory?

A. Group 3.

Q. What does group 2 represent?

A. Group 2 covers New York, Pennsylvania, part of Maryland, New Jersey and Delaware; I think it covers all of Maryland.

Q. Now, what does group 3, what states does group 3 cover?

A. Group 3 covers all of the States of Ohio, Indiana, the northwestern part of Pennsylvania, the southwestern part of New York—only a small part of it, and all of Michigan south of the Lake.

Q. I understand you to say that group 3 includes this Central Freight Association territory that we have been talking about?

A. Yes sir, group 3, in other words, includes that part of New York on and west of Buffalo and Pittsburg.

Q. Now, what does group 6 cover?

A. Group 6 covers Illinois, Wisconsin, Iowa and Minnesota entirely, parts of Michigan, parts of Missouri, and parts of North and South Dakota.

Q. Now, will you turn to, I think it is page 93 there, and give me the average number of passengers carried one mile per mile of line in group 2 for that year.

2618 A. 242,521.

Q. Now, for group 3.

A. 118,589.

Q. Now, for group 6.

A. 80,190.

Q. Now, give me the number of tons of freight carried one mile per mile of line in group 2.

A. 2,070,958.

Q. In group 3.

A. 1,443,062.

Q. In group 6.

A. 706,415.

Q. Now, in arriving at the density of traffic either freight or passenger do you not use the statistics that you have just read?

A. Yes sir.

Q. That is all.

Mr. COWAN:

Q. Mr. Tomlinson, is it not a fact that in group- 2 and 3, that the mileage upon which density of traffic is estimated does not consider the double, treble and fourth tracks on those railroads?

A. Yes sir.

Q. It takes the actual lineal mileage of the particular railroad?

A. Yes sir.

Q. Now, if you were to divide the gross tonnage by the mileage, considering the amount of double track, it would make a very different showing, would it not?

A. Very materially, and that has to be taken into consideration in any computation made.

Q. That is explained elsewhere in the report of the Com-

2619 mission what the bases are?

A. Yes sir.

Mr. DAWES:

Q. Is the double track considered in any of these groups?

A. No sir.

Q. So that the relation between the two remain just the same?

A. In reporting their mileage to the Interstate Commerce Commission, the roads give so many miles of main line track; that may be double, treble or four track, it is not considered.

Q. So they are all considered alike, the different groups, are they not?

A. They are all considered alike, no matter whether they have got four tracks or one track.

Q. So that the relations, as Mr. Cowan suggests, would not be changed at all?

A. Why, yes.

Q. The figures might be changed, but the relations would not.

Mr. COWAN:

Q. Is it not a fact Mr. Tomlinson, that the proportion of double track mileage, three and four track, in groups 2 and 3, are three or four times as great as the proportion in group 6?

A. I would say, it is very materially greater, at least twice and perhaps three times.

Mr. DAWES:

Q. Did you ever figure it out at all, isn't that just a guess that I could make as well as you?

A. Probably you can make it better than I can. I was
2620 asked for my opinion. I do not consider it an opinion—it is an opinion based on my knowledge of what lines have double tracks east of Chicago. There is only one line west of Chicaga that has got a double track between here and the Missouri River—that is the Chicago & Northwestern Railway. When a line has all the traffic it can handle on a single track, why that certainly has got to be taken into consideration in figuring the density of traffic in its relation to rates.

Mr. BAXTER:

Q. Without referring to the statistics published by the Interstate Commerce Commission, do you have any doubt in your mind that the density of traffic both passenger and freight per mile of line, or in any other way that you want to calculate it, is very much greater in groups 2 and 3 than it is in group 6?

A. I would say it was greater per mile of main line, and slightly greater per mile of track.

Q. Well, leave out the railroads altogether, what do you say about the density of people, and density of freight in group 6 as compared with groups 2 and 3?

A. It is much less than in groups 2 and 3.

Q. I hand you a memorandum that has been passed to me—I know nothing about the facts—as probably suggestive to
2621 you of when those packing houses were put in at Omaha. Look at it and see.

Mr. DAWES: That is stated in the report of the packing houses at the Omaha Stock Yards.

Mr. BAXTER: State whether those dates accord with your recollection. If so, read them into the record.

A. The only one I can recollect is that Armour started to build in 1897, which I recall now vividly, is correct. I do not know about the establishment of the Hammond Packing Company, or the Anglo-American, or the Swift. It is in the record.

Mr. COWAN: It is in evidence.

Mr. DAWES: The whole book is in evidence.

Mr. COWAN: I will not controvert it. We put it in evidence, the whole book for South Omaha.

The COURT: Mr. Shaver, do you want to ask some questions?

Mr. COWAN: Before you leave that question of the density of traffic, I will ask you if it is not a fact that in the territory between Chicago and the Missouri River in the State of Iowa, that the density of traffic is as great as the average density of traffic in the territory in group 3, compared per mile of line of railroad? What is your opinion about that?

A. Considering the double tracks east of Chicago, or west of Chicago as one mile of railroad, my opinion is that the traffic
2622 in group 3 is slightly more dense than in the territory strictly between Missouri River and Chicago. Take the line of The Alton Road, or the Chicago & Great Western operating exclusively between the Rivers, and St. Paul in the case of the Great-Western, and Chicago, the density is much greater than the average for group 6; and in the case of The Alton, it is not materially different from the statistics for group 3.

Mr. BAXTER: Now, Mr. Cowan I find—I beg pardon, I thought you were through (addressing witness).

The WITNESS: The density west of the Missouri River, in trans-Missouri territory is much less than in Iowa.

Mr. BAXTER: In turning my notes over here for cross examination of Mr. Tomlinson, I find I turned two pages at once. Will you permit me to ask some more questions.

Mr. COWAN: Certainly.

Mr. BAXTER: Have you any statistics covering a period of years as to the slaughtering of cattle and hogs at Cedar Rapids, Des Moines, Oskaloosa, Ottumwa, Waterloo, Boone, Fort Dodge and Marshalltown?

A. I have the statistics shown in the Cincinnati Price Current which I put in evidence, and which covers the slaughtering of hogs at those interior Iowa points. There are no published statistics so far as I know of the slaughtering of cattle at the markets
2623 you name. The statistics as to the slaughtering of hogs is in the record as an exhibit now.

Q. Well, does the same publication show the statistics covering the period of years of the receipts of cattle and hogs at those points?

A. It does not show any information as to the receipts, simply the slaughtering.

Q. Have you outside of that publication, any statistics on that point?

A. No sir.

Q. In your testimony in this case before the Commission, you

put in certain exhibits somewhat similar to those which you have put in evidence in this case, showing a comparison between the rates on live stock and packing house products charged in the territory east of the Missouri River, and the rates charged upon the same commodities in other territories, did you not?

A. Yes sir, I did not file that in this case however.

Q. You filed comparisons with the Illinois Tariff, didn't you, and the Iowa Tariff?

A. Yes sir.

Q. And the Central Freight Association Tariff?

A. Yes sir.

Q. In this case?

A. Yes sir.

Q. And in that?

A. Yes, sir. Pardon me, I thought you were referring to another exhibit which I did not file in this case

2624 Q. Now, I will ask you whether you did not say in your examination before the Commission, with reference to those comparisons as follows: "It is a very difficult thing to pick out any territory and say that it would be fairly compared with this section of country east of the Missouri River."

A. I probably said that, I am willing to admit that I said it, certainly.

Q. That is all.

Mr. COWAN:

Q. Why. I would like him to give his reasons.

A. Because you cannot find any territory precisely similar as to the density of traffic, the character of the traffic or any other pertinent elements that should be considered in making any comparison. For example, take the rate from Kansas on live stock in to Kansas City, traffic out there is less dense than it is in Iowa, and on that basis the rates from Kansas points in to Kansas City ought to be higher than from Iowa points in to Chicago, and it is not the case.

Q. Just the other way, isn't it?

A. Just the other way.

The COURT: Now Mr. Shaver ask your question.

2625 Examination by Mr. SHAVER:

Q. Mr. Tomlinson, does the 18½-cent proportional rate apply on any shipment of live stock to Chicago proper as the point of final destination?

A. No, sir.

Q. Does it not apply exclusively on shipments to points east of the Illinois-Indiana State line?

A. Yes, sir, except where the balance of the rate might be the same as the 18½ cents.

Q. Does the proportional rate of 18½ cents apply on any shipments to Chicago of live stock from points in the territory from 100 to 150 miles wide east of the Missouri River?

A. No sir, it does not.

Q. Does not the 23½ cent rate apply exclusively from the River, and from points in that territory east of the River to Chicago proper?

A. It applies exclusively from the territory east of the Missouri River. And so far as Sioux City is concerned, the rate instead of being 23½ cents, is 25 cents on cattle, and as I have previously stated it is higher also for St. Paul than from the Missouri River.

Q. These proportional rates do not apply on any shipment to Chicago proper?

A. No sir. The proportional rates—no sir, they do not.

Q. Now, Mr. Baxter asks you about the combination rates
2626 from the Missouri River and points west of the Missouri via Chicago, I believe, to the East, to New York.

A. Yes sir.

Q. In your testimony in regard to those combination rates, did you make the rate from Missouri River to Chicago the 18½-cent proportional rate?

A. Yes sir.

Q. You did not use the 23½ cent rate to Chicago?

A. No sir.

Q. That proportional rate is a part of a through rate on traffic that does not stop at Chicago but goes on to New York, is it not?

A. Yes, sir.

Q. Now, suppose you had used the 23½ cent rate to Chicago, plus the rate from Chicago on to New York, would your answers have been the same?

A. No sir, not quite the same.

Q. That combination rate would be higher than the rate on packing house products direct from the Missouri River to New York, would it not?

A. Yes sir, it would be 5 cents higher—it would be 5 cents higher on what is known as strictly packing house products, the same on cured meats in bulk, but the combination on cattle would be less.

Q. Mr. Tomlinson, take a steer of the gross weight, for con-
2627 venience of calculation, of 1,000 pounds. The 23½ cent rate per hundred pounds on the 1,000 pounds amounts to $2.35, ten times 23½ cents?

A. $2.35, yes sir.

Q. Take the amount of product in that steer which can be made merchantable as 70 per cent., or 700 pounds; the rate of $2.35 on this 700 pounds of product amounts to 33 4/7 cents per hundred pounds. The rate on prepared product is 20 cents per hundred pounds or less. Deduct 20 cents for 33 4/7 cents, and we have 13 4/7 cents per hundred pounds as the excess of the rate on the product of the live steer over the rate per hundred pounds on the prepared product, do we not?

A. Yes sir.

Mr. DAWES: This is argument.

The COURT: Let him proceed.

Mr. SHAVER:

Q. Does it not follow, therefore, that to the extent of 13 4/7 cents per hundred pounds, the Misouri River packer, the shipper of the prepared product to Chicago has the advantage of the shipper of the

live stock from the River, or from the territory east of the River in which the 23½ cent rate prevails?

A. Yes, sir.

A Recess was here taken until 2 o'clock p. m. of the same day, Wednesday, October 11, 1905.

2628 WEDNESDAY, *October* 11, 1905—2 o'clock p. m.

Court met pursuant to adjournment.

Counsel present same as before.

Whereupon EDWARD E. BETTS, called as a witness on behalf of the complainant in rebuttal being first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. What position do you hold with the North Western Road?

A. Car service Agent.

Q. You were summoned to produce a statement showing the actual train load of trains moving out of certain division points, I believe it was Boon and Clinton. Subsequently I stated to you that Clinton would be sufficient.

A. Yes.

Q. Have you prepared the statement?

A. Yes sir, I have them here.

Q. They correctly show the actual train consists of all trains included in the statement?

A. Yes sir, they do.

2629 Q. Fifteen days in January, April, and October, the period named in the statements.

A. Yes sir, 15 days in January and April, 1905, and 15 days in October, 1904.

Q. Those are fairly representative of the actual consists of the trains?

A. Yes, they are.

Q. You may file that as an exhibit to your testimony.

A. I have the other here.

(The statement first above referred to is marked "Betts' Exhibit No. 1.")

Mr. COWAN: By agreement between Mr. Lynde and myself, a witness was to file a statement showing the actual wheel reports for certain trains between certain dates.

Q. Have you those figures?

A. I have those.

Q. Are they fairly representative of the wheel reports generally?

A. Yes sir.

Q. You may file that also as an exhibit to your evidence.

A. The net tonnage on these I have also figured at your request.

Mr. COWAN: Well, that was at the request of Mr. Lynde and I, both.

The WITNESS: Yes, and the other statement that you asked for, of the weight of the empty cars is attached to the top of this (presenting paper).

Q. That is the report, a sample of the report which the conductors are directed to submit?

A. Yes sir.

1779

Betts Ex No 1 October 1904 2629a

Date	Train No	Engine No	No Cars Stock	No Cars Fire Fit and Perishable	No Cars Dead	No Cars empty	Total No Cars	Total Tonage of Train
Oct 1-1904	122	162	0	10	4	7	21	
" 1 "	318	40	0	8	12	8	28	
" 1 "	Ex Davey	268	0	7	23	4	34	1320
" 1 "	" Lane	495	2	21	5	7	35	
" 1 "	" Clark	135	0	3	0	0	3	
" 1 "	" Pierce	883	0	28	0	0	28	985
" 1 "	120	384	1	29	0	0	30	1020
" 1 "	Ex Jackson	312	0	0	30	3	33	1378
" 1 "	132	131	0	0	31	0	31	1350
" 1 "	Ex St Louis	12	0	0	30	0	30	1385
" 1 "	" Garrow	209	0	24	11	5	40	1272
" 1 "	" Bates	919	14	2	15	5	36	1211
" 1 "	" Koehler	83	0	0	16	18	34	1384
" 1 "	" Ketchen	1081	1	11	10	9	31	1001
" 1 "	" Wright	301	0	2	27	4	33	1458
" 1 "	" Tillefson	74	0	0	0	50	50	750
" 2 "	" Rosekrans	272	28	0	0	14	42	1080
" 2 "	318	284	0	7	19	6	32	
" 2 "	Ex Rodick	16	26	0	0	0	26	847
" 2 "	" Grimes	864	0	22	10	0	32	1166
" 2 "	" Hemming	267	39	0	0	0	39	1182
" 2 "	" Carey	312	30	0	0	0	30	817
" 2 "	126	77	0	29	1	0	30	1136
" 2 "	Ex Johnston	339	0	1	29	9	39	1420
" 2 "	" Cloyd	12	31	0	0	0	31	930
" 2 "	" Biederstadt	337	22	0	7	0	29	1015
" 2 "	" Bonholzer	47	22	0	12	0	34	1177
" 2 "	" W. Donnelly	301	29	0	0	0	29	870
" 2 "	" W Smith	867	0	33	2	4	39	1250
" 2 "	" E Smith	683	31	0	0	0	31	853
" 2 "	" H Hills	82	26	2	4	0	32	943
" 2 "	" Ingham	338	40	0	0	0	40	1195
" 2 "	" Hurley	266	22	0	8	0	30	1013
" 3 "	122	715	0	13	6	5	24	
" 3 "	318	74	0	10	16	4	30	
" 3 "	Ex Lundy	34	0	6	25	8	39	1422
" 3 "	" Vergie	266	0	14	8	0	22	830
" 3 "	" Kohler	47	0	16	12	18	46	1243
" 3 "	" Ward	883	3	21	7	0	31	1042
" 3 "	" Hahn	77	0	2	28	1	31	
" 3 "	" Jackson	384	21	0	8	0	29	945
" 3 "	126	465	0	24	5	1	30	
" 3 "	Ex Pierce	919	0	0	32	0	32	1408
" 3 "	" Wright	139	0	0	3	5	8	
" 3 "	" Davey	268	22	0	0	0	22	630
" 3 "	" Draper	16	17	0	13	0	30	1063
" 3 "	" C. Smith	40	24	0	0	0	24	720

October 1904

26296

Date	Train No	Engine No	No Cars Stock	No Cars Time Fast and Perishable	No Cars Dead	No Cars empty	Total No of Cars	Total Tongge of Train
Oct 3-1904	132	83	8	0	19	1	28	1016
" 4 "	Ex Grimes	301	21	11	0	0	32	1015
" 4 "	122	723	0	9	4	11	24	
" 4 "	318	272	1	5	18	4	27	924
" 4 "	Ex Woodworth	465	22	0	5	7	34	660
" 4 "	" Lindmier	1025	19	0	7	0	26	870
" 4 "	" Lane	339	1	11	9	21	42	1035
" 4 "	" Marsden	215	0	1	19	0	20	978
" 4 "	120	312	0	28	0	0	28	889
" 4 "	Ex Van Kirk	12	0	0	22	11	33	1345
" 4 "	132	131	32	0	0	0	32	1042
" 4 "	Ex F R Clark	Not Given	0	0	0	2	2	
" 4 "	" Bonholzer	337	0	0	28	6	34	1392
" 4 "	" Crickman	683	8	15	11	6	40	1292
" 4 "	" McNichols	82	0	0	30	4	34	1305
" 5 "	132	724	0	10	5	8	23	
" 5 "	Ex Ketchen	83	0	0	27	8	35	1344
" 5 "	318	284	0	4	20	8	32	
" 5 "	132	267	32	0	0	0	32	957
" 5 "	Ex Carey	77	0	1	13	53	67	1328
" 5 "	" Johnston	47	0	0	32	0	32	1293
" 5 "	" Buderstadt	139	0	1	4	0	5	
" 5 "	128	867	1	20	15	2	38	1303
" 5 "	Ex Cloyd	333	35	0	0	0	35	1004
" 5 "	" Roundy	919	2	20	7	0	29	1115
" 6 "	120	384	0	30	1	1	32	1064
" 6 "	Ex Rosekrames	74	0	1	7	17	25	
" 6 "	128	266	0	24	12	4	40	1306
" 6 "	Ex Kohler	1303	0	0	19	6	25	915
" 6 "	" W Donichy	520	9	0	5	5	19	
" 6 "	" E Smith	339	0	30	0	0	30	1030
" 6 "	132	131	38	0	0	0	38	1140
" 6 "	" De Wolf	883	7	22	1	7	37	1115
" 6 "	" Lundy	215	0	0	19	0	19	885
" 6 "	" Grimes	1025	3	6	12	0	21	901
" 6 "	Draper	337	0	0	26	15	41	1261
" 6 "	122	723	0	12	6	6	24	
" 6 "	Ex Wright	12	0	13	19	2	34	1362
" 6 "	318	34	0	5	12	1	18	
" 7 "	Ex Bonholzer	333	0	18	11	13	42	1300
" 7 "	132	267	17	1	0	13	31	711
" 7 "	Ex Carey	215	0	0	20	0	20	868
" 7 "	120	312	1	32	0	0	33	1123
" 7 "	126	306	12	13	4	2	31	1062
" 7 "	128	867	0	25	11	6	42	1243
" 7 "	Ex Greenway	465	0	5	26	21	52	1428
" 7 "	122	724	0	13	4	10	27	

October 1904.

2627c

Date	Train No	Engine No	No Cars Stock	No Cars Time Fut and Perishable	No Cars Dead Fut	No Cars empty	Total No of Cor	Total Tonage of Train
Oct 7-1904	Ex Hahn	301	0	7	13	6	26	1383
" 7 1904	318	40	0	4	24	7	35	
" 8 "	Ex Pierce	313	0	0	28	6	34	1305
" 8 "	" McNichols	1303	0	3	1	4	8	
" 8 "	" Ketcham	83	0	4	24	2	30	1260
" 8 "	" Flower	384	0	22	0	0	22	802
" 8 "	120	312	0	29	0	0	29	973
" 8 "	126	883	6	20	4	6	36	1104
" 8 "	Ex E Smith	1080	0	19	7	0	26	992
" 8 "	" Berderstadt	209	0	1	3	0	4	
" 8 "	132	131	14	0	1	16	41	1176
" 8 "	128	147	0	28	9	4	41	1285
" 8 "	Ex Johnston	266	0	22	6	7	35	1668
" 8 "	122	723	0	9	8	4	21	
" 8 "	318	34	0	4	28	13	45	1371
" 9 "	Ex Riddle	139	34	0	0	0	34	1042
" 9 "	" Young	3	23	13	0	0	36	1070
" 9 "	" Moore	12	36	0	0	0	36	1080
" 9 "	" Hahn	266	34	0	0	0	34	1016
" 9 "	" Taylor	267	36	0	0	0	36	1080
" 9 "	" Draper	301	20	4	5	2	31	894
" 9 "	" Lundy	77	28	0	0	0	28	336
" 9 "	126	465	6	16	8	1	31	1143
" 9 "	Ex Ingham	322	15	1	15	1	32	886
" 9 "	" Cloyd	919	0	3	27	25	55	1648
" 9 "	" Vergil	384	2	23	1	6	32	1071
" 9 "	1st 120	82	0	15	0	0	15	450
" 9 "	Ex W Smith	867	38	0	0	0	38	1140
" 9 "	" Van Kirk	40	36	0	0	0	36	1152
" 9 "	318	284	0	5	17	11	33	
" 10 "	Ex Hurley	629	20	0	0	0	20	600
" 10 "	" Murphy	272	35	0	0	0	35	1050
" 10 "	" Jackson	1303	20	0	0	0	20	600
" 10 "	132	304	31	0	0	0	31	922
" 10 "	Ex Bonholzer	337	0	27	0	0	27	986
" 10 "	" Van Kirk	322	1	17	15	1	34	1328
" 10 "	126	883	2	18	12	3	35	1290
10 "	Ex J Carey	919	22	11	2	0	35	1001
" 10 "	" Benton	77	23	0	0	0	23	690
" 10 "	" Pierce	47	22	1	0	0	23	633
" 10 "	" Davey	284	32	0	0	0	32	870
" 10 "	" Jackson	34	28	0	0	0	28	846
" 10 "	318	268	0	7	13	8	28	1404
" 10 "	122	724	0	9	4	1	14	
" 10 "	Ex Clark	275	0	0	13	6	19	618
" 11 "	122	162	0	11	4	2	17	
" 11 "	Ex Draper	266	0	2	29	9	40	1409

1782

October 1904.

2629d

Date	Train No	Engine No	No Cars Stock	No Cars Line Fit and Perishable	No Cars Dead Fit	No Cars empty	Total No of Cars	Total Tonnage of Train
Oct 11 1904	318	40	3	4	18	16	41	1246
" 11 "	Ex Cloyd	83	0	3	21	10	34	1205
" 11 "	" Adams	139	1	0	0	1	2	
" 11 "	132	131	33	0	0	0	33	961
" 11 "	Ex McNichols	919	20	0	8	0	28	971
" 11 "	" Ingham	301	0	0	30	0	30	1347
" 11 "	" Bonhelyer	322	20	5	3	0	28	935
" 11 "	128	117	0	10	16	17	43	1186
" 11 "	Ex Wright	337	12	12	7	4	35	1274
" 11 "	" Young	384	31	0	0	0	31	924
" 11 "	" E Smith	215 928	31	0	0	0	31	889
" 11 "	120	312	0	16	1	0	17	
" 11 "	126	465	0	19	7	4	30	971
" 12 "	122	724	0	6	7	0	13	
" 12 "	120	864	1	22	2	2	27	944
" 12 "	Ex De Wolf	306	10	14	6	16	46	1122
" 12 "	132	267	31	0	0	0	31	900
" 12 "	Ex Riddle	209	12	0	1	0	13	
" 12 "	128	867	1	35	0	3	39	1246
" 12 "	Ex Moore	312	9	0	18	1	28	1066
" 12 "	" Greenway	333	30	0	0	0	30	890
" 12 "	" Pierce	83	38	0	0	0	38	1017
" 12 "	" Ketcham	465	21	0	9	0	30	1005
" 12 "	" Bluckman	304	0	12	17	11	40	1181
" 12 "	Ward	77	0	17	1	11	29	804
" 13 "	122	272	0	7	2	0	9	
" 13 "	Ex Lane	337	1	23	8	3	35	1150
" 13 "	" E Smith	266	0	8	10	12	30	948
" 13 "	Van Kirk	77	0	2	15	0	17	1319
" 13 "	" Clark	139	0	0	2	7	9	
" 13 "	128	47	0	23	13	9	45	1280
" 13 "	Ex White	419	0	6	3	28	47	1344
" 13 "	" Benton	1015	0	25	1	0	26	828
" 13 "	" Kohler	306	34	0	0	0	34	889
" 13 "	" Carey	1018	0	0	20	0	20	886
" 13 "	" Tollyson	322	0	4	28	3	35	1378
" 13 "	318	284	0	10	10	2	22	
" 13 "	Ex J Carey	384	24	1	11	1	37	1297
" 13 "	132	131	30	0	0	0	30	910
" 13 "	120	312	0	26	3	5	34	1093
" 14 "	122	724	0	7	0	6	13	
" 14 "	116	209	0	1	1	1	3	
" 14 "	Ex Marsden	1303	0	3	14	4	21	766
" 14 "	" Johnston	864	26	2	0	8	36	1331
" 14 "	128	867	0	17	20	2	39	1278
" 14 "	126	883	1	30	3	0	34	1186
" 14 "	318	629	0	7	24	19	50	1637

2629e

October 1904

Date	Train No	Engine No	No Cars Stock	No Cars Fine Fit and Perishable	No Cars Dead Freight	No Cars empty	Total No of Cars	Total Tonnage of Train
Oct 14 1904	132	131	17	0	12	0	29	977
" 15 "	122	301	0	8	7	7	22	
" 15 "	120	919	0	12	10	0	22	822
" 15 "	Ex Ward	465	0	19	9	5	33	1158
" 15 "	128	47	0	18	19	8	45	1319
" 15 "	Ex Cloyd	82	0	0	28	0	28	1241
" 15 "	" Wright	83	0	5	22	10	37	1234
" 15 "	" Carey	1018	0	1	19	0	20	901
" 15 "	116	683	0	4	12	3	19	
" 15 "	Ex Bonholzer	333	2	0	25	0	27	1229
" 15 "	" Ingham	139	0	14	19	0	33	1385
" 15 "	" Innes	629	0	0	25	20	45	1410
" 15 "	" Bowley	272	0	1	25	17	43	1372
" 15 "	" Rosebrannes	304	3	7	21	3	34	1392
" 15 "	" 318	77	0	5	28	9	42	1392
" 15 "	132	131	23	1	8	0	32	

178

June 1905

2629

Date	Train No.	Eng. No	No cars start	No cars Empty Loaded	No cars passed	No with Cars	Total No Cars	Total tonnage
Jan 1 1905	Gr McNichols	333	24	1	4	7	36	965
	" Kitchen	1018	24	0	0	0	24	720
	170	16	6	17	10	0	33	1961
	176	306	1	26	1	0	28	996
	" Scharenberg	1018	25	0	0	0	25	750
	" Wright	870	24	0	0	0	24	720
	" Lake	850	35	0	0	0	35	1050
	" Neally	301	35	0	0	0	35	1050
	" Glazer	324	33	0	0	0	33	973
	" Woodward	24	35	0	0	0	35	1050
	" Reese	264	35	0	0	0	35	947
	" Ingham	918	33	0	0	0	33	991
	" Hopkins	683	33	0	0	0	33	993
	" Mark	384	35	0	0	0	35	924
	" Barnwell	313	33	0	0	0	33	990
	" McDaniels	909	34	0	0	0	34	1054
	Van Kirk	131	33	0	0	0	33	967
	" Manning	331	30	0	5	0	35	1107
	" Benton	47	0	0	1	3	4	
	" Cash	182	35	0	0	0	35	1050
	" Marston	334	0	24	2	4	30	900
	" Daniel	74	30	0	5	0	35	1185
	318	12	0	9	17	3	29	1082
2nd 1905	" Morris	1149	0	6	24	5	35	1223
	" Brickman	266	0	0	8	0	8	284
	132	304	19	0	10	0	29	1030
	" Moore	864	18	7	0	6	31	982
	" Kennedy	93	4	14	8	4	30	981
	" Daniels	284	0	16	6	5	27	926
	176	34	0	24	6	13	43	1334
	116	968	0	3	0	1	4	
	" Hahn	1078	0	0	8	1	9	349
	128	341	0	16	11	9	36	1089
	" Lundy	308	0	0	29	0	29	1371
	" Bates	267	0	0	33	0	33	1337
	" Marsglen	1014	0	1	20	0	21	926
3rd 1905	318	24	0	13	18	4	35	1151
	" Jackson	883	0	0	31	2	33	1516
	Knudsen	16	0	0	9	47	56	1276
	86	706	0	11	3	0	14	
	176	12	12	11	6	8	37	
	178	679	0	5	22	1	28	1188
	132	117	30	0	0	0	30	900
	" Jordan	40	0	1	28	0	29	1359
	" Hamilton	870	0	21	2	0	23	892
	" Schmidt	333	30	0	0	0	30	870
	" McNichols	464	30	0	0	0	30	900

Jan 1905 - (Cont.)

26299

Date	Train No	Eng No	No cars stock	No cars Tunnel & Perishable Ft	No cars Dead Ft	No mty cars	Total No cars	Total Tonnage
Jan 3rd 1905	116	74	0	1	0	1	2	
	120	137	0	15	5	2	22	790
	Ex Taylor	306	0	0	28	0	28	1275
	" Marston	209	25	0	0	0	25	750
	" Carey	1091	0	0	16	6	22	815
Jan 4th 1905	318	46	0	6	13	0	19	732
	" Wright	275	0	1	31	5	37	1290
	128	870	2	21	7	4	34	888
	132	304	28	0	0	0	28	840
	" Pierce	880	5	0	16	1	22	
	" Bates	331	5	0	17	1	23	932
	" Schorenberg	284	0	0	26	0	26	1228
	126	83	4	17	0	8	29	790
	" Hill	268	31	0	0	0	31	930
	" Neally	384	0	1	27	0	28	1298
	" Ingham	683	26	0	0	0	26	766
	" Raundy	267	0	0	28	1	29	1232
	" Greenway	313	0	0	28	0	28	1256
	862	724	0	9	1	0	10	
	" Cole	40	31	0	0	0	31	930
	116	804	0	1	0	2	3	
	" Marsden	1091	0	0	12	15	27	717
Jan 5th 1905	318	254	0	15	8	1	24	869
	" Moore	333	0	0	32	0	32	1470
	862	710	0	9	3	0	12	
	" DWolf	82	1	21	4	6	32	1056
	132	131	32	0	0	0	32	960
	128	47	0	21	8	6	35	1205
	120	284	0	17	3	0	20	675
	116	209	0	0	0	4	4	
	" Draper	372	11	0	10	0	21	797
	" Lynn	12	0	6	21	10	37	1213
	" Sheahan	276	2	11	0	0	13	
	" Strauss	263	0	7	9	19	35	1123
	" Morris	880	0	0	34	0	34	1497
	" Riddle	83	19	0	10	0	29	969
Jan 6th 1905	" McNichols	683	0	0	23	32	55	1309
	" Wright	275	0	1	33	2	36	1329
	Hill	16	0	10	4	0	14	
	862	724	0	8	5	0	13	
	132	267	36	0	0	0	36	1020
	" Henning	215	0	0	26	4	30	1176
	" White	339	4	26	0	0	30	1078
	" Marsden	1015	0	1	19	0	20	918
	128	313	3	23	6	2	34	1067
	116	46	1	0	0	1	2	
	" Brundage	263	2	23	0	0	25	842

Jan. 1905 - (Cont)

2629d

Date	Train No	Eng. No	No. cars Stock	No. cars Fuel & Perishable Frt	No. cars Dead Frt	No. mty cars	Total No. cars	Total Tonnage
Jan 6th 1905	126	465	1	21	6	10	38	
6th	Ex. C Smith	260	0	0	31	0	31	1465
Jan 7th 1905	" Grimes	331	0	0	31	1	32	1421
	" W C Donichy	864	0	1	33	0	34	1498
	116	209	0	0	0	2	2	
	" Rounsly	870	1	23	4	0	28	577
	" Schoenberg	266	0	5	31	2	38	1397
	132	880	7	1	19	0	27	1111
	" Barlow	1015	0	0	20	2	22	828
	128	47	4	14	0	27	45	952
	" Pierce	883	0	0	24	14	38	1382
	" Ketcham	276	0	0	22	33	55	1395
	318	272	0	6	22	0	28	1014
	862	724	0	9	1	2	12	
Jan 8th 1905	" Jackson	384	29	0	0	0	29	869
	" Ingham	131	30	0	0	0	30	953
	" Joyne	339	29	0	0	0	29	870
	" C Smith	1014	23	0	0	0	23	690
	" King	384	1	15	9	4	29	1145
	" Lane	465	1	23	5	0	29	1060
	" Wright	82	30	0	0	0	30	908
	" Benton	919	30	0	0	0	30	900
	" Vergil	46	0	2	0	0	2	
	" Nelly	12	0	25	3	6	34	1015
	" Cone	341	0	27	4	3	34	939
	" Taylor	266	1	20	5	0	26	985
	" Riddle	306	28	0	0	0	28	840
	" Vankirk	263	33	0	0	0	33	990
	" Sheehan	322	33	0	0	0	33	955
	" Cornwall	267	30	0	0	0	30	900
	" White	683	30	0	0	0	30	900
	" Moore	333	30	0	0	0	30	896
	" Greenway	864	30	0	0	0	30	866
	" Hill	275	34	0	0	0	34	1020
	" Cole	313	31	0	0	0	31	864
	" Bates	83	34	0	0	0	34	963
	318	40	0	9	5	1	15	
	" Ingham	131	30	0	0	0	30	959
Jan 9th 1905	" McNichols	47	22	0	0	0	22	660
	116	209	0	0	0	1	1	
	" Rodwick	137	28	0	0	0	28	739
	132	268	21	0	0	0	21	630
	128	864	0	5	10	23	38	1075
	" Barlow	1015	0	0	18	1	19	836
	" Grimes	16	0	0	31	0	31	1393
	" Morris	629	1	0	31	3	35	1384
	318	272	0	3	2	0	5	

Jan 1905 (Cont'd)

1787

2629

Date	Train No.	Eng No	No cars stock	No cars Timer Perishable Frt	No cars Dead Frt	No mty cars	Total No Cars	Total Tonnage
Jan 9th 1905	126	870	1	6	16	1	24	953
	Ex Doney	74	0	0	28	15	43	1370
	" Marston	276	0	1	9	46	56	1313
	862	710	0	9	3	0	12	✓
Jan 10th 1905	" White	683	24	0	0	0	24	720
	116	46	0	3	1	4	8	✓
	" Bates	82	27	0	0	0	27	796
	" Cole	322	25	0	0	0	25	696
	" DeWolf	339	27	0	0	0	27	777
	120	384	0	14	0	0	14	476
	" Taylor	629	3	21	0	0	24	838
	" Joghm	275	27	0	0	0	27	823
	132	880	28	0	0	0	28	890
	" Jackson	83	27	0	0	0	27	795
	" Wright	341	26	0	0	0	26	780
	128	47	3	19	4	9	35	1012
	" Schoremberg	12	0	3	28	0	31	1378
	" Roundy	465	6	22	3	1	32	✓
	318	304	0	3	9	4	16	✓
	862	724	0	9	1	0	10	✓
	132	1018	13	2	4	1	20	614
Jan 11th 1905	" O'Brien	384	27	0	0	0	27	732
	116	209	0	2	0	1	3	✓
	" Kohler	74	30	0	0	0	30	879
	" Riddle	12	27	0	0	0	27	810
	" C Smith	267	0	16	10	2	28	1020
	" Moore	465	27	0	0	0	27	784
	" Holmes	864	27	0	0	0	27	810
	" Marston	313	27	0	0	0	27	810
	" McNichols	341	27	0	0	0	27	810
	128	254	0	16	8	15	39	1150
	" Daney	304	28	0	0	0	28	840
	318	276	0	8	0	0	8	✓
	" Lloyd	131	22	0	8	0	30	1017
	862	710	0	9	3	0	12	✓
	862	724	0	9	2	0	11	✓
	318	46	0	6	26	0	32	1298
	" Taylor	306	6	9	4	3	22	708
	" Grimes	16	1	10	14	0	25	1018
	" Ketcham	331	4	20	4	3	31	994
	" Schoremberg	322	23	2	2	2	29	873
	" Roundy	919	9	7	0	0	16	496
	" W Donichy	263	26	0	0	1	27	815
	" Westholm	275	11	1	7	4	23	1015
	116	880	0	1	3	2	6	✓
	132	339	18	0	7	0	25	843
	120	284	0	27	0	0	27	940

Jan 1905 – Cont

26298

Date	Train No	Eng No.	No Cars Stock	No cars Prime Perishable Fort	No cars Drag Fort	No Cars mtg.	Total No Cars	Total Tonnage
Jan 12th 1905	128	47	0	19	3	19	41	1013
" 13th "	862	710	0	6	0	1	7	
	Ex Sheehan	683	0	3	5	21	29	1213
	" Strauss	1300	0	0	13	0	13	721
	" Jayne	268	0	5	12	3	20	740
	" Hahn	82	0	0	19	39	58	1360
	128	254	6	22	0	2	30	1000
	" C Smith	301	27	0	0	0	27	810
	" Johnston	864	0	0	32	0	32	1449
	116	209	0	1	1	3	5	
	132	267	17	0	6	0	23	834
	" J Donichy	341	0	0	31	0	31	1417
	120	266	0	9	5	3	17	599
	" Barber	1015	0	0	17	0	17	774
	" Henning	1142	1	20	7	15	43	1125
	" Wright	301	0	1	21	26	48	1447
Jan 14th 1905	862	124	0	9	0	1	10	
	318	304	0	7	14	0	21	832
	120	263	1	19	2	0	22	697
	" Fowler	384	0	19	0	0	19	602
	132	880	7	0	22	0	29	1219
	" Kohler	919	0	8	21	0	29	1705
	126	465	0	22	0	0	22	769
	128	47	0	23	1	6	30	864
	" McNichols	333	0	0	33	1	34	1748
	" Wachter	275	0	3	19	26	48	1262
	" Draper	40	27	0	0	0	27	788
Jan 15th 1905	318	260	0	10	6	3	19	604
	" Barber	16	26	0	0	0	26	780
	128	870	3	17	1	8	29	869
	" Jackson	209	0	3	0	3	6	
	" Wright	331	0	22	0	0	22	844
	" Cape	254	0	17	2	11	30	833
	" O'Brien	1300	19	0	0	0	19	570
	" W Donichy	268	26	0	0	0	26	780
	" Pierce	267	27	0	0	0	27	749
	" Jayne	266	26	0	0	0	26	780
	" Cary	465	24	0	0	0	24	679
	" Woodworth	284	27	0	0	0	27	810
	" Nichton	331	26	0	0	0	26	780
	" Holmes	46	28	0	0	0	28	840
	" White	272	26	0	0	0	26	780
	" Davey	301	26	0	0	0	26	780
	" Johnston	40	27	0	0	0	27	810
	" Westholm	206	29	0	0	0	29	870
	" Draper	86	25	0	0	0	25	740
	" Riddle	329	28	0	0	0	28	840

Jan 1905 - (Cont)

2629*

Date	Train No.	Eng. No.	No cars stocks	No cars Fence & Pinhole Mt	No cars sand Mt	No mtg cars	Total No Cars	Total Tonnage
Jan 15th	Ex Kelsham	341	24	0	0	0	24	720
	" Huba	77	25	0	0	0	25	704
	" Hill	82	25	0	0	0	25	750
	" DeWolf	275	25	0	0	0	25	681
	" Bowley	384	25	0	0	0	25	750
	" Moore	302	21	0	0	0	21	630

April 1905

26296

Date	Train No	Eng No	No Cars Stick	No Cars Time Perishable	No Cars Dead Fr	No Empty Cars	Total No Cars	Total Tonnage of Train
Apr 1 1905	Ex Pierce	77	8	0	19	7	34	1252
"	" Holmes 132	267	15	6	11	6	38	1204
"	" Bowley	34	0	1	11	33	45	1024
"	" Bigelow 862	724	0	8	0	0	8	
"	" Young	131	0	0	32	0	32	1540
"	" Marsden	1015	0	0	13	26	39	887
"	" Ketchen	206	0	2	33	0	35	1590
"	" W Smith	82	0	0	34	0	34	1522
"	" Morris	272	0	5	31	3	39	1496
"	" O'Brien 318	275	0	9	1	0	10	
"	" E Smith	276	0	0	32	0	32	1556
"	" H Hill	339	0	2	28	16	46	1652
"	" Ingham	331	0	0	34	0	34	1609
"	" J Carey	315	0	0	34	0	34	1646
"	" C Pierce 128	254	0	27	9	5	41	1181
"	" Neally 116	872	0	2	6	6	14	
"	" De Wolf	784	7	20	9	0	36	1322
"	" Fowler	871	0	22	12	0	34	1203
Apr 2 1905	" Taylor	47	0	28	5	2	35	1096
"	" Rollins	263	3	23	2	1	29	884
"	" Jackson	260	7	12	11	3	33	1177
"	" Cloyd	683	35	0	0	0	35	1013
"	" Greenway	87	35	0	0	0	35	1050
"	" Grimes	322	34	0	0	0	34	1020
"	" Cornwell	880	35	0	0	0	35	1050
"	" McNichols	266	36	0	0	0	36	1080
"	" Cassidy	206	33	0	0	0	33	980
"	" Koehler	264	33	0	0	0	33	990
"	" Hahn	242	35	0	0	0	35	964
"	" Henning	83	35	0	0	0	35	1012
"	" Jackson	315	31	0	0	0	31	930
"	" Moore	919	31	0	0	0	31	1110
"	" Riddle	1126	36	0	0	0	36	1080
"	" Jayne	46	11	1	0	2	14	
"	" Draper	314	32	0	0	0	32	996
"	" Marston	16	36	0	0	0	36	1080
"	" Scharenberg	313	35	0	0	0	35	1050
"	" Rosekamp 318	74	0	9	16	1	26	946
"	" Cassidy	302	0	0	36	0	36	1603
"	" C Smith	310	0	0	27	14	41	1476
Apr 3 1905	" Willerud	428	10	0	22	1	33	1294
"	" C Smith 863	871	0	13	13	10	36	1269
"	" Romsdy	284	3	14	15	0	32	1279
"	" Ingham	77	29	0	0	0	29	710
"	" Benton	331	0	0	34	0	34	1656
"	" Sheehan	1137	0	0	31	2	43	1575
"	862	710	0	10	2	0	12	

Date	Train No	Eng No	No Cars Stock	No Cars Time Perishable	No Cars Dead Fit	No Empty Cars	Total No Cars	Total Tons of Train
Apr 3 1905	Ex Carey	206	0	3	35	2	40	1646
	H Hill	339	0	0	32	10	42	1604
	Cone	267	0	0	34	0	34	1596
	318	679	0	8	6	2	16	490
	Ex Innis	272	0	0	33	17	50	1600
	Marston	1015	0	0	20	0	20	905
	Barber	275	0	0	34	0	34	1557
	Hill	1113	0	0	21	0	21	1010
	Vergie	872	0	0	0	5	5	
	Rutter	254	0	5	11	29	45	998
	Butler	1025	6	4	7	2	19	709
Apr 4 1905	126	260	0	16	22	1	39	1151
	Ex Mulley	46	1	0	2	1	4	
	" McCarey	1015	14	13	0	0	27	875
	128	47	3	13	17	4	37	1213
	Ex W Denicky	315	33	0	0	0	33	990
	132	880	34	0	0	0	34	1020
	Ex W Smith	683	30	0	0	0	30	890
	" Harenburg	242	28	1	0	0	29	875
	" Murphy	131	0	1	23	29	53	1347
	318	74	0	4	11	11	26	728
	" Woodworth	313	0	0	34	0	34	1504
	" Johnston	878	0	0	34	0	34	1549
	862	724	0	9	3	0	12	
	Ex E Smith	1113	6	6	17	2	31	1089
	Fowler	263	1	14	21	0	36	1386
	Ketchan	276	0	0	34	0	34	1536
Apr 5 1905	Ward	284	0	18	15	1	34	1202
	Jackson	331	32	0	0	0	32	944
	132	267	36	0	0	0	36	1080
	Ex Cassidy	322	31	0	4	0	35	790
	" McNichols	87	0	0	34	0	34	1581
	128	254	0	20	12	7	39	1259
	Ex Moore	919	0	0	15	1	16	609
	" Hahn	83	0	0	34	0	34	1429
	Fish	871	0	18	10	0	28	1087
	Lindeneur	34	0	3	30	12	45	1595
	Marsden	1015	0	0	19	0	19	904
	862	710	0	9	0	0	9	
	Ex Isaac	310	0	1	16	30	47	907
	Wattered	16	5	1	13	4	23	775
	Henning	82	12	0	12	1	25	924
	116	872	0	1	0	2	3	
	318	264	0	4	11	7	22	[illegible]
Apr 6 1905	Ex Bowley	272	0	5	27	4	36	[illegible]
	116	46	0	1	0	4	5	
	Ex Roundy	683	2	24	8	3	37	1270

Date	Train No	Engine No	No Cars Stock	No Cars Loaded	No Cars Dead	No Empty Cars	Total No Cars	Total Tonnage of Train
Apr 6 1905	318	629	0	3	4	0	7	
	867	734	0	6	0	0	6	
	Ex Riddle	706	4	0	17	0	21	922
	" Rollins	77	0	0	34	0	34	1603
	" Grimes	767	0	0	21	20	41	955
	132	880	26	0	0	0	26	780
	Ex Berglund	313	21	4	8	0	33	1119
	" W Smith	131	36	0	0	0	36	1080
	178	47	0	35	3	3	41	1309
Apr 7 1905	132	267	29	0	0	0	29	870
	Ex Ward	263	0	17	8	0	25	1025
	116	872	0	0	10	2	12	
	Ex Dalwolf	16	2	7	21	0	30	1184
	" Fowler	872	3	19	7	5	34	1126
	" Hemming	242	34	0	0	0	34	982
	" W Smith	276	0	0	33	0	33	1588
	" Sheahan	260	0	0	26	7	53	1623
	" C Smith	339	0	0	34	0	34	1634
	178	254	2	26	8	6	42	1102
	Ex Barber	268	0	0	33	0	33	1476
	318	264	0	9	14	28	51	1175
	Ex Hill	478	0	0	27	0	27	1345
	" Marsden	105	0	0	14	9	23	
	" Ingham	1115	0	0	36	0	36	1534
	862	710	0	8	1	0	9	
	" Butler	34	0	1	19	26	46	1269
Apr 8 1905	" Carey	1015	0	6	15	00	21	625
	" Draper	77	0	25	0	0	25	835
	130	263	2	21	3	11	37	1062
	Ex Young	1303	7	16	2	7	32	1015
	132	880	10	4	10	9	33	965
	178	47	0	20	12	8	40	1370
	Ex Ketchum	315	0	0	33	0	33	1643
	" Pearce	83	0	0	35	0	35	1586
	318	679	0	10	1	1	12	
	Ex Scherenbur	322	0	0	33	0	33	1591
	116	46	0	4	7	2	13	
	Ex Hobler	339	0	0	37	13	50	1715
	" Whitenid	331	0	0	34	0	34	1471
	" Woodsmith	289	0	0	34	0	34	1529
	872	734	0	8	1	4	13	
	Ex Johnston	87	0	0	1	62	63	997
Apr 9 1905	" Dingham	310	34	0	0	0	34	1064
	" Butler	878	35	0	0	0	35	1050
	" Jacksey	1123	35	0	0	0	35	1050
	" W Smith	206	33	0	5	0	38	1040
	" 318	768	0	8	4	7	19	535

26390

Date	Train No	Eng No	No Cars Stock	No Cars Fruit & Pumbl	No Cars Dead Fit	No Empty Cars	Total No Cars	Total Tonnage of Cars
Apr 11 1905	Ex W Smith	77	33	0	0	0	33	990
	" Jackson	87	13	0	14	11	38	1142
	" Dingham	331	6	1	1	16	24	530
	862	724	0	8	1	1	10	
	Ex M Nichols	260	5	18	7	1	31	1208
	128	254	0	19	16	0	35	1253
	Ex Muesden	1015	0	19	1	0	20	712
Apr 12 1905	116	46	0	4	4	9	17	
	318	629	0	8	14	10	32	
	126	16	1	8	6	26	41	843
	Ex Young	919	35	0	0	0	35	961
	" Hammery	206	35	0	0	0	35	1021
	132	880	33	0	0	0	33	990
	Ex E Smith	313	35	0	0	0	35	915
	" Murphy	363	5	15	2	3	25	732
	" Jordan	242	26	0	0	3	29	826
	862	710	0	8	2	0	10	
	128	47	0	27	8	6	41	1236
Apr 13 1905	862	724	0	9	1	0	10	
	318	34	0	4	8	54	66	1210
	116	872	0	1	2	2	5	
	126	870	2	21	7	0	30	1022
	E Jackson	87	32	2	0	0	34	1030
	132	267	31	0	0	0	31	930
	128	254	3	30	0	11	44	1237
	Ex W Smith	331	15	0	8	0	23	729
	" Bates	315	8	1	2	13	24	573
	" Muesden	1091	23	2	5	0	30	978
Apr 14 1905	" Innis	310	0	0	0	70	70	1190
	" Carey	1091	13	1	8	18	27	703
	862	710	0	9	1	1	11	
	318	272	0	8	10	33	51	1077
	120	871	3	26	0	0	29	977
	Ex Cornwell	880	32	0	0	0	32	960
	128	47	4	26	10	0	40	1174
	Ex Hemmery	322	18	5	8	0	31	1077
	116	263	0	1	6	5	12	
	Ex Greenway	284	0	21	6	6	33	1034
	" Schaumburg	82	0	16	6	14	36	1092
Apr 15 1905	116	872	0	0	6	6	12	
	862	724	0	8	0	0	8	
	318	764	0	8	8	53	69	1372
	132	267	9	2	11	8	30	978
	Ex Cole	870	4	23	5	0	32	1157
	" Draper	16	1	15	7	5	28	963
	" Isaac	1091	12	1	11	3	27	906
	128	254	0	22	4	18	44	1101
	120	871	0	26	7	3	36	1157

2630 Q. And it includes the weights of particular cars?
A. Yes sir.

Mr. LYNDE: Just describe that. That classifies——

A. All the empty equipment that we are supposed to handle and it is used in fixing the gross tonnage handled in our trains in making up a train on the tonnage basis. I have ascertained the net tons on those particular trains by deducting the weight of the various classes of cars in these particular trains.

Mr. COWAN:

Q. From what?
A. From the gross tonnage as shown on the report.
Q. That was the method by which it was ascertained?
A. Yes sir.
Q. Were those the only statements you were to furnish?
A. Those are all I have been requested to furnish.

Examination by Mr. LYNDE:

Q. I notice on this statement of the train movements from Clinton covered by the statements which you have produced, that you show certain trains that are numbered and other trains are shown as extras, the great majority of them being extra trains. Now, I want to ask you about these trains that seem to bear regular numbers; for instance, train No. 318 appears almost daily. What train is that?

1796

2630a

On freight trains of over thirty (30) cars, exclusive of the caboose, the practice of double-heading will be discontinued, except in case of storms, engine failures, or to avoid running engines to and from shops, or from one portion of the road to another, or in snow service and when used in such emergencies the tonnage of the train will not be increased beyond the rating of the largest engine.

The Dispatcher will determine rating to be handled when it is not desired that full rating shall be hauled, on account of weather or other unusual conditions.

In making out way-bills, Agents will insert the *Gross Weight in Tons* (car and contents) of each car load shipment on the way-bill. Do not show fractions of tons; less than 1,000 pounds to be dropped; 1,000 pounds or over to be counted one ton.

When moving Company material, such as bridge outfit, scrap ties, etc., under special instructions without way-bills, Conductors and Agents will make careful estimate of the weight of contents.

Engines unable to haul the above trains on account of poor condition will be bulletined in the various yards and round-houses, stating what reductions will be made for their trains.

Yardmasters will at all times make up trains in accordance with the above instructions.

ESTIMATED WEIGHTS OF EMPTY CARS.

	TONS		TONS
Flats	12	Furniture cars (38 and 40 feet)	17
Gondolas, less than 60,000 Capacity	14	Furniture cars (46 and 50 feet)	20
" 60,000 Capacity and over	15	Sleeper	57
Common stock cars	13	Buffet	55
Street's stable stock cars	18	Chair	43
C. & N.-W. special stock cars	18	Diner	52
Box cars (28 and 31 feet)	13	Parlor	52
Box cars (33 and 34 feet)	17	Coaches (first class)	34
Refrigerators	21	Coaches (second class)	24
Box beer cars	18	Officers'	41
Box ice cars	19	Comb. passenger, baggage and mail	32
Tank Line cars	16	Comb. passenger and baggage	32
Rogers Ballast cars	15	Baggage	32
Ore cars	14	Postal	34
Cabooses, 4-wheel	17	Milk	23
Cabooses, 8-wheel	19	Horse car, C. & N.-W. (60 feet)	17
Stockmen's cabooses	22		

MAXIMUM WIDTH AND HEIGHT OF LOADED CARS THAT WILL PASS IN SAFETY OVER THE GALENA DIVISION.

FOR POINTS BETWEEN	HEIGHT ABOVE TOP OF RAIL. 9 ft. Wide.	10 ft. Wide.	11 ft. Wide.	LIMITING HEIGHT.
	Ft. In.	Ft. In.	Ft. In.	
State St. and Wells St. Depot	15-0	15-0	15-0	Clark St. Viaduct.
Wells St. Depot and Oakley Ave.	15-6	15-6	15-6	Halsted St. "
Oakley Ave. and West Chicago	15-6	15-6	15-6	Western Ave. "
West Chicago and Geneva	18-9	18-9	18-9	Highway, Geneva.
Geneva and DeKalb	16-9	16-9	16-9	I. I. & M. Crossing, east of DeKalb.
DeKalb and Clinton	18-6	17-6	17-0	Mississippi River Br.
South Branch	15-3	15-3	15-3	Halsted St. Viaduct.
West Chicago and Freeport	16-3	16-3	16-3	Overhead highway, E. Rockford.
Elgin and Genoa Jct.	16-3	16-3	16-3	Wis. Div. Crossing, Crystal Lake.
St. Charles and Aurora				No obstruction.
Belvidere and Spring Valley	18-6	18-6	18-6	C. B. & Q. Crossing, south of LaSalle Jct.
Nelson and Peoria	18-0	18-0	18-0	A., T. & S. F. Crossing.

Trainmen and Yardmen will observe the above limitations before moving cars and assure themselves that same will conform thereto.

Betts Ex no —
see trans ff 2629. 2630

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND NOT FROM WAY-BILLS. 2630b

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	X CONTENTS	X FIRE MILEAGE	X Weight of Car & Contents in Tons	TO BE LEFT BLANK TON MILES
1	FGE	16542			183	550	100	5	Fruit	135	36	
2	OPCo	871			185	22		22	Meat	127	32	
3	NCL	9396			185	—		—	—	—	32	
4	CFX	10994			183	0		5	Fruit	135	35	
5	—	19210									38	
6	FGE	14697									35	
7	CFX	19412									36	
8	FGE	14750									35	
9	KCFE	20767									35	
10	CFX	10432									35	
11	FGE	21313									35	
12	CFX	10323				4					35	
13	—	19840							Salmon		41	
14	FGE	21367							—		42	
15	UPac	67317							Fruit		31	
16	C+NW	60692							Salmon		32	
17	CP	83770							Pecan		32	
18	UP	68074							Fruit		31	
19	C+NW	9310							Cod Fish		38	
20	B+O SW	15072							Flour		32	
21	SP	81186							Pecan		33	
22	C+NW	78522							Fruit		33	
23	—	7096							Salmon		37	
24	UPac	68166							Cd Fruit		31	
25	C+NW	18223			1088				Flour		32	
26	CMP MO	22124			283				Hay		24	
27	C+NW	6293			297	10			Sheet Cord		45	
28	—	8793			—	—			Dunch		45	
29	—	92821			—	—			Shovel		45	
30	—		43055		127	5			X		12	
31	CMP MO	23196			31	22	31	22	Middle	17	37	
32	C+NW	79816			—	18		18	Flour	19	49	
33	FGE	1244			—	16		16	Stone	22	38	
34	CMP MO	18772			—	14		4	Flour	23	51	
35	—	22418			—	—		—	—	—	46	
36	Cgct	257			22	18	21	18	Stone	2	50	
37	C+NW	64485				—		—	—	—	50	
38	—	16979				5		5	Cupes	7	33	
39	—		70494						X		17	
40	—		34241						X		17	
41	—		68440						X		17	
42	—		75666						X		17	
43	—		68935						X		17	
44	—		74568						X		17	
45	—		7512						X		17	
46	—		82124						X		17	
47	MP		30094						X		17	
48	GNor		32408						X		17	
49	U S+P	26133				57			H H Goods		27	
50	B+O		40535			4			X		18	
51	C+NW	55704				—			Kortlers		25	
52	—	34672				—			Couplers		25	
53												
54												
55												
56												
57												
58												
59												
60												

X 470 Tons Fit out Clinton

Total Tonnage 1649

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,400 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,000 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630 b

Chicago & North Western R'y Co.

Copy

CELENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 126 GOING East

Left Clinton Station at 7 45 a M

Oct 3 1904

(Name of month must be written)

Arrived at W Ave at 4 10 P M

Oct 3 1904

(Name of month must be written)

W R De Wolf Conductor.

L Christensen Brakeman.

R Mulhern Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2062	100	5	135
22 tons			

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	Miles	ENGINEER	Tax Bal. Unit
465	100	5	135	A Repton	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by F. M. KIRCH, in the year 1904, in the Office of the Librarian of Congress at Washington.

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND ENTERED FROM WAY-BILLS. 2630

	INITIALS	CAR NUMBERS		OFFICE CIPHER FOLIOS	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR MILE AGE	TONS TO BE CHARGED	TO BE LEFT BLANK
		London	Empty									TON MILES
1	G.N.W	18840			120	38	100	32	Meat	103	33	
2		20441			131	7		2	Horses	135	81	
3		19437			—	4		4	—			34
4		39947			147	7		7	—			30
5		39876			—	—		—	—			30
6		39873			—	—		—	—			30
7		7213			131	—		—	Cattle			30
8		3149			—	—		—	—			30
9		19878			185	1		5	Meat			30
10		19960			120	—		—	Meat			33
11		21398			127	—		—	Cattle			34
12		39231			131	544		2	Hogs			30
13		3647			—	—		—	—			30
14		21389			—	—		—	—			30
15		42987			—	1		—	Corn			42
16		41858			—	—		—	—			54
17		44178			—	—		—	—			46
18		43584			—	—		—	—			50
19		49216			—	—		—	—			48
20		39214			—	—		—	—			43
21		41 488			—	—		—	—			48
22			9599		178	5		5	X			16
23		93152			—	10		—	Iron			23
24		6889			—	—		—	Wheels			30
25		9886			—	—		—				30
26			60116		—	1		—	X			16
27	[illegible]		1961		—	4		—	X			12
28	G.N.W		6997		—	31		31	X	108		12
29	G.N.W		45231		—	—		—	X	—		12
30			4623		—	—		—	X	—		12
31			43886		—	—		—	X	—		12
32			11019		—	—		—	X	—		12
33			49067		—	—		—	X	—		12
34												
35												
36												

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630C

Chicago & North Western R'y Co.

Cayuga DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 132 GOING East

Left Clinton Station at 6:35 P.M.
April 8th 1905
(Name of month must be written)

Arrived at Calif Ave at 6:15 A.M.
April 9th 1905
(Name of month must be written)

Chas Cornwell Conductor.
H E Bassett Brakeman.
E W Sison Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2083	100	5	135

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Time Dec. Used
880	100	5	135	M Murray	

Report ALL Engines used en route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to act of congress by F. M. LUCE in the year 1898 in the office of the Librarian of Congress, at Washington

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND NOT FROM WAY-BILLS. 2630 d

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLLECTOR	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	X CONTENTS	X CAR MILL AGE	X [illegible]	TO BE LEFT PLANE TO BE MILLED
1	C R L	3853			185	3131	100	56	Meat	39	35	
2	C & N W	15846			120	—		—	—	—	35	
3	—	15826			—	1		5	—	135	35	
4	—	20404			—	31		31	—	108	35	
5	—	80670			185	72		—	Meat	—	30	
6	C R L	3718			—	31		—	—	—	35	
7	N Y D L	13828			115	22		22	Poultry	126	35	
8	C & N W	19634			108	4		5	Hogs	135	30	
9	—	18685			—	—			—		30	
10	—	21877			—	—			—		30	
11	—	19541			113	—			—		30	
12	—	7479			131	—			—		30	
13	—	3511			—	—			—		30	
14	M D J	11820			120	1			Mdse		25	
15	C & N W	20865			127	—			—		25	
16	—	16400			—	—			—		25	
17	U R J	40151			120	—			—		25	
18	C & N W	20608			185	4			—		25	
19	—	20776			—	1			—		25	
20	Erie	61829			—	—			—		25	
21	C & N W	61626			—	—			Hides		40	
22	A R L	8150			—	4			Meat		35	
23	S Pac	18142			183	—			Prunes		30	
24	C & N W	36340			—	—			Wheat		50	
25	—	66012			120	534			Corn		50	
26	—	38118			—	1			—		45	
27	—	96434			160	—			—		45	
28	—	62102			—	—			Oats		40	
29	—	33208			3109	—			Corn		50	
30	—	32816			—	—			—		50	
31	—	28374			—	—		47	—	101	45	
32	—	6864			—	—		47	—	—	45	
33	M Pac	7579			3131	534		47	Lbr	—	41	
34	G L S F	13371			24	2	24	—	Eng Work	12	30	

X 638 Tons Frt out Clinton

X Total Tonnage 1291

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

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In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

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The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,600 lbs., it should be reported as weighing 11 Tons, if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630d

Chicago & North Western R'y Co.

Coast DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 120 GOING East

Left Clinton Station at 2 05 AM

Jan 1st 1905
(Name of month must be written)

Arrived at Calif Ave at 11 40 P.M.

Jan 1st 1905
(Name of month must be written)

C Layne Conductor.
P R Revealffe Brakeman.
C Partridge Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
1786	100	5	135

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Time Out
16	100	5	135	T Hendricks	

Report ALL Engines used en route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by R. M. LUCE, in the year 1875, in the office of the Librarian of Congress at Washington.

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND NOT FROM WAY-BILLS. 2634

	INITIALS	CAR NUMBERS Loaded	Empty	OFFICE CODE DESTIN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR MILE AGE	Weight of Car & Contents in Tons	TO BE LEFT BLANK TON MILES
1	CQ&P	3883			183	3131	100	56	Meat	34	35	
2	"	3349			"	"			"		35	
3	C+NW	15832			170	"			Tobacco		45	
4	"	68370			183	"			Meat	103	35	
5		15852			170	98		32	"	108	35	
6	CQ&P	7793			128	31		31	"	135	35	
7	"	7641			183	1		5	"		35	
8	CQ&P	72542			136	"			"		38	
9	CQ&P	61893			128	"			Poultry		36	
10	M&ST	11265			"	"			Mdse		20	
11	CB&Q	4058			127	2			Corn		45	
12	C+NW	57224			174	"			Hay		30	
13		36488			"	"			Corn		45	
14		44370			"	"			"		46	
15		89076			"	"			"		45	
16		69536			131	"			"		47	
17		74860			"	4			"		42	
18		40502			"	1			Mdse		25	
19		24802			"	"			Poultry		30	
20		A286			178	"			"		30	
21		21296			136	"			Mdse		30	
22		40680			178	"			Lamps		43	
23		5088			"	"			Poultry		42	
24		48332			170	"			Meat		33	
25				291	167	10			Coal		25	
26				488	131	1					35	
27				744	"	"					35	
28				1078	"	"					35	
29	CB&Q M&O	28091			113	4			Hay		30	
30	C+NW	4553			3/16	"	56		Hogs	101	30	
31		6290			3/31	1			Poultry		34	
32		81160			"	"			"		33	
33		38777			"	"			"	55	32	
34		16576			49	"	46		Mdse		30	
35		70652			"	"			Mdse		21	
36		19848			46	"			Mdse 93		21	
37		43670			"	4			" 94		25	
38		70828			"	1			Mdse		30	
39		44598			"	4			"		25	
40		11597			"	1			"		45	
41		39116			42	"			Corn		35	
42	CB&Q M&O	11747			"	"			Dry Goods		25	
43	C+NW	11231			"	4			Mdse		25	
44												
45												
46												

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggag., Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,600 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630e

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 170 GOING East

Left Clinton Station at 12 30 A.M.

Jan 8th 1905
(Name of month must be written)

Arrived at W Ave at 10 30 A.M.

Jan 8th 1905
(Name of month must be written)

W P King Conductor.
H Tylor Brakeman.
W Coon Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2096	100	5	135

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Tons Coal Used
384	100	5	135	H Kitel	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by H. M. LUCE, in the year 1904, in the office of the Librarian of Congress, at Washington.

1802

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND NOT FROM WAY-BILLS. 26308

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	X CONTENTS	X CAR MILEAGE	X Weight of Car & Contents in Tons	TO BE LEFT BLANK TON MILES
1	UTL		4088		131	31	100	31	X	108	18	
2	C&NW	69840			127	2		5	Hay	135	28	
3	—	74560			—	2			Bran		32	
4	—	4989			—	7			Cattle		30	
5	—	18951			—	—			—		30	
6	—	19775			—	—			—		30	
7	CLPMnO	5368			246	2			Corn		38	
8	C&NW	7944			240	—			Oats		57	
9		68880			—	—			—		47	
10		73196			—	—			Corn		47	
11		6692			—	—			—		47	
12		62282			—	4			Bran		35	
13	BPL	550			—	—			Mt Pro		30	
14	C&NW	12352			100	—			Mdse		30	
15	CLPMnO	18748			—	—			—		30	
16	Brg 4	16673			—	—			—		30	
17	C&NW	63250			178	—			Hay		27	
18	CLPMnO	96			—	1			Mdse		30	
19	CLPMnO	15834			—	—			—		36	
20	C&NW	20328			—	—			B&E		30	
21		20366			—	—			—		30	
22		20122			350	—			F Meat		30	
23		20198			178	—			B&E		30	
24		20798			—	—			—		30	
25		21540			—	—			—		30	
26		20432			—	—			—		30	
27		36590			—	—			Hay		27	
28		66522			—	—			—		27	
29		16390			—	—			B&E		30	
30		45188			—	—			S Iron		37	
31			8774		100	10			X		18	
32		465			—	—			S Iron		33	
33		11240			—	—			—		35	
34		40698			—	1			P Corn		30	
35	UP	68444			—	7			Lbr		46	
36	C&NW		1149		127	10			X		35	
37	—		704		—	—			X		35	
38	B&O	92789			32	4	31		Horses	28	30	
39	AP&Co	6094			—	—			—		30	
40	C&NW	64598			38	4			Mdse		30	
41	—	77586			—	—			—		30	
42	—	30142			—	1			—		30	
43	—	19860			—	—			Boxes		22	
44	B&O	82385			32	4			—		32	
45	C&NW	80828			—	—			Mdse		30	
46	DH&Co	6667			34	—			W Mdse		28	
47	CLPMnO	8298			36	—			Mdse		30	
48	C&NW	62540			—	—			—		30	
49	AP&Co	1005			—	—			—		21	
50	C&NW	20610			—	—			Castings		23	
51	—	11486			—	1			angle		33	
52	TCDD	22177			—	2			—		30	
53	CEL		19418		—	—			X		36	
54	B&O	65149			—	—			Mdse		30	
55	C&NW	61322	1		38	4			Shoulders		35	
56	—		16646		31	1			X		15	
57	—	20553			—	—			Mdse		30	
58	NYC-Jt	62147			—	—			Hides		30	
59	CLPMnO	16906			—	—			Mdse		30	
60												

X 496 Tons Fert out Clinton

Total Tonnage 1827

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630f

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 128 GOING East

Left Clinton Station at 5 45 P.M.

April 4 1905
(Name of month must be written)

Arrived at Calif Ave at 3 30 A.M.

April 5 1905
(Name of month must be written)

R. L. Taylor Conductor.
G. F. Hull Brakeman.
E. Partridge Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
1582	100	5	135
		Ion	22

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Time Cost Used
47	100	5	135	J Burns	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine and show where each is taken and left, and mileage made by each.

1803

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND ... T FROM WAY-BILLS. 2630g

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR MILEAGE	Weight in Tons & Hundredths of a Ton	TO BE LEFT BLANK TON MILES
1	C.H.&W.	63637			131	2	100	5	Corn	138	40	
2		93817							Oats		57	
3		79928							—		40	
4		34610							—		40	
5		37304							—		45	
6		94570							—		57	
7		80056							Hay		35	
8		70732							Oats		57	
9		71716							—		42	
10	C.H.&W.	18044			184				Corn		40	
11	C.H.W.	81644			145				—		40	
12	C.H.&X.	79829			171				Wheat		48	
13	C.H.W.	95748			131				Oats		42	
14	—	60528							—		42	
15	C.O.	4616							—		40	
16	C.H.W.	58376							Barley		43	
17	—	67464							Oats		45	
18	C.H.&W.	16744							Barley		42	
19	C.H.W.	96786							—		40	
20		43873							—		42	
21		63129							—		40	
22		6882			178				Corn		51	
23		61787							Hay		27	
24		66917							Wheat		09	
25		35848							Corn		45	
26		63482							—		47	
27		47170							—		37	
28		67404			127				Oats		45	
29		73476			—				Wheat		54	
30	C.&W.	14676			—				Oats		42	
31	C.H.W.	72808			358				Hay		36	
32	C.&J.		12227		38	4	31		X	27	16	
33	C.J.&L.		3158		—				X		14	
34	C.H.&J.		8746		80				X		20	
35	M.C.&L.		25476		76				X		18	
36	C.W.		7480		—				X		20	
37	C.H.&D.	17706			57	10			Trap		30	
38	C.H.W.	6528			88	1			Cowhage		25	
39	C.&J.		1502		74	7			X		21	
40	C.J.&L.		25376		80	5			X		17	
41	C.H.W.	14457			—	10			Elm		30	
42	—	74017			—	—			Hardon		20	
43	—		70844		—	5			X		21	
44	—	68652			—	10			Trap		30	
45	T.H.&J.		1752		87	5			X		20	
46	C.H.&W.	9516			86	4			Bble		25	
47	C.J.&L.		8473		—	5			X		21	
48	C.H.W.	13107			31	10			Wheels		30	
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Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 967. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 967 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,600 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

960 2630g

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 132 GOING East

Left Clinton Station at 7 55 A.M.

Oct 1st 1904

(Name of month must be written)

Arrived at W Ave at 5 15 A.M.

Oct 2nd 1904

(Name of month must be written)

Chas Cone Conductor.

Jno Daley Brakeman.

F Brundage Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
7053	100	5	135
			22 tons

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Time Sent Yard
131	100	5	135	M Murray	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by F. M. LOCK, in the year 1904, in the office of the Librarian of Congress, at Washington

1804

THE NU[illegible]ERS AND INITIALS TO BE TAKEN FROM THE CARS AND [illegible]T FROM WAY-BILLS. 26114

	INITIALS	CAR NUMBERS Loaded	Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR No. & Initials	Wt. in Tons & Hundredths	TO BE LEFT BY AGENT TONS MILES
1	C+NW	21815			276	7	10	5	Forge	131	30	
2			5226		214	5			X		79	
3		38722			291	2			Bales		42	
4		57810			142				Oats		42	
5		20088			1210				—		42	
6		24467			4085				Barley		47	
7		47976			1285				—		45	
8		65950			1452				Oats		50	
9		57566			1443				—		42	
10		36812			1278	4			H.S.Ends		30	
11		74634			180				Forgings		45	
12	C+O		16536		—				X		20	
13	Erie	2000			183				Mdse		35	
14	W.J.	84133			108				—		35	
15	C+NW	74394			—	1			—		30	
16		75474			4527				Hay		35	
17		49605			6609				Hay		28	
18		17778			—				Hay		38	
19	T.O.T.C.	963			183				Rolling		34	
20	T.O.C.	8619			—				Mdse		30	
21	C+NW	31888			301				Potatoes		42	
22		16374			190				Butter		30	
23		21246			207				Mdse		32	
24		76065			127				—		30	
25		20242			—				—		30	
26		21286			—				—		30	
27		24560			—				—		30	
28		16090			350				—		30	
29		24472			131				—		30	
30		69736			109				—		30	
31		78122			4045				Hay		26	
32		24240			183				—		30	
33		43894			—				Flour		20	
34		57358			—				Grain		32	
35		80548			4803				Barley		37	
36		29294			306				Grain		40	
37	L+N.E.	24016			—				—		40	
38	C+NW	19424			Same				Mdse		30	
39	C+N.	3888			84	4	31		—	27	30	
40	N+W	90364			34	—			Grain		30	
41	C+NW	56776			—				—		30	
42	C+NW	36086			87	1			H.S.Ends		30	
43		44040			76	—			Potatoes		35	
44		24615			89	—			Mdse		35	
45		20864			31	—			—		30	
46	C+NW	2468			36	—			—		30	
47	C+NW	43762			—	4			—		30	
48		37412			38	—			Tongues		35	
49		18490			—	—			Wheat		30	
50		72266			—	—			Potatoes		76	
51	Ohio	14116			34	4			Mdse		30	
52	N+W	62776			—	—			—		30	
53	C+NW	29132			32	1			—		30	
54		77338			—	4			Ran		35	
55		84110			—	—			Cones		38	
56		96334			36	—			Mdse		30	
57												
58												
59												
60					X 644 Tons First out Clinton							
										Total Tonnage X	1878	

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 907. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 907 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 22,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 20,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630h

Chicago & North Western R'y Co.

CANADA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 128 GOING East

Left Clinton Station at 5 10 P.M.
Oct 5th 1904
(Name of month must be written)

Arrived at W Ave at 4 35 A.M.
Oct 6th 1904
(Name of month must be written)

C M Jayne Conductor.
H P Russells Brakeman.
Edw McCarrant Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2078	100	5	135

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Tons Dis. End
867	100	5	135	W Cole	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

1805

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND NOT FROM WAY-BILLS. 2630i

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OPTION CONTR. COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR MILEAGE	Weight Gain & Entrain in Tons	TO BE LEFT BLANK TON MILES
1	C+NW	39307			183	39	100	39	Sheep	98	33	
2		7117									34	
3		39139									35	
4		39299									34	
5		7175									34	
6		39207									31	
7		7087									30	
8		39281									29	
9		7165									30	
10		7361									32	
11		7381									31	
12		7201									29	
13	AAL	7913			4738	7		5	Meat	135	35	
14		9017			—	22		22		127	35	
15		8407			—						35	
16		7965			—						35	
17	[illegible]	514			183						35	
18	AAL	844									35	
19	NCL	9154									35	
20		7284									35	
21		7409									35	
22	AAL	8050									35	
23	HAL	01145									25	
24	C+NW	80648			131	1		31	Hay	108	28	
25	[illegible]	22174			—	—					25	
26	C+NW	80808			—	—					29	
27	—	76860			—	—					28	
28	[illegible]	15116			127	92			Stock		32	
29	C+NW	47774			—	1			Hay		30	
30	UTL		5740		178	31			X		16	
31			2915		—				X		16	
32			3789		131				X		16	
33			1636		178				X		16	
34			4266		—				X		16	
35			5541		4738				X		16	
36	[illegible]		10956		183			—	X		17	
37	[illegible]		4428		—				X		17	
38	[illegible]	23906			682	18	31	18	Lbr	21	40	
39	[illegible]	4708			934	—	—	—	—	—	37	
40	[illegible]	4366			31	—	—	—	Stone	—	56	
41	[illegible]	4563			31	—	—	—	—	—	56	
42	K+M		4294		22	2	21	5	X	7	15	
43	—		4434			4			X		15	
44	O+A	15641				—			Coupler		35	
45	[illegible]	1448				—			—		35	
46	C+NW	34612				—			—		35	
47	[illegible]		8586			5			X		17	
48	C+NW		39010			—			X		17	
49	[illegible]		24238			—			X		17	
50	C+NW		95034			—			X		17	
51	—		95140			—			X		17	
52	CSR	23926				934			Oil		35	
53	C+NW	78522				94			Coal		45	
54	—	72564				131			—		45	
55	—	6222				145			—		45	
56	[illegible]	40462				934			Stugh		30	
57	MC	42998				—			Coffee		30	
58	C+NW		95160			5					17	
59	MOT	7292				183			Steel		30	
60	AAL		7536			7			X		21	
										Total Tonnage		

X 622 Tons Cut out Clinton

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken to Freight Trains, a special report should be made on Blank, Form 107. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 107 you will also report them on this Blank, Form 610.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of limited cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 25,450 lbs. of freight, it should be reported as 23 Tons, because it weighs more than 23 Tons than 22 Tons. If the car weighs 25,000 lbs. and contains 41,500 lbs. of freight, it should be reported as 32 Tons, because it weighs more than 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 21,000 lbs., it should be reported as weighing 11 Tons, if 21,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. B. CANTILLON,
General Superintendent.

No. 2630

Chicago & North Western R'y Co.

Copy

CALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 176 Engine No. 1376 East

Left Clinton (Name of station) at 7 00 a.m. Jan 3rd 1905

Arrival at Beloit Ave (Name of station) at 5 00 p.m. Jan 3rd 1905

W Deergi Conductor

E E Gaines Brakeman

C N Coates Brakeman

CABOOSE CARS.

CABOOSE NUMBER	TARES AT	LEFT AT	NO. MILES RUN
2106	109	5	135
		22	Tons

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TARES AT	LEFT AT	MILES	ENGINEER	Yard Use Only
12	109	5	135	W Coleman	

Report ALL Engines used en route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND ... FROM WAY-BILLS. 2630

INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	[illegible]	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	[illegible]	[illegible]	[illegible]
[illegible]		3686		22	5	21	5		2	17	
—		3130		—	—	—	5		—	17	
—		42080									

(belongs to next preceding page

1835

Total Tonnage

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the Initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 867. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 866 you will also report them on this Blank, Form 866.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly.* When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 25,000 lbs., and contains 22,650 lbs. of freight, it should be reported as 23 Tons, because it weighs nearer 23 Tons than 22 Tons. If the car weighs 27,000 lbs. and contains 41,000 lbs. of freight, it should be reported as 38 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

2630 j

Chicago & North Western R'y Co.

HELENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 176 GOING East

Left Chestnut Station at 7 30 A.M.

June 3rd 1905

(Hours of month must be written)

Arrived at Gulf Cove 5 10 P.M.

June 3rd 1905

(Hours of month must be written)

W. Ingram Conductor.

J. C. Erkine Brakeman.

C. R. Oates Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2106	100	5	135 mtr

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	[illegible]
12	100	5	135	St Coleman	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

1807

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND ST FROM WAY-BILLS. 26 JY

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	ADDITIONAL CARS	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR WILL USE	TIME IN TRANSIT	TO BE LEFT AT	TOO MILES
1	Chas	29755			131		160	7	Coal	IX	3 V		
2		30659							Wood		3 V		
3		16493							Coal		3 V		
4		3607									3 V		
5		9783							Wood		3 V		
6		9733							Coal		3 V		
7		19627									3 V		
8		19598									3 V		
9		38519									3 V		
10		2711									3 V		
11		30711									3 V		
12		671									3 V		
13		3678									3 V		
14		3659									3 V		
15		18357									3 V		
16		9659							Wood		3 V		
17		7747									3 V		
18		7201									3 V		
19		7263									3 V		
20		7369									3 V		
21		4743									3 V		
22		36497							Coal		3 V		
23		48 [illegible]							Wood		3 V		
24		17 [illegible]							Coal		3 V		
25		19618							Wood		3 V		
26		3433									3 V		
27		34487									3 V		
28		19783									3 V		
29		19637									3 V		
30		3961									3 V		
31		19518									3 V		
32		38775									3 V		
33		21369											

997 Tons

X 443 Tons Fort and Clinton

Total Tonnage

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C. St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

2630 h
Jan 1st 1905

Copy

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. Ex GOING East
Left Clinton Station at 9 35 P M.
Jan 1st 1905
(Name of month must be written)
Arrived at W Yds at 10 30 a M.
Jan 2nd 1905
(Name of month must be written)
M Higham Conductor.
R H Harrington Brakeman.
J H Stevens Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2107	100	7	140 - 22 Tons

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Date Gen'l Dead
919	100	56	34	G Hall	
339	56	7	105	W Cole	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by F. M. LUCE in the year 1878, in the office of the Librarian of Congress, at Washington.

1808

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND [illegible]T FROM WAY-BILLS. 2630 l

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR MILEAGE	Weight of Car & Contents in Tons	TO BE LEFT BLANK TON MILES
1	CWW	20511			127	7	100	7	Hogs	135	30	
2		3453							—		30	
3		3795							—		30	
4		39537							Cattle		30	
5		39981							—		30	
6		39716							Hogs		30	
7		10243							—		30	
8		21229							—		30	
9		18913							Cattle		30	
10		1953							Hogs		30	
11		3767							—		30	
12		20795							—		30	
13		20361							Sheep		30	
14		4845							Cattle		30	
15		39573							Hogs		30	
16		39527							—		30	
17		7503							—		30	
18		7737							Cattle		30	
19		20737							Hogs		30	
20		4707							Sheep		30	
21		21665							Hogs		30	
22		3835							Cattle		30	
23		20367							Hogs		30	
24		39923							—		30	
25		20409							Cattle		30	
26		21917							—		30	
27		4493							Hogs		30	
28		18955							Cattle		30	
29		21887							Hogs		30	
30		21729			31		31		—	27	30	
31		39809			—				—	—	30	
32		20709			—				Cattle	—	30	
33		20693							~~Cattle~~		[illegible]	

X 360 Tons Fort and Clinton

X Total Tonnage 990

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,629 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,600 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

2630 l

950

Chicago & North Western R'y Co.

CALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. Ex GOING East

Left Clinton Station at 8 00 P M

Jan 8th 1905
(Name of month must be written)

Arrived at Cal Ao at 7 45 A M

Jan 9 1905
(Name of month must be written)

Chas Carmell Conductor.

J Johnson Brakeman.

J Chambelis Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2083	100	5	135

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Tons Coal Used
267	100	46	80	J D Kern	
683	46	5	55	P Dickson	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by F. M. LUCE, in the year 1878, in the office of the Librarian of Congress at Washington.

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND NOT FROM WAY-BILLS. 2630 m

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR MILEAGE	Weight of Car & Contents in Tons	TO BE LEFT BLANK TON MILES
1	Mather	1721			482	7	100	7	Horses	141	30	
2	Cur	4033			1058				Hogs		30	
3		18725			1092				Cattle		30	
4		21279			—						30	
5		3261			1096						30	
6		20009			—						30	
7		4129			1047						30	
8		19289			1046						30	
9		20123			1405						30	
10		7447			—						30	
11		19209			1410						30	
12		3911			—						30	
13		20525			—						30	
14		3803			1260						30	
15		39859									30	
16		20145									30	
17		3769									30	
18		39809									30	
19		4685									30	
20		4525									30	
21		39481									30	
22		92029									30	
23		42249									30	
24		21217									30	
25		21669									30	
26		18917									30	
27		21897									30	
28		21171									30	
29		21487									30	
30		21684									30	
31		5025									30	

X 372 Texas Fort and Clinton

Total Tonnage 930

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are get out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,600 lbs., it should be reported as weighing 11 Tons; if 28,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off. Also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630 m

Copy

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. Ex GOING East
Left Clinton Station at 10 54 M.
Oct 2 1904
(Name of month must be written)
Arrived at U Syds 6 55 M.
Oct 3 1904
(Name of month must be written)
W J Cloyd Conductor.
E E Darby Brakeman.
F A Rosey Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
21047	100	7	141
22 Tons			

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Zone Gear Feed
12	100	5	135	A Morrill	
772	5	7	6	A Leech	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by F. M. LUCE, in the year 1904, in the office of the Librarian of Congress, at Washington.

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARD AND ... FROM WAY-BILLS. 2638

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLORS	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR KIND & AGE	REMARKS Weight & Condition of Car	TO BE LOADED TON MILES
1	[illegible]	[illegible]			[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
2		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
3		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
4		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
5		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
6		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
7	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
8	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
9		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
10		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
11		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
12	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
13	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
14		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
15		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
16	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
17	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
18	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
19		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
20	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
21	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
22	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
23		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
24	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
25	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
26	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
27		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
28		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
29		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
30	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
31		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
32		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
33		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
34		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
35	[illegible]	[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
36		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
37		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	
38		[illegible]			[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 960.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,400 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 18 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

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960 Jay 2630m

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 132 GOING East

Left Clinton Station at 11 P.M.

Jan 7th 1905
(Name of month must be written)

Arrived at Sydney at 8 P.M.

Jan 1905
(Name of month must be written)

E. B. Holmes Conductor.

W. J. Smith Brakeman.

C. A. Thomas Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2103	100	7	141

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Dep. Ord. Dist.
880	100	10	133	M. Murphy	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

1811

Copy

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND [illegible]T FROM WAY-BILLS. 26300

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR MILE AGE	Weight Other & Contents in Tons	TO BE LEFT BLANK TON MILES
1	CNW	4807			Wacanda	7	100	7	Hogs	142	30	
2	Hicks	1050			—				Cattle		30	
3	CNW	3189			—				—		30	
4	Hicks	4312			Beaver				—		30	
5	CNW	92325			Peterson				Hogs		30	
6		21427			Rutland				Cattle		30	
7		21420			—				—		30	
8		7461			—				—		30	
9		3057			—				Cattle Hogs		30	
10		21837			—				Cattle		30	
11		20137			Marathon				—		30	
12		19291			—				—		30	
13		21817			—				—		30	
14		3499			—				C & Hogs		30	
15		4263			Ireton				Hogs		30	
16		18879			—				Cattle		30	
17		20061			—				Sheep		30	
18		20099			Orangeville				—		30	
19	—	3201			—				—		30	
20	Street	2897			Alsatian				Hogs		30	
21	CNW	21624			Beresford				Cattle		30	
22	—	39999			Conrad				—		30	
23	—	4971			—				C & Hogs		30	
24	—	18803			Eldora				Cattle		30	
25	—	19197			Beaver				—		30	
26	—	92389			—				—		30	
27	—	19857			—				—		30	
28	—	4731			Whitten				Hogs		30	

X 336 Iowa Fort and Clinton

X

Total Tonnage 840

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,400 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,600 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2,630

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. Ex GOING East

Left Clinton Station at 11 a.m. M.

Jan 11 1905
(Name of month must be written)

Arrived at Hayds at 8 1/2 a.m. M.

Jan 12 1905
(Name of month must be written)

Wm Davey Conductor.

H Penny Brakeman.

J J Scarbrow Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
1929	100	7	142

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Tons Coal Used
307	100	2	142	Bennett	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by F. M. LUCE, in the year 1878, in the office of the Librarian of Congress at Washington

1812

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND ...T FROM WAY-BILLS. 2630

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR LOADING AGE	Weight (Enter a Contents in Tons)	TO BE LEFT BLANK. TON MILES
1	CRRW	21328			125	1	100	5	Index	135	30	
2	"	42605			122	—			Hardy		30	
3	"	21967			62	7			Little		30	
4	—	18365			131	—			Hoyo		30	
5	—	7663			—	—					35	
6	Brad Co	69942			184	4			Route		35	
7	Pitt	11622			—	—			Second		35	
8	Ark MO	10468			100	—			Index		30	
9	CRRW	6048			120	—			—		30	
10	Pitt		5918		178	—			X		18	
11	CRRW	44998			120	—			Route		30	
12	—	34248			—	1			—		35	
13	—	77974			—	—			Wilcox		37	
14	CRW	14718			136	—			Hinton		41	
15	SAL RW	864			—	—			—		35	
16	CRRW	21357			131	—			Index		30	
17	—	21480			—	—			—		30	
18	—	20470			167	—			—		30	
19	So Pac	37207			184	—			—		46	
20	CRRW	12318			127	—			Flour		44	
21	—	21870			—	—			Index		30	
22	—	20162			100	—			—		25	
23	—	43942			—	—			—		30	
24	—		5278		120	—			X		18	
25	—		8870		—	—			X		18	
26	—		39160		—	—			X		18	
27	—		20142		—	—			X		21	
28	—		19826		—	—			X		21	
29	—	11338			178	7			Hoyt		30	
30	—		21698		168	5			X		21	
31	—		20402		130	—			X		21	
32	—	48305			—	—			Coosada		30	
33	—	29396			—	100			—		30	
34	—		5044		178	—			X		18	
35	—	14531			131	5			Wilcox		30	
36	—	21778			75	100	31		Index	27	22	
37		16278			—	—			—		26	
38	Ark MO	10748			36	—			—		30	
39	CRRW	3-1282			—	4			—		32	
40	—	2-9042			—	1			—		40	
41	—	35846			—	4			—		55	
42	CRJ		13406		38	—			X		16	
43	CRRW	5746			—	2			Index		30	
44	—	63384			—	4			—		30	
45	—	20478			—	—			—		34	
46	Ark MO	12188			37	1			Cooking		40	
47	PRR	10516			—	4			Grounds		35	
48	CRRW	59267			34	—			Cooper		35	
49	PRR	85767			—	1			Mitch		40	
50	PRR	13892			36	—			dow		25	
51	CRRW	20524			34	—			Index		30	
52	—	63612			—	1			—		30	
53	—		19386		31	4			X		21	
54	—	2-1014			32	1			Index		30	
55	—	5-4928			31	2			Hicks		30	
56	CRL	15501			36	2			Agr Impl		30	
57												
58												
59												
60												

X 35 tons Fat ent Clanton. X Total Tonnage 1133

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 956.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,000 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630p

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 478 GOING East

Left Lelington Station at 6 55p M.

Jun 10 1905
(Name of month must be written)

Arrived at Real Ave. at 5 20 a. M.

Jun 11 1905
(Name of month must be written)

J F Mully Conductor.

E Croke Brakeman.

N H Brunt Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
1693	100	5	135
2092	31	5	27

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Time Ins. End
47	100	5	135	H Soffer	
514	100	46	80	G Hole	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by P. M. ADDIS, in the year 1876, in the office of the Librarian of Congress, at Washington.

THE NUMBERS AS IALS TO BE TAKEN FROM THE CARS AND NOT FROM WAY-BILLS. 2630g

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK CALLED	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	STATUS	CAR LOAD	CAR EMPTY	TO BE LEFT BLANK TON MILES
1	URT	3060			Kansas City	22	100	22	Grain	127	35	
2	—	4796			—	—	—	—	—	—	35	
3	CRIW	49682			307	—	—	—	Resta	—	42	
4	—	—	7964		183	5	—	5	X	135	27	
5	—	—	8080		—	—	—	—	X	—	27	
6	—	—	9110		—	—	—	—	X	—	27	
7	—	46515			127	2	—	—	Wheels	—	30	
8	—	78478			4016	4	—	—	Hay	—	39	
9	—	68935			178	—	—	—	Flour	—	25	
10	—	71176			184	—	—	—	Oysters	—	38	
11	GTT	13431			185	—	—	—	Canning	—	30	
12	MKR	98664			184	—	—	—	Oysters	—	38	
13	—	70464			—	4	—	—	Lumber	—	38	
14	GTT	7938			Kansas City	Joint	—	31	Grain	108	35	
15		3280			—	—	—	—	—	—	35	
16		3336			—	—	—	—	—	—	35	
17		4087			185	—	—	—	—	—	35	
18		3118			—	—	—	—	—	—	35	
19		4058			—	—	—	—	—	—	35	
20		7461			—	—	—	—	—	—	35	
21		3468			—	—	—	—	—	—	35	
22		7467			—	—	—	—	—	—	35	
23		3803			—	—	—	—	—	—	35	
24		3209			—	—	—	—	—	—	35	
25		3516			—	—	—	—	—	—	35	
26		7051			—	—	—	—	—	—	35	
27		3733			—	—	—	—	—	—	35	
28		3476			—	—	—	—	—	—	35	
29		3435			—	—	—	—	—	—	35	
30		3341			—	—	—	—	Hay	—	30	
31	Ohio	98239			—	—	—	—	X	—	26	
32	WRT	—	40100		4012	1	—	—	X	—	18	
33	GTT		6516		183	91	—	—	X	—	27	
34	WRT		40138		162	—	—	—	X	—	27	
35	WRT		40134		183	—	—	—	X	—	18	
36	WRT		9597		—	—	—	—	Hay	—	30	
37	CRIW	92815			199	—	—	—	Stone	—	37	
38	CRIW	54948			229	1	—	—	Staple	—	18	
39	WRT		5318		1013	91	—	—	X	—	18	
40			7346		170	31	—	—	X	—	18	
41			7878		248	—	—	—	X	—	18	
42			3331		223	—	—	—	X	—	18	
43			4277		—	—	—	—	—	—	—	
44	CRIW	21590			18	40	18	5	Smalls	6	25	
45	—	21908			16	5	16	5	—	5	25	

470 Tons Fit out Clinton — Total Tonnage 1334

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

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In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 950.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,020 lbs. of freight, it should be reported as 32 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

959 2630g

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train No. 126 GOING East

Left Clinton Station at 840 A. M.

January 2 1905
(Name of month must be written)

Arrived at Wave at 640 P. M.

January 190
(Name of month must be written)

Howard Hill Conductor.

Harry Wilson Brakeman.

Roy Anderson Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
2070	100	5	135

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Dead Head
34	100	5	135	J. James	
275	100	5	—	J. Pringle	

Report ALL Engines used on route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by F. M. LUCY in the year 1874, in the office of the Librarian of Congress at Washington.

1814

THE NUMBERS AND INITIALS TO BE TAKEN FROM THE CARS AND NOT FROM WAY-BILLS. 26014

	INITIALS	CAR NUMBERS Loaded	CAR NUMBERS Empty	OFFICE CHECK COLUMN	BILLED FROM	BILLED TO	WHERE TAKEN	WHERE LEFT	CONTENTS	CAR MILEAGE	WEIGHT On & Wheels & Tons	TO BE LEFT BLANK TOT MILES
1	Ladue	77750			100	550	100	76	Model	127	25	
2	—		34178		178	44		44		80	20	
3	—	37368			100	76		76	Model	107	25	
4	Rep Mfg	12064			157	80			coal Dust		25	
5	C & NW	63882			6113	1370			Hay		30	
6	—	68178			6220	3257			Lodge		47	
7	—	432158			6457	3613			Feed		30	
8	—	37466			—	3277			Flour		50	
9	Lake Sup	14304			183	—			Drums		37	
10	Mo Pac	18776			1498	551			Grain		35	
11	C & NW	3476			136	—			Grain		31	
12	—	7596			700	934			Bags		36	
13	—	46334			750	3255			Lodge		40	
14	C & S	78172			350	577			Flour Stock		35	
15	Rock Isl	65118			6107	3025		46	Hay	80	20	4981
16	C & S	117332			57	952	56	76	Model	93	20	
17	C & S		40008		—	76					24	
18	C & NW		12		—	636					20	
19	—				—	1076			Cement		38	
20	Rock	26703			—	550			Fire Brick		32	
21	—	22734			—	565			Brick		45	
22	C & NE	5866			3131	712			Coal		50	
23	St Louis	42496			—	82			—		46	
24	—	5782				641			—		47	
25	—	4760				930					34	
26	Ore	13374				698			Ore		27	
27	Iowa	2746				1028			Coal		56	
28	Dry Cont	6966				62					47	
29	—	2120				934			Whiskey		30	
30	C & NW	48932				76			Grain		25	
31	—	47454				1000			Coal		36	
32	—	62452				1024			—		47	
33	—	63418				713			—		23	
34	Wabash	19502				913			—		27	752
35	C & NW	64184										

+ 213 Tons Frt Out Clinton

Total Tonnage

Report of Delay.

Report the exact time in hours and minutes your train is delayed. State where detention occurs and cause.

REMARKS.

INSTRUCTIONS.

In reporting cars which belong to this Company, you will please be careful to give the initials "C. & N. W." and not "N. W." or "C."

"C., St. P., M. & O." cars should be reported as such and not "O."

Whenever Baggage, Mail or Passenger cars are taken in Freight Trains, a special report should be made on Blank, Form 957. Original to be sent to Car Service Agent, Chicago, duplicate to be sent to Division Master Mechanic.

In addition to reporting Passenger Equipment cars on Form 957 you will also report them on this Blank, Form 956.

Be careful to write the Initials and Numbers plain, and be sure to report them correctly. When cars are set out of trains on account of being disabled or heavy train, report the same.

The weight of loaded cars and contents must be reported in Tons. If the car weighs 20,000 lbs., and contains 22,450 lbs. of freight, it should be reported as 21 Tons, because it weighs nearer 21 Tons than 22 Tons. If the car weighs 22,000 lbs. and contains 41,620 lbs. of freight, it should be reported as 22 Tons, because it weighs nearer 32 Tons than 31 Tons. The stenciled weight of empty cars must also be reported in like manner. For instance, a car is stenciled as weighing 22,000 lbs., it should be reported as weighing 11 Tons; if 23,500 lbs., it should be reported as weighing 12 Tons.

ACCIDENTS.

When accidents occur, causing cars to get off the track, give initials, number and contents of all cars off, also give numbers of such cars left at the wreck. If the contents of any cars are transferred, give the initials and numbers of such cars.

TO WHOM THIS REPORT SHOULD BE SENT.

Original of this report to be sent to Auditor Car Mileage, Chicago, Ill., at the end of each trip, without fail, duplicate to be sent to Division Superintendent.

W. D. CANTILLON,
General Superintendent.

950 2630k

Chicago & North Western R'y Co.

GALENA DIVISION.

FREIGHT CONDUCTOR'S REPORT.

Train 318 & 319 GOING East

Left Lelunton Station 4 N a M

Jan 8th 1905
(Name of month must be written)

Arrived North Yard at 2 1/2 P M

Jan 8th 1905
(Name of month must be written)

R J Rockwood Conductor.
J B Dewolf Brakeman.
F A Martin Brakeman.

CABOOSE CARS.

CABOOSE NUMBER	TAKEN AT	LEFT AT	NO. MILES RUN
1710	100	76	107—17 [illegible]

Report ALL Caboose Cars in train in above spaces, extra Caboose Cars as well as the Regular Caboose.

ENGINES.

Engine Number	TAKEN AT	LEFT AT	MILEAGE	ENGINEER	Time Used Good
40	100	76	107	Jos Lulan	

Report ALL Engines used en route, Helpers or Pushers as well as the regular engine, and show where each is taken and left, and mileage made by each.

Entered according to Act of Congress by F. M. LUCY, in the year 1905, in the office of the Librarian of Congress at Washington.

2631 A. Train No. 318 is what we call our Milwaukee train; that train takes all the time freight and in fact all through loads that we may have at Clinton each 24 hours, for Milwaukee. That stuff comes from Clinton to Milwaukee via Belvidere.

Mr. COWAN:

Q. Not via Chicago?
A. No sir.

Mr. LYNDE:

Q. Belvidere is 40 or 50 miles west of Chicago.
A. It is 75 miles northwest of Chicago.
Q. Is that so? It is further than I thought. Then there is train 132 that appears almost daily.
A. That is our local stock pick-up train that starts from Council Bluffs and, of course, they would take out of there perhaps some time freight and pick up stock en route.
Q. Is it not a fact that that train almost always has with the stock cars a large percentage of dead freight cars?
A. Yes, very frequently. It depends, of course, on what freight there is to pick up but there are only the two days in the week where there is the heavy stock run and yet they handle a great deal of stock.
Q. 122, what is that?
A. That is a local train out of Clinton on the Galena Division.
Q. That is purely a way-freight train?
A. Yes sir.

2632 Q. Picking up at every station between?
A. They take out, of course, a reasonable tonnage out of Clinton. That is not a train into Clinton from the west.
Q. I understand; it is made up there at Clinton?
A. It is made up at Clinton.
Q. 318, what is that?
A. I gave you that.
Q. No. 120?
A. No. 120, that is our time freight train out of Council Bluffs at 11 P. M. daily. That takes meat, and perishable freight and also picks up a little stock.
Q. No. 120 is a train that carries mostly meat, most of the meat?
A. Well, at the present time, I presume it would be almost a standoff between that and train No. 126. I was going to say that train No. 126 is the regularly established meat train that leaves between 1 and 2 P. M. daily and that takes the stuff that is loaded up to 11 A. M. while No. 120 brings out the stuff that is loaded after 6 P. M.
Q. Do both of these trains carry more or less dead freight?
A. Yes sir, they do. No. 126 is light at present.
Q. No. 128, I don't think I asked you about that.
A. That is called the refrigerator train. Its duty is to pick up the butter and eggs in Iowa.

Q. Where does that train start from?
A. That train starts from Boon.
Q. That is a sort of a dairy train?
2633 A. Yes sir. It attends to the connections from the side divisions, takes all their butter and egg shipments and they are consolidated and it brings them to Chicago.

Mr. COWAN:

Q. It takes some stock, don't it?
Mr. LYNDE: These statements would show that it did not.
Q. I think those are all the trains that bear special numbers, that are shown on this list.
A. That would include all of our regular schedule trains. Of course, a full stock train, they are run extra.
Q. What do you say, Mr. Betts, as to the comparative tonnage between the live stock trains, as you have figured it, and the dead freight, which are the heavier?
A. Well, the dead freight trains are very considerably heavier both in gross tonnage and in net revenue tonnage, as shown on those statements.
Q. And these statements that you have here are copies of——
A. Copies of the originals which I have here, and the statement from which is compiled from the originals here.

Mr. LYNDE: That is all.

Mr. COWAN:

Q. The number of loaded cars, however, in trains carrying live stock is more on the average than the number of loaded cars which do not carry live stock. That is true, is it not.
A. Well, I would somewhat question that.
2634 Mr. LYNDE: That would appear on the statement?
A. That would appear on the statement.
Mr. COWAN: Whatever the figures would show.
The WITNESS: Whatever the figures would show. My judgment is that they run a little the other way, but whatever it shows in the statement is correct.

Mr. LYNDE:

Q. You have not marked out, have you—(referring to statement). The first column is the Live Stock Column and the next column is the Time Freight and Perishable, an- then follows a column of Dead Freight. What is this next column?
A. That is empties and here is the gross tonnage in red ink.
Q. In which of those columns will the meat and packing-house products appear?
A. In the Time Freight Column.
Q. And that column there (indicating) does not include all the meat?
A. No sir.
Q. What other commodities are embraced in that?
A. Well, fruit and butter and eggs, and what is called high

class freight. Those are the two principal commodities we handle between Council Bluffs and Chicago in the way of time freight, outside of meat and packing-house products. West bound it would be merchandise and freight of that character.

Mr. COWAN: These trains, as a whole, represent substan-
2635 tially the character of tonnage which makes up the earnings of your company?

A. Yes, I should say they were fairly representative.

Mr. COWAN: Have you a statement in regard to the loss and damage?

Mr. LYNDE: Why, yes, I asked Mr. Richards to meet me and come over, but he had another engagement.

Mr. COWAN: We have a statement to offer in evidence which is the consists of the trains into and out of Creston Iowa, Galesburg, Illinois, and Burlington for 15 days in April, 15 days in October, 1904, and I believe this is April, 1905, with a similar sample of the actual conductors' reports showing the make up of the trains, and an explanatory statement attached which is all obtained by request of Mr. Crosby, and which shows the damage claims paid on live stock, the total number of cars handled and the damage claims paid on packing-house products and dressed meat and the total number of cars handled, which, with the explanation attached, we have agreed to introduce in evidence with the——

Mr. DAWES: The reporter ought to copy that.

The COURT: Right into the record?

Mr. COWAN: Copy all this?

Mr. DAWES: I don't mean the exhibit, but the statement which is really a part of his testimony.

EXHIBITS

NOT

SUITABLE

FOR

MICRO-

FILMING

2636 Mr. COWAN: That is all pinned together and I have stated that the statement becomes a part of his evidence.

Mr. DAWES: You file that as an exhibit, then?

Mr. COWAN: As an exhibit to his evidence.

Mr. DAWES: I don't care how it goes in but this is a part of his testimony.

Mr. COWAN: That will be understood.

We also offer in evidence a part of the testimony of Mr. Gardner, taken before the Interstate Commerce Commission which has been agreed to between Mr. Lynde and myself, with an explanatory statement of Mr Gardner's attached, which is to go in as a portion of the testimony of Mr. Gardner with respect to the matters therein stated. We also have to offer in evidence the Forty Sixth Annual Report of the Chicago & North Western for 1905 and the printed annual reports of the Chicago Burlington & Quincy Railroad Company for the years ending June 30th, 1903, and 1904, and the printed annual report of the Atchison, Topeka & Santa Fe Railroad Company for the fiscal year ending June 30th, 1904.

(The said documents were marked "General Exhibits 10, 11, 12, and 13.")

Mr. COWAN: I asked some of the gentlemen to please furnish a live stock contract. I don't know whether it is here or not.

2636*a* In the United States Circuit Court, Northern District of Illinois.

INTERSTATE COMMERCE COMMISSION, Complainant,

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., Defendants.

In connection with the portions of my testimony which was given before the Interstate Commerce Commission on January 8th, 1904, in the matter of the investigation by said Commission into the increase of grain rates, which have been introduced in evidence by counsel for the Interstate Commerce Commission, and particularly in connection with that portion of said testimony which relates to the loading of cars used in the shipment of grain, I desire to state as further explanation that there is a wide difference between the loading of cars used in the shipment of grain at terminal points, like Chicago or Council Bluffs, and the loading of such cars at way stations, owing to the fact that the shipper of grain at way stations does not, as a rule, have the same quantity of grain to handle as the large elevators at the above named terminal points, and has not command of the same financial means, so that he very frequently ships grain in comparatively small quantities as compared with the heavy shipments from terminal points. As a rule, the shipments from way stations more nearly approximate the minimum loading of the car than otherwise, while in shipments from elevators at Chicago, or other terminal points, the tendency is for the shipper to load the car to its maximum capacity. This will explain the fact that on grain shipments handled on the North Western road from way

2636*b* stations the loading is not heavier than was stated by me in my testimony before the Interstate Commerce Commission.

As to the remaining portions of the testimony so offered, I will merely add by way of further explanation that the movement of grain cars loaded to Chicago, and the westward movement of empties in handling the grain traffic is very similar to the movement of live-stock; and that the additional cost of picking up cars of grain at different stations over the handling of a through loaded train is very similar to the additional cost of picking up cars loaded with live-stock at way stations over that of handling a through train of live-stock.

W. A. GARDNER.

2636*c* Copy of following portions of the Testimony of W. A. Gardner, General Manager of the Chicago & North-Western Railway Company, taken before the Interstate Commerce Commission January 8th, 1904, in the matter of the investigation into increase in grain rates.

"Mr. COWAN: Will you kindly tell the Commission, if you know, what the average loading of your cars hauling grain from that locality is?

Mr. GARDNER: Well, I could not be specific as to that particular locality. The average loading of box cars on the road is about 14 tons.

Com'r PROUTY: Do you refer to grain, or to all commodities?

Mr. GARDNER: All commodities.

Com'r YEOMANS: In box cars?

Mr. GARDNER: Yes sir.

Mr. COWAN: What is your average loading of grain?

Mr. GARDNER: I have never had occasion to go into that. Of course, it would fluctuate with different kinds of grain and different years. We frequently get a load of light weight of oats. There is considerable amount of oats—oats and corn comes to Chicago.

Mr. COWAN: What is considered an average loading of wheat, or if not an average of wheat, tell us all about the loading of grain.

Mr. GARDNER: We insist upon loading every car to its capacity and we check that up to see that it is loaded. Consequently, a fifteen ton box car would probably be loaded with 14 to 14½ tons of grain.

Mr. COWAN: Is it not a fact that a large majority of cars used in the shipment of grain will load 25 or 30 tons?

Mr. GARDNER: No Sir: we have only a few forty ton box cars on our road out of 29,000.

Mr. COWAN: Have you a book of tonnage ratings of your engines?

Mr. GARDNER: We have them printed on the back of our

2636*d* time schedules.

Mr. COWAN: Does that give the number of your engines and their tonnage ratings?

Mr. GARDNER: Yes sir: the classification of engines as to their size and gross tonnage they will pull in a train over certain lines of railroad.

Mr. COWAN: Can you furnish us a book of tonnage ratings?

Mr. GARDNER: I can send you the time cards. We have some fifteen divisions. What I can send you will be a file of the time cards." (pp. 222, 223).

Mr. GARDNER: I appreciate that, and would be glad to give you any suggestions I can. I suggest this, that their basis of rates is

something that will yield a profit under good conditions as well as under poor conditions. With reference to the grain business, if all the cars that come eastbound loaded with grain went westbound with load, we could afford to haul grain pretty cheap and afford to haul westbound traffic pretty cheap; but in my experience with the North-Western Road of twenty-three or twenty-four years, I have yet to see the time when one-half or two-thirds did not have to be hauled empty.

Com'r PROUTY: The testimony in this case is that the empty car movement is westbound.

Mr. GARDNER: Yes, sir, it is and consulting our annual report you will see that from 26 to 28 per cent. of all car mileage of the North-Western Railway is empty car mileage. That is not from choice of course, but from necessity. We are hauling empty cars up into the lumber territory in Wisconsin. After a while the grain traffic will start in and there will be no commercial coal traffic going out, and then we will have to haul empty cars out to bring back. That is the way it works. That has something to do with the fixing of the rate of freight, the rate on grain and other car load commodities. The expense is not just that of hitching a locomotive on at one
2636e end of the train and hauling it to the other end. That is a very small portion of the expense. You have to associate your cars with switch engines, and you have to classify them as to trains that are going to various localities and with reference to different consignees, because when we get them here in Chicago we deliver the grain to forty different places, and the switching, very frequently, of a carload of grain will cost as much, or more, as it does to haul it from Omaha to Chicago; and then we are subject to all the claims for detention. If we have derailments and wrecks and break up perhaps fifteen or twenty carloads of grain. All that goes into the expense.

Com'r PROUTY: What percentage of your receipts from grain traffic do you pay out in the way of damages?

Mr. GARDNER: I cannot answer that. Our records will show that last year we paid out $600,000 for claims arising from or on account of personal injuries. Most of that was chargeable to freight trains, and half as much again for damage to freight. More or less of that was grain. Take the situation in Chicago last winter, when we had several hundred carloads of grain on our tracks here. There was great congestion here and we could not deliver the grain to consignees on other railroads on which their elevators and grain houses were located. The lines would not accept it. Meanwhile, prices of grain went down, and consequently now we are negotiating on claims for damage."

(pp. 239-241).

"Com'r PROUTY: Have you ever made any estimate of handling local and through traffic, like this grain from the Missouri River to Chicago?

Mr. GARDNER: I have not specifically; but I think it is apparent. For instance, if you start a train of 30 cars out of Omaha and you do not have to stop it at all until it gets to Chicago it costs much less than if you have a train starting out with 30 loads which
2636f have to be peddled out along the line and the train compelled to stop at every station and switch cars. It costs much more." (pp. 248, 249).

2636*g* TOMLINSON'S EX. No. 10.

1905.

Forty-sixth Annual Report of the Chicago & North Western Railway Company for the Fiscal Year Ending June 30, 1905.

* * * * * * *

2636*h* Forty-sixth Annual Report of the Chicago and North Western Railway Company for the Fiscal Year Ending June 30, 1905.

The results of the operations of the Chicago & North Western Railway Company for the fiscal year ending June 30, 1905, are as follows:

Average number of miles operated, 7,408.13.

Gross Earnings:		
From Passengers	$13,339,713 94	
From Freight	39,292,830 47	
From Express, Mail and Miscellaneous	3,112,730 76	
Total Gross Earnings		$55,745,275 17
Operating Expenses and Taxes:		
Operating Expenses (65 $\frac{49}{100}$ per cent. of Gross Earnings)	$36,459,334 91	
Taxes (3 $\frac{93}{100}$ per cent. of Gross Earnings)	2,189,976 74	
		38,649,311 65
Net Earnings		$17,095,963 52
Other Charges:		
Interest on Bonds and Interest (NOTE.—This is the net amount after making the usual deductions for dividends received on C. St. P. M. & O. Ry. preferred and common stock.)	$7,006,576 36	
Sinking Funds	225,000 00	
		7,231,576 36
		$9,864,387 16
Add Other Income		553,435 00
Net Income, carried forward		$10,417,822 16

2636*i* Net Income, brought forward		$10,417,822 16
Dividends (8% on Preferred Stock and 7% on Common Stock)		5,174,924 00
Surplus Net Income		$5,242,898 16
Less Amount of Expenditures for Construction, Improvements and Permanent Additions to the Property deducted from the Surplus Net Income for the year by authority of the Board of Directors		4,600,000 00
Balance Income for the year		$642,898 16
Balance to Credit of Income Account, June 30, 1904		10,997,282 85
Balance to Credit of Income Account, June 30, 1905		$11,640,181 01

The results as compared with the preceding year are as follows:

Passenger Earnings increased	$312,005 48	
Freight Earnings increased	2,038,291 59	
Express, Mail and Miscellaneous Earnings increased	60,344 24	
Increase in Earnings		$2,410,641 31
Operating Expenses increased	$1,070,030 95	
Taxes increased	352,171 41	
Increase in Operating Expenses and Taxes		1,422,202 36
Increase in Net Earnings		$988,438 95

The increase in Operating Expenses referred to above was distributed as follows:

Increase for Maintenance of Way and Structures	$300,635 37	or	28.10%
Increase for Maintenance of Equipment	909,445 69	or	84.99%
Increase for General Expenses	53,958 91	or	5.04%
	$1,264,039 97	or	118.13%
Less Decrease for Conducting Transportation	194,009 02	or	18.13%
Net Increase in Operating Expenses	$1,070,030 95		

* * * * * * *

2636*j* *Freight Traffic.*

The details of Freight Traffic for the year ending June 30, 1905, compared with the preceding year, were as follows:

	1904.	1905.	Increase Amount.	Increase Per cent.
Freight Earnings.....	$37,254,538 88	$39,292,830 47	$2,038,291 59	5.47

	1904.	1905.	Percentage of increase or decrease.
Tons of Freight Carried	28,128,810	31,129,651	10.67 Increase
Tons of Freight Carried One Mile.	4,066,140,935	4,292,448,817	5.57 Increase
Average Earnings Received per Ton	$1.32	$1.26	4.55 Decrease
Average Earnings Received per Ton per Mile..	.92 of a cent	.92 of a cent	
Average Distance Each Ton was Hauled	144.55 miles	137.89 miles	4.61 Decrease
Total Mileage of Freight Trains..	18,106,231	18,017,914	.49 Decrease
Average Number of Tons of Revenue Freight Carried per Train per Mile Run	224.57	238.23	6.08 Increase
Average Number of Tons of Revenue Freight Carried per Loaded Car per Mile Run	13.04	13.26	1.69 Increase
Average Approximate Earnings per Mile Run by Freight Trains.	$2.07	$2.19	5.80 Increase

Maintenance of Way and Structures.

The total Operating Expenses of the Company for the year ending June 30, 1905, were $36,459,334.91; of this amount $7,466,943.51 was for expenditures pertaining to the Maintenance of Way and Structures. Included in these expenditures is the cost of 50,593 tons of steel rails, the greater portion of which was laid in
2636*k* replacement of rails of lighter weight in 420.12 miles of track; also the cost of 2,997,941 new ties.

The expenditures for Maintenance of Way and Structures also include a large portion of the cost of ballasting 7.92 miles of track with crushed stone, 292.55 miles with gravel, and 51.12 miles with cinders and slag; the erection, in place of wooden structures, of 33 new steel bridges on masonry, and 13 on pile supports, aggregating 2,168 feet in length and containing 1,525 tons of bridge metal; and the replacement of other wooden structures with masonry arch and box culverts and cast-iron pipes, the openings being filled with earth. The wooden structures replaced by permanent work aggregate 9,486 feet in length.

The details of the expenditures on account of Maintenance of Way and Structures for the year ending June 30, 1905, compared with the preceding year, were as follows:

Rails Laid in Renewals:	1904.	1905.	Increase or decrease.
New steel rails laid	27,486 tons	34,872 tons	7,386 tons Inc.
Usable rails laid	26,044 "	15,721 "	10,323 " Dec.
Total tons laid	53,530 "	50,593 "	2,937
Ties Laid in Renewals:			
Number	2,333,616	2,997,941	664,325 Inc.
Cost of Rails:			
New steel rails	$776,348 12	$982,271 52	$205,923 40 Inc.
Usable rails	658,981 73	326,954 59	332,027 14 Dec.
	$1,435,329 85	$1,309,226 11	$126,103 74 Dec.
Less Value of old rails and other items	931,626 60	805,511 73	126,114 87 Dec.
Net Charge	$503,703 25	$503,714 38	$11 13 Inc.
Cost of Ties	$989,245 73	$1,354,117 43	$364,871 70 Inc.
Track Labor	2,993,389 23	3,111,284 10	117,894 87 Inc.
Miscellaneous Track Material	677,467 76	548,505 41	128,962 35 Dec.
Total Charges for Roadway and Track, carried forward	$5,163,755 97	$5,517,571 32	$353,815 35 Inc.

* * * * * * *

2636*l*–2636*m* GEN EX. 14.

Forty-ninth Annual Report of the Board of Directors of the Chicago, Burlington & Quincy Railroad Company to the Stockholders for the Year Ending June 30, 1903.

* * * * * * *

2636*n* Forty-ninth Annual Report.

CHICAGO, *October* 1, 1903.

To the Stockholders of the Chicago, Burlington & Quincy Railroad Company:

The Railroads and properties of your company were leased, taking effect October 1, 1901, to the Chicago, Burlington & Quincy Railway Company, and have since that date been operated by that Company. For purposes of comparing results of operation with previous years, this report is made, as heretofore, by the Railroad Company.

Earnings and Expenses.

The Gross Earnings from operation, including all leased and controlled roads, for the year ended June 30, 1903, have been:

From Freight	$42,782,405.94	
From Passengers	14,136,281.18	
From Mail, Exp. and Miscellaneous	5,719,691.70	
		$62,638,378.82

The Expenses have been :		
Operating Expenses	$38,763,996.67	
Taxes	1,778,476.09	
		40,542,472.76
Income from Operation		$22,095,906.06
Add for—		
Income on Securities owned and other Income and Interest	$268,331.72	
Net receipts of Land Departments	78,208.26	
		346,539.98
Total Income		$22,442,446.04
Charges have been :		
Interest on Bonds	$7,442,941.24	
Rentals	192,173.95	
Sinking Funds	721,757.70	
Other Charges	759,465.00	
		9,116,337.39
Balance		$13,326,108.15

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26360 1902–3 Compared with 1901–2.

Gross Earnings from Operating in 1902–3	$62,638,378.82
In 1901–2	53,795,245.47
Increase in 1902–3	$8,843,133.35
Operating Expenses and Taxes in 1902–3	$40,542,472.76
In 1901–2	35,682,875.53
Increase in 1902 3	$4,859,597.23
Net Earnings from Operating 1902–3	$22,095,906.06
In 1901–02	18,112,369.94
Increase in 1902–3	$3,983,536.12
Percentage of Operating Expenses, including Taxes, to Gross Earnings, 1903–3	64.72
In 1901–2	66.33
Decrease in 1902–3	1.61
Total Number Passengers carried one mile 1902–3, exclusive of free mileage	678,462,129
In 1901–2	600,136,909
Increase in 1902–3	78,325,220

Gross Earnings from Passengers 1902–3	$14,136,281.18
In 1901–2	12,857,266.86
Increase in 1902–3	$1,279,014.32
Gross Earnings per Passenger per mile 1902–3	$2.08
In 1901–2	2.12
Decrease in 1902–3	$ .04
Miles run by Passenger Trains, 1902–3	15,311,454
In 1901–2	15,299,531
Increase in 1902–3	11,923
Miles run by Passenger Trains per mile of Road Operated in 1902–3	1,749
In 1901–2	1,859
Decrease in 1902–3	110
Total number of tons of Revenue Freight carried one mile in 1902–3	4,931,185,014
In 1901–2	4,001,631,245
Increase in 1902–3	929,553,769
Gross Earnings from Freight, 1902–3	$42,782,405.94
In 1901–2	36,072,079.68
Increase in 1902–3	$6,710,326.26
Gross Earnings per ton per mile, 1902–3	0.868
In 1901–2	0.896
Decrease in 1902–3	0.028
Miles run by Freight Trains in 1902–3	18,545,775
In 1901–2	18,324,905
Increase in 1902–3	220,870
Miles run by Freight Trains per mile of Road operated in 1902–3	2,119
In 1901–2	2,228
Decrease in 1902–3	109

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2636*p* *General Remarks.*

The length of road operated on June 30, 1903, was 8,324 miles, against 8,124 miles on June 30, 1902.

The average number of miles of road operated in 1902–3 was 8,319 miles, against 8,109 miles reported for 1901–2. The gross earnings per mile of road operated were $7,529.56 in 1902–3, against $6,634.02 in 1901–2. The operating expenses, including taxes, per mile in 1902–3 were $4,873.48, against $4,400.40 in 1901–2. The percentage of operating expenses, including taxes, to gross earnings in 1902–3 was 64.72, against 66.63 per cent. in 1901–2.

The number of tons moved one mile increased $23\frac{23}{100}$ per cent., as compared with 1901–2; and freight earnings increased $18\frac{60}{100}$ per cent. Passengers carried one mile increased $13\frac{5}{100}$ per cent., and passenger earnings increased $9\frac{95}{100}$ per cent. The percentage of operating expenses to gross earnings decreased $1\frac{61}{100}$ per cent.

The total amount at the credit of Sinking Funds on June 30, 1902, was $20,352,290.13. This amount was increased during the year by the sum of $1,345,435.33, of which $721,757.70 was paid directly from the earnings of the year, and the remainder, $623,677.63 was the accumulation of interest on bonds held in the Funds. This increase was used in purchasing $1,276,600 bonds, of which $502,000 were canceled, and $774,600 remain uncanceled in the Sinking Fund investments.

The Burlington & North-Western and Burlington & Western Railways, narrow gauge roads extending from Burlington to Oskaloosa, Iowa, which have heretofore been controlled by your Company through its ownership of their securities, have been consolidated under the name of the Burlington & Western Railway, and during the year changed to standard gauge and leased to your Company. An extension of the Burlington & Western Railway from Oskaloosa to Tracey, Iowa, to connect with your Company's branch from Albia to Des Moines, is now under construction.

2636*q* The Quincy Railroad Bridge Company, which has heretofore been operated by this Company under a lease requiring an annual payment, as rental, of ten per cent. on the capital stock of the Bridge Company, has been acquired by the purchase of 17,477 shares of its capital stock, out of a total issue of 17,500 shares,* payment being made in C., B. & Q. Illinois Division 3½ per cent. bonds of 1949, thus effecting an annual reduction in the rental amounting to three per cent. on the stock of the Bridge Company.

An arrangement has been made by which the C., B. & Q. consolidated mortgage seven per cent. bonds maturing on July 1, 1903, have been extended for two years at four per cent.

For further details relating to the affairs of the Company, reference is made to the report of the General Auditor and following statements.

By order of the Board of Directors.

GEORGE B. HARRIS, *President.*

* * * * * * *

*The remaining 23 shares have since been purchased.

2636r GEN. EX. 12.

Fiftieth Annual Report of the Board of Directors of the Chicago, Burlington & Quincy Railroad Company to the Stockholders for the Year Ending June 30, 1904.

* * * * * * *

2636s Fiftieth Annual Report.

CHICAGO, *July* 1, 1904.

To the Stockholders of the Chicago, Burlington & Quincy Railroad Company:

The railroads and properties of your company were leased, taking effect October 1, 1901, to the Chicago, Burlington & Quincy Railway Company, and since that date have been operated by that company. For purposes of comparing results of operation with previous years this report is made, as heretofore, by the Railroad Company.

Earnings and Expenses of all Roads Operated and Controlled for Years Ended June 30.

Gross Earnings.

Per cent.	1903.		1904.	Per cent.
68.3	$42,782,405.94	Freight	$44,651,996.76	68.5
22.6	14,136,281.18	Passenger	14,494,572.78	22.2
3.3	2,082,703.33	Mail	2,300,861.45	3.5
1.9	1,198,118.97	Express	1,290,960.77	2.0
3.9	2,438,869.40	Miscellaneous	2,489,800.09	3.8
100.0	$62,638,378.82	Total	$65,228,191.85	100.0
		Operating Expenses.		
28.7	$17,985,963.76	Conducting Transportation	$20,266,480.74	31.1
12.3	7,719,043.98	Maintenance of Equipment	8,376,602.44	12.8
15.0	9,341,728.36	Maintenance of Road and Structures	10,277,274.54	15.7
5.9	3,717,260.57	General Expenses	3,751,935.41	5.8
61.9	$38,763,996.67	Total	$42,672,293.13	65.4
38.1	$23,874,382.15	Net Earnings	$22,555,898.72	34.6
2.8	1,778,476.09	Taxes	1,906,649.46	2.9
35.3	$22,095,906.06	Income from Operation	$20,649,249.26	31.7

1903.		1904.
$22,095,906.06	Income from Operation	$20,649,249.26
	Deduct:	
	Interest paid in excess of Income on Securities owned and other Income and Interest received	204,115.89
	Add:	
346,539.98	Income on Securities owned and other Income and Interest	
$22,442,446.04		$20,445,133.37
	Charges:	
$7,442,941.24	Interest on Bonds	$6,908,499.72
192,173.95	Rentals	
721,757.70	Sinking Funds	721,716.98
759,465.00	Other Charges	
$9,116,337.89	Total Charges	$7,630,216.70
$13,326,108.15	Balance	$12,814,916.67
$227,818.50	Dividends on stock of the Chicago, Burlington & Quincy Railroad Company, not deposited as collateral for Northern Pacific-Great Northern Joint C. B. & Q. Collateral Bonds	$226,667.00
8,606,752.00	Interest for the year on Northern Pacific-Great Northern Joint C. B. & Q. Collateral Bonds at 4 per cent	8,608,082.00
$8,834,570.50	Total	$8,834,749.00
$4,491,537.65	Surplus	$3,980,167.67

During the year the Chicago, Burlington & Quincy Railway Company paid, as rental, dividends at the rate of seven per cent. per annum on the stock of the Chicago, Burlington & Quincy Railroad Company. The dividends upon the stock of the Railroad Company deposited as collateral security for the Northern Pacific-Great Northern Railway Companies' joint C. B. & Q. collateral four per cent. bonds were, for the convenience of all concerned, applied directly to the payment of the interest on these bonds, as shown above.

2636u *Statistics of Freight and Passenger Traffic on All Roads, Operated and Controlled, for Years Ended June 30.*

Description.	1903.	1904.		
Freight Traffic.				
Mileage of Freight Trains..	17,146,860	17,201,899	Increase	55,039
Mileage of Mixed Trains...	1,398,915	1,558,962	"	160,047
Total.....	18,545,775	18,760,861	Increase	215,086
Mileage of Loaded Freight Cars.....	333,686,181	335,391,022	Increase	1,704,841
Mileage of Empty Freight Cars..... .	124,469,924	136,060,252	"	11,590,328
Total Car Mileage...	458,156,105	471,451,274	Increase	13,295,169
Tons of Revenue Freight Carried.....	20,049,276	20,634,024	Increase	584,748
Tons of Company Freight Carried.....	6,150,217	6,634,745	"	484,528
Total....	26,199,493	27,268,769	Increase	1,069,276
Tons of Revenue Freight One Mile..... ...	4,931,185,014	5,207,483,649	Increase	276,298,635
Total Tons One Mile.....	5,685,365,607	6,114,521,072	"	429,155,465
Earnings from Freight Traffic..... ...	$42,782,405.94	$44,651,996.76	"	$1,869,590.82
All Cars Hauled per Freight Train Mile..... .	24.70	25.13	"	0.43
Tons Revenue Freight Hauled per Train.....	265.89	277.57	"	11.68
Tons Revenue Freight Hauled per Loaded Car..	14.78	15.53	"	0.75
Earnings per Freight Train Mile..	$2.31	$2.38	"	$0.07
Earnings per Ton per Mile.	$0.0087	$0.0086	Decrease	$0.0001

2636v *Statistics of Freight and Passenger Traffic*—Continued.

Description.	1903.	1904.		
Passenger Traffic.				
Mileage of Passenger Trains..	13,912,539	13,478,444	Decrease	434,095
Number of Passengers Carried.....	14,100,605	14,098,053	"	2,552
Passengers carried one Mile..	678,462,129	682,352,166	Increase	3,890,037
Earnings of Passenger Trains....	$17,564,428.69	$18,272,694.82	"	$708,266.13
Earnings per Passenger Train Mile	$1.26	$1.36	"	$0.10
Earnings per Passenger Per Mile	$0.0208	$0.0212	"	$0.0004

Total Trains.				
Mileage of Freight and Passenger Trains	32,458,314	32,239,305	Decrease	219,009
Earnings from Freight and Passenger Trains	$60,346,834.63	$62,924,691.58	Increase	$2,577,856.95
Earnings per Train per Mile	$1.86	$1.95	"	$0.09
Expenses per Train per Mile	$1.19	$1.32	"	$0.13
Net Traffic Earnings per Train per Mile	$0.67	$0.63	Decrease	$0.04

* * * * * * *

2636*w* *General Remarks.*

The length of road operated and controlled on June 30, 1904, was 8,821 miles against 8,751 miles on June 30, 1903, and the average for the year 1903-4 was 8,799 miles against an average of 8,693 miles in 1902-3.

The Gross Earnings per mile were $7,413.14 in 1903-4 against $7,205.61 in 1902-3. The Operating Expenses, including Taxes, per mile, in 1903-4 were $5,066.36 against $4,663.81 in 1902-3. The percentage of Operating Expenses, including Taxes, to Gross Earnings, in 1903-4, was 68.34 against 64.72 in 1902-3.

The number of Revenue Tons moved one mile increased 5 60-100 per cent., as compared with 1902-3; and freight earnings increased 4 37-100 per cent. Passengers carried one mile increased 57-100 per cent., and passenger earnings increased 2 53-100 per cent. The percentage of operating expenses to gross earnings increased 3 62-100 per cent.

The total amount at the credit of Sinking Funds on June 30, 1903, was $21,697,725.46. This amount was increased during the year by the sum of $1,408,673.92, of which $721,716.98 was paid directly from the earnings of the year, and the remainder, $686,-956.94, was the accumulation of interest on bonds held in the Funds. This increase was used in purchasing $1,408,000.00 bonds, of which $512,000.00 were canceled and $896,000.00 remain uncanceled in the Sinking Fund investments.

During the year the new line from Oskaloosa to Tracey, Iowa, to connect the old line of the Burlington & Western with the branch from Albia to Des Moines, has been completed. A line from Old Monroe to Mexico, Mo., has been built, connecting with the Chicago & Alton Ry. at the latter point, thereby making a through line between St. Louis and Kansas City.

The lines and property of the Quincy Railroad Bridge Co., of the Iowa & St. Louis Ry. Co., and of the Kansas City & Omaha Ry. Co., which were shown in the last report as Controlled Roads, are now a part of the operated mileage of this company.

For further details relating to the affairs of the Company, refer-

ence is made to the Report of the General Auditor and the following statements.

By order of the Board of Directors.

GEORGE B. HARRIS, *President.*

* * * * * * *

2637 Mr. DAWES: You did not ask me.

Mr. LYNDE: Nor me.

Mr. COWAN: Mr. Tomlinson telephoned to Mr. Crosby and I guess he overlooked it. I want to have in evidence a live stock contract showing the contract upon which the live stock is shipped.

The COURT: All right, we will admit it when we get it.

Mr. COWAN: That is all except Mr. Ryan and the letter of Mr. Stickney. Were you gentlemen through with Mr. Tomlinson?

Mr. LYNDE: No, I wanted to ask him a few questions.

Mr. DAWES: If your Honor please, Judge Mills, when he left, if your Honor will remember, said it would be impossible for him to return and asked to have the testimony of the witnesses who testified in behalf of their commission at the former hearing, a witness whose name is Yapp, introduce- in evidence here. I don't want to be understood as introducing it on my behalf, because I object to it, but I am acting for Judge Mills in that regard.

The COURT: Let the record show that.

Mr. COWAN: And I object to it.

Mr. DAWES: I object to that testimony, but I am doing this as a matter of favor and I speak of it now so that it may not be overlooked.

2638 T. W. TOMLINSON, having been duly sworn as a witness on behalf of the complainant in rebuttal, resumed the stand for examination by Mr. Lynde, and testified as follows:

Q. Your attention was called to some portions of your testimony before the Commission on the hearing of this case and I want to ask you if you will look at that and state whether you did not testify at that time as follows, in addition to the other portions of the testimony that have already been called to your notice. On page 415:

"So far as the Central Freight Association rates are concerned, I made the statement yesterday that their minimum schedule is less than these cattle rates, which it is. Now, I could inundate you with statements"—(that is what you have done here I am afraid)—"showing you that the minimum schedule issued in the Central Freight Association territory is in effect the maximum schedule. It is mis-named, I don't know why they named it that. In fact, the rates in the Central Freight Association territory were raised here about two years ago and you cannot safely compare the rates in that territory with the rates in a vast producing section like Iowa and Missouri or Kansas and Nebraska or Minnesota or North Dakota, because in the first place you have not got the density of live
2639 stock traffic while the other traffic is much more dense and the rates properly, the through rates in Iowa should not be

so much higher than these Central Freight Association rates." Did you so testify?

A. I assume that I did, yes.

Q. In that hearing you appeared not only as counsel or associate counsel, but you were also a witness and took part in the argument of the case; that is true, is it not?

A. Yes.

Q. Certain portions of the record in that case have been offered, showing testimony of certain witnesses in this case. There were other witnesses, were there not, besides yourself and the witnesses whose testimony has been already offered by Mr. Cowan?

A. Yes sir.

Q. Now you spoke of the natural advantages in favor of the slaughterer at the point of origin, in the course of your testimony the other day. You recognize that there are such?

A. Yes.

Q. Well, that gives rise, does it not, to the development of the manufacturing or slaughtering near the source of production?

A. Yes.

Q. The point of origin?

A. Yes.

Q. And that has been going on at Kansas City and Omaha, for the last 20 years practically, has it not?

A. Yes.

2640 Q. And has been developing more or less at these intermediate points in between all that time?

A. Yes.

Q. When did the Kansas City Packing establishments first commence, do you remember, to go into operation?

A. It is shown in the annual report; a good many years ago.

Q. It was quite a number of years ago?

A. Yes.

Q. And from that time down to the present time there has been a tendency towards a decrease in the receipts of cattle at Chicago, from Texas, isn't that true?

A. Yes.

Q. Somewhat commensurate with the development of the packing industries there at Kansas City?

A. Largely.

Q. I think Mr. Buell said that that began some 10 or 12 years ago. There has been a steady decrease from that time down?

A. Well, it probably commenced earlier than that.

Q. Well, who are, generally speaking, the buyers in the Kansas City, Omaha and St. Joe markets?

A. The packers located there.

Q. Anybody else?

A. Feeders and buyers of packers who have not plants at that point.

2641 Q. Well, who are they?

The COURT: Isn't that in the record already by definite proof?

Mr. LYNDE: I beg pardon?

The COURT: That is already in the record.
Mr. LYNDE: I don't think it is fully.
The WITNESS: I could not give you an accurate list.
Q. Do you mean buyers for packers at intermediate points, is that what you mean?
A. I believe that Sinclair & Company and Morrell & Company occasionally buy hogs on the river markets.
Q. Is that what you mean when you say buyers for packers at other points who have no packing establishment there?
A. Yes, and I think Plankington buys occasionally on that market.
Q. Where is their plant?
A. Up at Milwaukee.
Q. That is what you mean when you refer to packers who have no plants at the Missouri river points?
A. Yes, all the packers located there, packers located there, for instance, who may prefer to slaughter at Chicago. For example, S. & S. frequently buy there. Armour and Swift, I think buy there and forward.
Q. Who are, generally speaking the shippers of cattle into Chicago or into these other western markets?
2642 A. Into Chicago from those river markets, there is practically no shipping business of fat cattle by independent shippers.
Q. That is, you mean from those markets alone; but from western points beyond those markets, who are the shippers? They are the producers, are they not, as a rule?
A. Yes.
Q. The men who have raised the cattle and fed them and who bring them into the market?
A. Yes.
Q. Who are the feeders, who are the buyers for feeding purposes?
A. On the river markets?
Q. Yes.
A. People who want the cattle to fatten on the Iowa corn.
Q. They are the farmers in the vicinity?
A. Yes.
Q. Buying cattle and sending them out?
A. Yes.
Q. Is it not true that the great portion of the cattle handled at th- river markets are bought in that way, for feeding, a very large portion of them?
A. A very large portion of the feeder cattle, yes.
Q. Is it more true of Omaha and the northwest points than it is at Kansas City?
A. Kansas City is the largest feeder market.
2643 Q. And Omaha is a large feeder market and Sioux City, also.
A. Yes, large comparatively, but not as large by any means as Kansas City. All the river markets are, in a measure, feeder mar-

kets except possibly St. Joe, and that does not figure as much as a feeder market.

Q. They have been feeder markets for a great number of years?

A. Yes.

Q. These cattle when they are bought by the farmer and shipped out fattened, as a rule, come to Chicago, don't they?

A. It depends where they are purchased and if they are shipped east of the Missouri river, the probabilities are that a very large percentage would come to Chicago or go east.

If shipped back into Kansas or Nebraska, why, I would say that a large proportion would go back into the Missouri river. The only cattle that come here from Kansas and Nebraska are not extremely good cattle.

Q. I think there was one part of your testimony where there seems to have been an error, and I want to call your attention to it so that it might be corrected. It is on page 2359 and is evidently an error. I do not know what the correction should be so I will give you the chance to make it no-. I- don't see-, to have the right preference. Strike that out, please. You spoke in your testimony of there being no proporti-nal rate at Sioux City. What did
2644 you mean, that cattle coming from that point to Chicago move on the balance of the rate?

A. I meant that there was not the same kind of a proportional rate published from Sioux City that is published from Kansas City, St. Joe or Omaha. The cattle move from Sioux City, if they come from west of the river, they would move, of course, on the through rate and as between the two markets it might properly be called the balance of the rate.

Q. Well, that is what it has been called right along so far.

A. It has been called so, yes. But it is hardly properly so called, bec-use they move on the through rate. There is no contradiction distinction really between the through rate and the balance of the rate. There is a through rate on which the shipment moves from the point of origin to Chicago and the proportion accruing to east of the Missouri river may or may not be the balance of the rate.

Mr. COWAN: You had better explain that.

The WITNESS: Well, take Denver and Colorado common points The difference in the rate on cattle to Chicago as compared with the Missouri river, is 16 cents. The rates divide so that the line east of the Missouri river gets about 17½ cents instead of 16 cents, so that therefore, 16 cents, while it is the balance of the rate, it does
2645 not represent what the line east of the Missouri river receives out of the through rate.

Q. It is the balance to the shipper then?

A. It is the balance to the shipper, yes.

Q. But not to the railroad east of the river?

A. Yes.

Mr. LYNDE: Let's see now, hold on. It does represent that balance of the rate, the amount that the road east of Omaha gets for it if the cattle are delivered over to it by the Union Pacific at Omaha,

doesn't it? The portion of the through rate that goes to the road for the haul from the Missouri river to Chicago?

A. But the balance of the rate, that is the difference between the rate on cattle from Union Pacific stations to Omaha and to Chicago is different than the earnings which the line east of the Missouri river receives for performing that service.

In other words, the rate from Laramie, a large shipping point on the Union Pacific, might be and I think is close around 17 cents. That is the difference between the rate to the Missouri river and to Chicago. Now the line east of the Missouri river gets a percentage proportion of the through rate from Laramie to Chicago which, if my memory is correct, is slightly higher than 17 cents.

Q. That is as between it and the Union Pacific?

2646 A. Yes, as between the line east of the Missouri river and the Union Pacific.

Q. Or the lines west of the river, which ever it may be?

A. Yes.

Q. Now, you say that Chicago is the best market for cattle. That is your opinion, isn't it?

A. Yes.

Q. And I infer from what you say that you think it is the only competitive market, is that true?

A. I would not put it quite so broad as that. I would say that there is more competition at Chicago than there is at any of the other markets.

Q. Well, the prices are higher at Chicago markets than at any of the other markets?

A. They are higher than at the markets west of here, yes.

Q. Don't Chicago prices practically control the prices at the other markets west of here?

A. Largely, yes.

Q. If a shipper can get the same price relatively at the western market, then it is to his advantage to sell his cattle at that market, is it not?

A. If he can get the same price.

Q. Relatively, I am saying.

A. Everything taken into consideration, the question of shrinkage, etc., yes.

Q. Is it is to his advantage to avoid the haul to Chicago

2647 and sell in the nearby market, that is true, isn't it?

A. If he can get a better price, yes.

Q. Well, if he got the same price relatively?

A. Well, if you consider everything.

Q. That is what I mean.

A. The prices would not be quite the same if you consider everything and the price is the same there would be no advantage in selling at the river over selling at Chicago if you equalize all the advantages.

Q. Might it not be an advantage to him to avoid, indeed, the extra labor and burden of carrying his cattle for 500 miles?

A. I understood you to consider that in the question "relatively."

Q. Well, possibly, that is considering that one market would be just as favorable to him as another?

A. If all expenses were on a parity, all costs and so forth, and the prices were the same, there would be no advantage in going to either market.

Q. That is practically the fact, isn't it, as the markets stand? If a shipper can sell his stock at a greater advantage at Kansas City or Omaha, he will do it.

A. If he can get a better price at the river relatively, he does so, yes.

Q. And if they are not willing to pay him a fair price in comparison with the Chicago price, he will bring his stuff to Chicago,
2648 will he not?

A. Necessarily he will.

The COURT:

Q. What about this statement that someone made the other day? Is it true that he won't get any higher price for it in Chicago than in Kansas City, if he got away at Kansas City or Omaha or any other Missouri river point and unloaded there?

A. I have known of some instances of that kind.

Q. Is it not claimed to be true generally and isn't that a part of the complaint that they make against your stockholders and particularly against what they call the packers who have a monopoly?

A. It is claimed that on cattle which are—the classes of cattle which the packers buy it is true that when those cattle stop at a river market for sale and the shipper is not satisfied and he forwards them on here, that he does not get enough more to equalize the thing, yes. But, on the export cattle, where there is a little more competition, cattle which the eastern buyers want, why, the shipper is not then at the mercy of the packers, and he can go both to the Missouri river and Chicago.

Mr. LYNDE:

Q. Well, I don't know that I quite understand you. Is it your idea that as a rule, the shipper does get a better price at the Missouri river markets than at Chicago?

A. Well, I think that the receipts from Kansas, in Kansas
2649 City, for example, are much larger than they are at Chicago.

Mr. COWAN:

Q. Do you mean that they get more cents per hundred pounds? Do you mean that they get a better price at the Missouri river?

A. No, no, not actually. I thought you were referring to the relative proposition. No, not in actual amounts in cents per hundred pounds.

Mr. LYNDE: Well, relatively.

A. Well, I have answered the question relatively.

Q. You say that you think they do get more at the Missouri river markets relatively?

A. I think they do, yes.

Q. Well, the maintaining then of those markets is a distinct advantage to the shipper, isn't it?

A. It is a distinct advantage on paper but it is an advantage of which the shipper cannot avail himself except through the instrumentality of the party who buys his cattle and therefore he is at the mercy of the slaughterers or buyers at the nearby market because he is not permitted to go on at a base of rates which puts him on an equality with the packer.

Q. Now if the Chicago market is open to him, as it is—There is nothing to prevent him from bringing his cattle to Chicago, is there?

A. No.

Q. Would he under such a case a- you put, would he have
2650 a better market if he brought his cattle here?

A. He would probably get a higher price for his cattle; he might have, indeed he would have a wider competition but the circumstances are so much against him and the packer has so much the advantage that he is not able to avail himself of the privilege of coming on.

Q. Now is it not a fact that the buyer at the Missouri river market, Kansas City or Omaha, who wants to get his cattle, is compelled to pay him the equivalent of the Chicago price in order to get the cattle there?

A. It is not necessary at all because of the advantage arising out of the low product rates, he can pay the owner of the stock just enough of that advantage to stop his shipment.

Q. Is it not a fact though that he has got to pay him enough of the price at the Chicago market so that relatively he is paying him as much for his cattle as he would get in the Chicago market, in order to prevent him from bringing his cattle on to Chicago?

A. No, I do not think so.

Q. Do you think the shipper who sells his stock at the Missouri river market sells it at a lower price relatively than he would get by bringing them on to Chicago?

A. No sir, I do not mean that.

Q. It is the contrary, if I understand you correctly, it is
2651 the other way?

A. I have gone over that.

Q. I know, but I would like to ask you now, isn't that true, it is the other way?

A. Well, the——

Q. Just answer yes or no?

(Question read.)

A. No sir.

Q. Chicago prices are pretty well published throughout the western country, are they not, from day to day?

A. Yes. Not quite so generally published at the Missouri river prices perhaps, but they are fairly well known and *dessimated*.

Q. Are they not published in every newspaper that is printed

west of Chicago, in this cattle region, day after day, the market reports?

A. No, that is not correct. You take local papers west of the Missouri river and they would not publish as much of the Chicago prices as they do of the Missouri river prices. Perhaps the Denver live stock papers might but the ones at Cheyenne and Rawlins would not.

Q. Well, take it through this Iowa region that we are dealing with, how is it there?

A. Undoubtedly Chicago prices are given wider publication than Missouri river.

Q. You instanced Cedar Rapids as an illustration once or twice in the course of your testimony and you said that, at Cedar Rapids, for instance, they paid an arbitrary price under the Chicago
2652 price. That is what I understood you to say, is that right?

A. In my understanding that is true, yes.

Q. What do you mean by an arbitrary price?

A. I mean that they would pay 20 to 35 cents per hundred pounds under Chicago.

Q. Do they pay less than the relative amount that is required to equalize the price at Cedar Rapids with the price at Chicago, is that your idea?

A. Yes.

Q. So that the shipper by shipping his hogs or cattle on to Chicago would get a better price, would he, relatively?

A. No, not relatively. They pay relatively less.

Q. What?

A. They pay relatively less.

Q. Don't they pay relatively more?

A. No sir.

Q. Do they pay any more or less than the Chicago price, relatively, taking into consideration all of these elements that you refer to?

A. I claim they pay relatively less, taking into consideration all the factors enumerated, and if the shipper is—that the shipper is almost forced, the shipper into Cedar Rapids market, is almost forced to patronize that market simply because of the advantage accruing to the packer.

Q. If the shipper can get relatively more by shipping on
2653 to Chicago, what is there that forces him to send his hogs to Cedar Rapids?

A. There is a lot of factors in that question relatively which the shipper cannot avail of.

Q. We are dealing with what he can avail of.

A. If there is a factor in that relative consideration which he can avail of, and he can get more by coming on to Chicago, why he should come.

Q. If he can get more by coming on to Chicago and paying the additional cost that is involved to him in the movement of his hogs to Chicago than he can get by selling them at Cedar Rapids, is it not a fact that he would send them to Chicago, generally speaking?

A. I would think so.

Q. So that the buyer at Cedar Rapids, in order to get those hogs is compelled in fact to pay the prices which will equalize the price at Cedar Rapids with the price at Chicago. Just answer the question, I don't want to argue.

A. The question is not susceptible of an intelligent answer without an explanation.

Q. Well, that is enough. Now, as a matter of fact, there is no market at Cedar Rapids in the shape of an open market, is there?

A. No sir.

Q. I think it has been—either you said or it was explained by other witnesses that Sinclair & Company, sent out notices as to all the prices that they will pay for hogs and the different companies
2654 do the same. You understand that is the case, do you?

A. I understand that is the case, yes.

Q. So that, the shipper does not bring his hogs to Cedar Rapids in the first instance unless he has made a contract to sell them, isn't that your understanding?

A. I would not be the best authority on that but that would be my general impression.

Q. Well, that is what I mean.

A. That he went there on the theory that he would get a certain price for his hogs.

Q. What is the class of cattle that are mainly shipped from Colorado, are they mainly feeders?

A. There is a great deal of butcher stock, fat steers. No, I would not say they were all feeders.

Q. I did not say "all" I said mainly?

A. Not mainly feeders, but they are not as good a class of cattle as the Iowa cattle.

Q. They don't compare with the Montana cattle, do they, they are not as heavy?

A. No, they are not as heavy.

Q. There are more shippers of stock in Montana, than in Colorado, are there not?

A. You would hardly call it butcher stock in Montana. There are more steers in Montana than in Colorado.

Q. Aren't those large steers in Montana shipped directly to the market for slaughter?

A. Yes.

2655 Q. And the cattle down in Colorado do not belong to that same class as a rule, do they?

A. You could hardly classify them, there is quite a distinct difference, but Colorado is a little different from Texas, a little different in that it has got more fat cattle than Texas would have.

Q. As between the two, Colorado and Montana, Montana cattle are in better shape to go to the market at once than the Colorado cattle, are they not? I mean to be slaughtered on the market?

A. I would be inclined to think there is very little difference because the Colorado cattle are fattened on grass the same as the Montana cattle are. I don't think there is very much of a difference.

Ut is about the same as Wyoming, the cattle range over through in the South and Middle Pass and while a large proportion of them may not be the same in Colorado as Montana, I do not think there is any marked difference.

Q. As to the shipper, shipping cattle from Montana or from Colorado, is it not a fact that it is the through rate from that point that controls and determines whether he will ship to Chicago or not?

A. Largely that, and the facilities at the other markets for slaughtering.

Q. If he has got feeder stock he would send them probably to the feeder market, Kansas City?

2656 A. Very few feeders go from Montana.

Q. Those that go from Montana go for slaughter in the main?

A. Mostly.

Q. The man in Colorado, if he has feeder stock, he would ship them to Kansas City?

A. If he had feeder stock, yes sir.

Q. Wherever he shipped would depend in the main on the through rate from Montana to Colorado?

A. Yes sir.

Q. The natural movement of cattle, you say from west of the Missouri river, if I understood you correctly, is to the Missouri river markets?

A. The natural movement would be east bound, and, for natural reasons——

Q. It goes to those markets rather than to Chicago?

A. For natural reasons, yes.

Q. You said however in that same connection that it was unnatural for cattle to go to Kansas City from Omaha. I think that statement was made by you?

A. That is a mistake, I did not mean that.

Q. It reads that way and I wondered what you did mean.

Mr. COWAN: From Montana.

Mr. LYNDE: Well, let's see now, not at all. I desire to refer to the record to see if I have got it right. (Counsel refers to

2657 record.) You are correct, Mr. Cowan, it was Montana, I am wrong.

Q. Now what is the movement from Montana to Kansas City, in fact?

A. Very slight.

Q. I think you said that in figures, it amounted to something like 114 head for the last year.

A. If I said that it is based upon Mr. Kenyon's exhibit.

Q. A very small number?

A. Yes sir.

Q. So trifling that it practically cannot be considered as a movement at all?

A. Kansas City would not be a natural market for Montana stuff.

Q. I refer to it because you had spoken of it but I see you meant that simply as an illustration of what you would consider an unnatural movement?

A. Yes.

Q. While the natural movement would be direct to—From Montana—To Omaha or Sioux City, is that right?

A. Or St. Paul or Chicago. The natural movement would be east bound towards the point of ultimate consumption via the line of least resistance.

Q. Would it not be east bound towards the nearest point of manufacture for ultimate consumption, rather than towards the point of ultimate consumption in some distant place?

A. I think that is also true. I think I have already stated that. There are several natural advantages of the river
2658 markets to which they are entitled.

Q. Then it is a question as between the slaughterer there and the slaughterer at some other point?

A. No, I don't think it is a question so much between the slaughterer there and the slaughterer at some other point as between the slaughterer at the first point and the shipper.

Q. Now if the shipper can get the same price or a better price at a nearby market than by shipping his cattle further eastward, what inducement is there to him to ship to the east?

A. None at all except that he might get a little wider competition. Bear in mind that the prices paid are dependent upon the prices on which the packer can market his product, and all those prices and all those rates, for example of prices, the shipper is not in a position to avail himself of, because he does not slaughter the product, and the packer can surrender of his advantage just enough to make it profitable for the shipper to stop there and for that reason, added to the natural advantages, the shipper is really, under the present adjustment, restricted to the market nearest him and is barred from the competition to which he is naturally entitled upon an ideal adjustment.

Q. But the packer controls, if I understand you correctly, the nearby market. You say he is the only buyer there.

2659 A. He controls it more largely than he does the Chicago market.

Q. Does he control the Chicago market?

A. No sir, I would not say that he did.

Q. So the Chicago market is an open competitive market?

A. It is an open competitive market, more so than are the other markets. Now that is on fat cattle or hogs ready for the block, for slaughtering.

At Kansas City there is of course, a wide competition on feeders and so also is there at other Missouri river points; perhaps a wider competition on feeders than there is at Chicago, naturally there would be because the Corn Belt is west of Chicago and the feeders originate west of the Missouri river.

Q. Where do the Chicago feeders go as a rule, those that are sold for feeding here in Chicago?

A. Illinois, some in Wisconsin and some in Iowa and Indiana, but largely Illinois.

Q. But the man who ships or sells his hogs at Cedar Rapids, still has the opportunity to send those hogs on to Chicago and get the Chicago price if the packer at Cedar Rapids won't pay him the equivalent, isn't that so?

A. Yes.

Q. You spoke about having made a comparison of rates from certain points on the North Western Road to Chicago. I think
2660 those are exhibits 15 and 16. On this statement you compared the rates from certain points in Iowa with rates from certain points in Wisconsin, the comparison being made to Chicago and on a mileage basis. That is, you apparently have sought to take stations of equivalent distances. Now, is it not a fact, Mr. Tomlinson, that the rates from those stations named in Wisconsin are rates to Milwaukee and that Chicago takes the Milwaukee rate?

A. They——

Q. Isn't that a fact?

A. Not entirely.

Q. Is it not a fact as to the stations that you have named here, in the main?

A. Yes.

Q. So that in order to get the equivalent in mileage you should add about 85 miles to the mileage shown as to the Wisconsin points?

A. No sir, I don't think so.

Q. Should you not add the mileage——

A. I have given the mileage there to Chicago.

Q. You have given the mileage to Chicago and instead therefore of giving the mileage to Chicago, should you not have deducted 85 miles from the mileage given as to each of these Wisconsin points?

A. No.

Q. Isn't that the difference in mileage between Chicago *an* and Milwaukee?

A. With equal justice I would——

Q. Just answer that, isn't that the difference?

2661 A. No, I should not.

Q. Pardon me. That is the difference in mileage between Milwaukee and Chicago, 85 miles?

A. Yes.

Mr. COWAN: That would depend on where it is from.

Mr. LYNDE: That is the difference between Milwaukee and Chicago and I want to have the figure appear in the record.

The WITNESS: It is 87 miles, I think.

Mr. LYNDE: That would be nearer correct, I suppose.

Q. Now, as to these points in Kansas and Nebraska.—I think they are all in Kansas, are they not, that you have listed here.

A. I cannot tell you without looking at the statement.

Q. Well, one statement refers to certain points on the Rock Island and the other statement to certain points on the Union Pacific.

A (Examining statement). Kansas and Colorado.

Q. Well, in each of those cases, is it not true that there are zones running north and south through Kansas and Colorado in which the rates are the same?

A. To all Missouri river markets.

Q. To such markets as you have listed here, I think these are into Kansas City, are they not?

A. There are zones in Kansas where the rates to Kansas City and St. Joe are the same.

2662 Q. Are they not shown on your statement there in that way?

A. No, I give the several rates, the specific rates to Omaha for the C. R. I. & P., and the specific rates for the Union Pacific to Kansas City.

Q. Take the first group. The rates to Omaha, for instance are shown on your statement from Munden, Kansas, a distance of 141 miles, the rate is 14½ cents and that rate seems to prevail down to Phillipsburg, a distance of 243 miles.

A. Yes.

Q. And that means that in that entire zone that general rate of 14½ cents applies?

A. To Omaha, yes.

Q. Isn't that true in your statement on the Union Pacific, to Kansas City, in the main?

A. To Kansas City——

Q. Isn't that a fact?

A. It applies 43 miles.

Q. Well, that is not as much of a zone. Then below the 16½ seems to run from 223 miles down to 303?

A. A distance of 80 miles, yes. The rates from all western Kansas and Nebraska points are not uniformly the same to Omaha, Kansas City and St. Joe. When you get west of the east line of Colorado and Wyoming, they are the same to all Missouri river markets.

Q. West of where, I did not catch that?

A. West of the east line of Colorado and Wyoming. They

2663 are not the same to all Missouri river markets, except the territory up in Montana which I previously referred to.

Q. That is to be explained, is it not, by competitive conditions existing in Kansas and Nebraska and east of that point, or is that the case?

A. No, I don't think it is explained on that theory, because I say they are not the same. You misunderstood me.

About those comparisons to Milwaukee, if you will permit an explanation, on the same reasons the rates from Iowa are the same as to Milwaukee and if you made any deduction to equalize on the Wisconsin rates, you should also make a deduction to equalize on the Iowa rates. No deduction is necessary at all, the rates are made on Chicago.

Q. That is not what we are dealing with here. So far as these

rates here are concerned shown in this list, they are rates to Milwaukee and Chicago gets the benefit of the Milwaukee rate.

A. I would not call them rates to Milwaukee any more than rates to Chicago; the bulk of the stuff comes to Chicago.

Q. At the same rate?

A. Yes, except possibly nearby hogs. Take nearby points to Milwaukee, the rate is much less than it is to Chicago.

Q. I am dealing with those you have listed here.

A. I was trying to explain the general situation.

Q. I do not know what that is, so I would rather confine it to these here.

2664 The COURT: Any other question?

Mr. LYNDE: Just a moment, I am very nearly through. The error that I wanted to call attention to I have now found and it is on page 2390 where you are stating the shipments from the state of Iowa into Chicago, and, as it appears here in the record before me it is said, "During 1904, 19,826 cars."

A. That is wrong, I noticed it.

Q. I do not know what the correct figure is. You had made that statement?

A. What is the year? 119,896. No, that is 1903. 1904, 97,826.

Q. 1904, of course the strike was in existence?

A. Yes.

Mr. LYNDE: I think that is all, your Honor.

Examination by Mr. RANSOM:

Q. Mr. Tomlinson, you are a lawyer, are you not?

A. No sir.

Q. Did you ever study law?

A. I have read a little bit.

Q. Yes, read law. You were one of the attorneys for the Live Stock Exchange in prosecuting this case before the commission?

A. No sir, I am not an attorney. I was their railway representative.

2665 Q. You prosecuted the case before the commission?

A. I assisted Mr. Cowan.

Q. Were you in the employ of the Live Stock Exchange aside from that employment at that time?

A. Yes, I was their railway representative.

Q. Are you in the employ of the Live Stock Exchange now?

A. No sir.

Q. Who is employing you now?

A. The American Stock Growers' Association.

Q. Where are they located?

A. At Denver, Colorado.

Q. Were you ever engaged in the practical operation of a railroad?

A. Yes.

Q. What railroad?

A. The Sioux City & Western, I was superintendent of it.

Q. Did you have the making of rates on that road?
A. Well, it came under my jurisdiction, the General Freight Agent. Yes, I did.
Q. Did you make the rates?
A. I made them in conference with the other lines serving the same territory, yes.
Q. The superintendent of a railroad company don't make the rates, does he?
A. The general freight agent reported to me in that instance.
Q. He reported what rates he made?
A. Reported to me for my approval.
2666 Q. And you approved them formally?
A. Yes.
Q. You don't know what they were based on, do you?
A. The rates made at that time were made equal with the rates of the other lines serving the same territory.
Q. You don't know what basis they were made on, do you, or did you?
A. There is not very much basis for making rates.
Q. You don't know what this man made the rates on, what basis? Can't you answer that yes or no.
A. No, I don't know.
Q. Now then you say that the rates on the proportional adjustment to this 23½ cent live stock rate from the Missouri river to Chicago—that they are not properly adjusted to that rate. Will you tell me what the rate per ton per mile is for the country tributary to Chicago, say for 150 miles from Chicago?
A. The rate per ton per mile?
Q. Yes, on live stock.
A. It is between 1½ and 2 cents.
Q. What is it in Illinois?
A. There are no statistics published, segg*r*egating——
Q. Don't talk about statistics. You say they are not properly adjusted. Can you tell me what is the rate per ton per mile in Illinois from 150 miles from Chicago?
2667 A. On what?
Q. On live stock, that is what this case is about.
A. I can tell you in a minute by figuring it up, I cannot tell you offhand, no.
Q. Never mind figuring it up now. Do you know what the rate per ton per mile is on live stock from 140 miles east of the Missouri river.
A. All rates vary, it is a matter of computation.
Q. Do you know that?
A. No, I do not.
Q. Do you know as a matter of fact that it is very much greater than the rate per ton per mile for the same distance out of Chicago, on all these lines?
A. It——
Q. Don't you know that?
The COURT: Well, answer.

A. The rate per ton per mile from Iowa points into South Omaha on cattle is greater than the rate per ton per mile from Illinois points into Chicago.

Mr. RANSOM:

Q. And from the other points on the other roads outside of Illinois, how is it?

A. It is greater than from Indiana points, it is not greater than from Iowa points to Chicago.

2668 Q. I want you to get back to what I am asking about. Don't you know it to be a fact that the rate per ton per mile on live stock from 140 miles east of the Missouri river into the Missouri river, is very much greater than the rate per ton per mile for a distance of 140 miles west of Chicago, on all these lines into Chicago?

A. Into Chicago?

Q. Yes.

A. No sir, it is not.

Q. Now, will you produce a statement here showing the rate per ton per mile for 140 miles into Iowa from the Missouri river.

A. I cannot get the 140 mile point——

Q. It can be figured out from the statements already in here?

A. You want the rate west of Chicago, that will confine you to Illinois.

Q. On all the lines, yes.

A. If you take——

Q. Don't you know as a matter of fact that there are statements in here now from which you can figure the rate per ton per mile into Chicago for 140 miles west of Chicago and into the Missouri river from 140 miles east of the Missouri river?

A. Yes, there are.

Mr. COWAN: Well, you make your own figures, Mr. Ransom.

The WITNESS: The information is in here and I will figure it up for you.

Mr. RANSOM:

2669 Q. Don't stop now. You have stated now that the rates are not properly adjusted. You say you don't know the rate per ton per mile into Chicago for 140 miles and you don't know the rate per ton per mile into the Missouri river. Now, how do you say that the rates are not properly adjusted, if you don't know what they are.

A. As between the live stock rates entirely?

Q. That is all I am talking about.

A. The live stock rates into Omaha and into St. Paul?

Q. No, into the Missouri river.

A. As compared with the rates into Chicago from Iowa points.

Q. Just read the question to him.

(Pending question read.)

A. The rates from a great portion of the state of Iowa into

Chicago average more than the Iowa distance rates for the same distance. There may be exceptions to that but when you get over 350 or 300 miles under the Iowa schedule, the rates are really paper rates. They are never used because there is no workable distance.

Q. Now you know what I am asking. I asked you for only 140 miles. I didn't say anything about 300 miles. I am confining you to 140 miles west of Chicago and 140 miles east of the Missouri river.

A. I have not especially picked out 140 miles to make any comparison. I have given you the best of my opinion without looking up the records. I can look it up and tell you absolutely in
2670 a minute.

Q. Yes, I know you can.

The COURT: That answers that.

Mr. RANSOM: Yes.

The WITNESS: The mere fact that I don't know the 140 mile rate——

The COURT: He says he cannot answer.

Mr. RANSOM: He can answer this question, your Honor, I think: That covers the zone, don't it, 140 miles, the 23½ cent belt is covered by that, isn't it?

A. Approximately, yes.

Q. Do you claim that the receipts in Chicago of live stock since 1900, have decreased as compared with former years?

A. Since 1900?

Q. Yes.

A. They will average about the same.

Mr. LYNDE:

Q. You made some statement, Mr. Tomlinson, as to the average cost of delivering live stock at the Union Stock Yards in Chicago, which you said you had prepared from the sworn statements of the railroads involved in the $2.00 terminal charge case. Now, did you in that connection consider and examine the testimony of the witnesses, especially Mr. Gardner's testimony on the subsequent hearing in that case or did you make them up from statements
2671 filed on the original hearing in 1902?

A. Made it up from statements filed on the original hearing.

Mr. COWAN:

Q. I just want to ask one question. Is there any such thing as a rate per ton per mile?

A. No, it is a most unfair basis of a comparison and it means nothing.

Mr. DAWES:

Q. Haven't you used it here as a basis of comparison right along?

A. Only to a very slight extent.

Q. Wherever you have used it, it is unfair.

A. I say it does not accurately represent true conditions and I used the comparison simply because the railroads put in some figures on the same basis.

Mr. RANSOM:

Q. How do you arrive at the conclusion that the rates are not properly adjusted?

A. Because relatively they are higher from Iowa points than into South Omaha.

Q. What do you mean by "relatively," relative to what?

A. If you will take the exhibits on file here showing the distance in that Iowa schedule——

Q. What do you mean by "the Iowa schedule?"

A. I mean the schedule published by the Iowa Railroad & Warehouse Commission.

2672 Q. But we are talking about Interstate tariff into the Missouri river. They don't make rates into the Missouri river.

A. They make rates into Council Bluffs.

Q. But they don't make them into the packing house points. Tell me what you mean by "relatively," relative to what?

A. I mean that upon any proper theory where rates advance upon a sensible schedule, that is not proportionately for distance, in other words not what is understood as a per ton per mile schedule, that the rates from Iowa points to Chicago——

Q. I didn't ask you anything about that.

The COURT: Let him answer.

A. (continued). The rates from Iowa points to Chicago and from Minnesota and Wisconsin points to Chicago are relatively higher than the rates from the same territory into Missouri river or St. Paul.

Mr. RANSOM:

Q. Relative to what?

A. To each other.

Q. Considering the distance?

A. Yes.

Q. And you base all your statements on the Iowa distance tariff?

A. And on the Illinois schedule and the schedule of the Central Freight Association.

Q. You only calculate then into Council Bluffs, don't you?

2673 A. I don't calculate them to any market, I calculate them according to the Iowa distance tariff and according to those exhibits, it shows that the rates out of that territory are less than they are from——

Q. Well, you know well enough that the Iowa distance tariff don't rule the rates from western Iowa points into South Omaha, don't you?

A. No, I don't.

Q. You don't know that?

A. No sir.

Q. Do you think that the Iowa Commission makes rates into *South Omaha*?
A. I think the railroads——
Q. Do you think so?
A. In so far as the schedule of the Iowa Commission is used, yes.
Q. Who uses it?
A. The railroads in publishing rates into South Omaha use the schedule of the Iowa Commissioners plus the bridge toll.
Q. What is the bridge toll?
A. $4.00 a car.

Mr. Ransom: That is all.

R. C. Richards, called as a witness on behalf of the complainant in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Lynde:

Q. State your name, residence and occupation?
2674 A. R. C. Richards, Geneva, Illinois, Chief Claim Agent of the Chicago & North Western Railway Company.
Q. How long have you held that position with the North Western?
A. About 24 years.
Q. How wide is your jurisdiction over claims against that company?
A. I have charge of the investigation and adjustment of claims for loss and damage, freight claims, claims for personal injuries, for property destroyed by fire and a miscellaneous run of claims.
Q. Practically all the claims.
A. Except overcharges and claims for damage to land, the real estate part of it.
Q. Your control over the adjustment of those claims is absolute, isn't it?
A. Well, of course I am subject to the people that appointed me but I am supposed to look after the claims.

The Court:

Q. Every claim has to go through your hands?
A. Yes.

Mr. Lynde:

Q. That relates to and includes claims for damages to live stock and also claims for damages on account of loss on packing-house products or dressed meat shipments?
A. It does.
Q. And is delays to live stock included in that?
2675 A. Yes.
Q. What is the principal cause of claims on account of live stock, Mr. Richards?
A. Most always on account of delays in transportation.
Q. Delays in transportation?
A. Yes.

Q. How about the claims on account of loss or damage to meat or packing-house products?

A. They are most always for damage to property on account of failure to take proper care of the property while in transportation.

Q. Where the property then in some way has deteriorated in quality?

A. Yes.

Q. By reason of failure to take care of it?

A. Yes.

Q. Have you prepared or had prepared a statement showing the claims which were paid by you during the year 1904 for loss and damage on meat and packing-house products?

A. I did have such a statement prepared.

Q. Is that it? (handing statement to witness).

A. That is the statement. That top sheet is just some credits. The list of the claims is underneath there.

Q. That is the entire year beginning——

A. January 1st to December 31st, 1904.

The COURT:

Q. What was it you said about the claims for delays on the
2676 products?

A. I said those claims were nearly always for damage to the property on account of not being cared for properly while being transported, failure to ice the cars, etc.

Q. How much do they all amount to in one year?

A. The statement shows there, I think it is $5,000.00.

Q. $5,415.00?

A. Yes sir.

Mr. LYNDE:

Q. That is under the head of Chicago & North Western Railway proportion?

A. Yes.

Q. I wish you would explain to the court just what you mean by those two columns.

A. One column shows the total amount of the claim as paid. Another column shows the amount paid by the North Western and the other column shows the amount paid by the other lines that participated in the haul.

Q. Where the claims arise on our own rails, is the claim participated in then by other lines?

A. It is not, that is where we have the whole haul.

Q. But where we are connecting carriers with others, then the claim is proportioned on a mileage basis?

A. On a mileage basis.

The COURT:

Q. These are all small items?
2677 A. Yes.

Q. You haven't very many with S. & S.?

A. No sir, they don't do much shipping with us.

Mr. LYNDE:

Q. Is that true also in cases of those claims on account of wrecks or anything of that kind, is it then based on the mileage basis?
A. Of course a claim on account of a wreck would be charged to the road on which the wreck occurred. It would not be pro rated among the different roads.

Mr. DAWES:

Q. It is only where you cannot determine just where the damage to the property was incurred or commenced?
A. Yes. We divide up the damage claims on the mileage rate and the loss claims on the revenue basis.

Mr. LYNDE:

Q. And that is determined by the rules of the——
A. Freight Claim Association.
Q. You list also here the names of all claimants?
A. They are all shown there.
Q. Now, Mr. Richards, in reference to these claims when presented, what investigation was made by you?
A. We investigate to find out whether or not the claim is meritorious. If it is meritorious the claim is allowed.
Q. That applies, of course, only to claims for loss occurring
2678 on our own line?
A. Yes.
Q. You cannot investigate claims that arise elsewhere?
A. Well, I could but I do not.
Q. You rely on the investigation made by the other company?
A. I do.
Q. You have business enough on your own line, haven't you?
A. Yes.
Q. State whether in fact those claims so shown upon this statement are all *bona fide* claims paid by you during that period?
A. They are.

Mr. LYNDE: That may go in as Richards' Exhibit No. 1.
(Paper so marked.)

Q. Look at that statement and explain what that is. (handing paper to witness).

2678*a* RICHARDS' EXHIBIT No. 1, Trans., p. 2678.

No 1.

Statement of Amount Paid in Settlement of Claims for Loss and Damage on Meat in the Year 1904.

Claim No.	Claimant.	Date.	Amount paid.	C. & N. W. Ry. Prop.
K-16326	Martin Dooley	1/13/04	$1.95	$1.95
K-2723	Morris & Co.	1/14/04	6.00	6.00
E-67918	Cudahy Packing Co.	1/15/04	130.78	130.78
K-13227	Schwarzschild & S.	1/15/04	7.83	7.83
H-77585	Swift & Co.	1/15/04	17.64	17.64
H-93915	Cudahy Packing Co.	1/15/04	73.04	23.36
K-2884	" " "	1/15/04	9.41	9.41
K-13107	" " "	1/15/04	6.66	6.66
K-7064	" " "	1/15/04	82.86	83.86
H-97369	Swift & Co.	1/19/04	4.18	4.18
K-16154	H. Baumhover	1/21/04	3.00	3.00
K-2197	A. Olinger	1/22/04	1.50	1.50
K-20290	Milcher & Irvin	1/26/04	3.69	3.69
K-14313	Froehlich & Deiter	1/26/04	3.50	3.50
K-2352	L. B. Albight & Co.	1/30/04	15.56	13.82
K-8963-5	Libby McNeill & L.	1/30/04	8.09	8.09
K-3092	Swift & Co.	1/30/04	3.40	1.12
K-2724	Morris & Co.	2/1/04	6.50	6.50
K-4974	" "	2/1/04	2.75	2.75
K-13012	Armour & Co.	1/29/04	2.70	2.70
K-2722	Morris & Co.	2/6/04	3.63	3.63
H-76629	Plankington Packing Co.	2/6/04	72.53	72.53
K-18780	Swift & Co.	2/11/04	1.70	1.70
H-82470	Cudahy Packing Co.	2/11/04	11.85	11.85
K-14925	Armour & Co.	2/18/04	9.40	9.40
K-30094	J. E. Anderson & Co.	2/12/04	1.24	1.24
K-26843	Fred. Hyer	2/29/04	.85	.85
K-3098	Cudahy Brothers Co.	2/15/04	6.19	3.09
K-4817	Armour & Co.	2/15/04	4.96	4.96
H-82436	" "	2/15/04	9.21	9.21
K-1104	Omaha Packing Co.	2/24/04	2.75	2.75
K-15540	Hammand Packing Co.	2/24/04	1.13	1.13
K-232	Cudahy Brothers Co.	2/29/04	21.50	21.50
K-31816	Cudahy Packing Co.	3/1/04	2.00	2.00
K-31820	Swift & Co.	3/1/04	3.50	3.50
K-19114	Armour & Co.	3/12/04	10.01	10.01
K-3584	" "	3/15/04	5.97	5.97
K-15720	" "	3/15/04	10.65	5.15
K-31476	Libby McNeill & L.	3/15/04	4.25	4.25
K-13226	Schwarzschild & S.	3/15/04	5.87	5.87

H-81823	Swift & Co.	3/15/04	298.26	298.26
E-00691	Libby McNeill & L.	3/15/04	4.50	4.50
K-17177	Armour & Co.	3/15/04	43.46	19.76
K-25169	Gust. Keeler	3/15/04	3.50	3.50
K-19541	S. & S. Co.	3/23/04	1.10	1.10
K-27706	Armour & Company	3/31/04	7.88	7.88
K-19813	Swift & Co.	3/31/04	7.76	7.76
H-61649	Cudahy Packing Co.	3/31/04	133.85	133.85
K-4980	" " "	3/31/04	107.30	107.30
K-17312	" " "	3/31/04	99.93	99.93
K-14564	" " "	3/31/04	3.37	3.37
K-21014	" " "	3/31/04	4.75	4.75
H-74556	" " "	3/31/04	24.20	9.65
H-40108	Agar Packing Co.	3/31/04	656.90	200.55
H-22994	Cudahy Packing Co.	4/1/04	6.50	6.50
K-17389	" " "	4/1/04	11.72	11.72
H-97945	" " "	4/1/04	7.80	7.80
K-31967	H. A. Armstrong	4/5/04	6.30	6.30
K-32032	Nelson Morris & Co.	4/6/04	2.75	2.75
K-27171	Swift & Co.	4/6/04	1.69	1.69
K-19113	Armour & Co.	4/6/04	5.41	5.41
K-32397	" "	4/12/04	.90	.90
K-77850	Libby McNeill & L.	4/28/04	2.80	2.80
	Carried Forward			

2678*b* No. 2.

H-93602	L. H. Heinemay	4/15/04	7.43	7.43
H-58277	G. W. Swartz	4/15/04	4.38	4.38
K-20782	S. & S. Co.	4/15/04	11.07	11.07
H-81636	Cudahy Packing Co.	4/15/04	9.57	9.57
K-14362	" " "	4/15/04	10.88	10.88
K-1463	" " "	4/15/04	4.63	4.63
K-16382	" " "	4/15/04	2.10	2.10
K-3097	Swift & Co.	4/15/04	5.74	5.74
K-17620	Elliott & Co.	4/15/04	8.46	8.46
K-31623	Bodden Packing Co.	4/15/04	3.08	3.08
K-46645	Swift & Co.	4/15/04	13.00	13.00
K-27705	Armour & Co.	4/30/04	61.24	61.24
K-26977	Swift & Co.	4/31/04	22.72	22.72
K-22865	G. H. Hammond & Co.	4/30/04	108.74	108.74
H-89318	Libby McNeill & L.	4/30/04	7.08	7.08
K-28234	Cudahy Packing Co.	5/1/04	7.66	7.66
K-29999	Armour & Co.	5/1/04	4.76	4.76
K-28124	Swift & Co.	5/1/04	20.75	20.75
K-29987	" "	5/1/04	6.51	6.51
K-32246	Cudahy Packing Co.	5/1/04	10.34	10.34
K-36750	" " "	5/1/04	12.65	12.65
K-36751	" " "	5/1/04	9.14	9.14
K-38058	" " "	5/1/04	5.78	5.78
K-38006	Swift & Co.	5/4/04	4.05	4.05

K-24670	W. A. Pieh	5/10/04	5.65	5.65
K-23987	Parks Groc. Co	5/14/04	9.99	9.99
K-36546	S. & S. Co	5/14/04	10.90	10.90
K-17094	Armour & Co	5/15/04	20.72	20.72
K-22221	Cudahy Packing Co	5/15/04	90.23	90.23
H-61651	" " "	5/15/04	203.68	203.68
H-63133	" " "	5/15/04	15.00	15.00
K-6816	" " "	5/15/04	11.16	11.16
K-31900	Morris & Co	5/15/04	8.33	1.33
K-24216	F. I. Johansen	5/15/04	18.46	8.46
K-29193	Schuett Bros.	5/16/04	2.00	2.00
K-29525	E. H. Kimbell	5/18/04	4.48	4.48
K-5457	Cudahy Packing Co	5/23/04	31.20	31.20
K-21506	Swift & Co	5/27/04	1.92	1.92
K-29504	Libby McNeill & L	5/31/04	1.25	1.25
K-33922	" " " "	5/31/04	54.98	54.98
K-32768	Cudahy Bros. Co	5/31/04	8.25	3.52
K-8890	S. & S. Co	5/31/04	43.50	43.50
K-23119	C. Frill	5/31/04	5.00	5.00
K-39208	Cudahy Packing Co	6/1/04	1.15	1.15
K-39277	" " "	6/1/04	2.09	2.09
K-39237	Swift Co	6/1/04	.25	.25
K-39238	" "	6/1/04	2.38	2.38
K-25960	Armour & Co	6/4/04	18.20	18.20
K-19810	S. & S. Co	6/4/04	4.00	4.00
H-82794	Cudahy Bros Co	6/8/04	3.38	3.38
K-40448	W. C. Harris	6/14/04	2.00	2.00
K-24386	S. & S. Co	6/15/04	54.64	54.64
K-35565	Swift Co.	6/15/04	3.54	3.54
K-28293	" "	6/20/04	7.39	7.39
K-24326	Armour & Co	6/20/04	5.12	5.12
K-45166	" "	6/21/04	7.50	7.50
K-45018	Omaha Packing Co	6/21/04	42.80	42.80
K-40612	T. M. Sinclair & Co	6/30/04	6.38	6.38
K-45357	Swift & Co	6/30/04	6.27	6.27
K-33370	Armour & Co	6/30/04	8.50	8.50
K-29430	T. M. Sinclair Co	6/30/04	7.93	7.93
K-15802	Cudahy Packing Co	6/31/04	5.90	5.37
K-52317	Swift & Co	7/1/04	1.50	1.50
K-33275	" "	7/1/04	3.26	3.26
K-52318	Cudahy Packing Co	7/1/04	2.35	2.35
K-39743	J. Snipe	7/7/04	1.00	1.00
	Carried Forward			

2678c No. 3.

K-55334	T. Wills	7/15/04	4.00	4.00
K-51262	Roew Kamp Bros	7/15/04	3.00	0.00
K-47155	F. J. Trottier	7/20/04	5.74	5.74
K-55530	L. Steckbauer	7/26/04	6.49	6.49
K-41285	C. C. Chocak	7/28/04	4.03	4.03

K-55015	Swift & Co.	7/28/04	7.15	7.15
K-47100	Cudahy Bros. Co.	7/28/04	1.50	1.50
K-47597	Plankington Oacking Co.	7/28/04	8.58	8.58
K-55028	T. M. Sinclair & Co.	7/29/04	14.76	14.76
K-40430	Nelson Morris Co.	7/30/04	50.22	16.64
K-51148	Libby McNeill & L.	7/30/04	11.14	1.54
K-3094	Swift & Co.	7/30/04	9.78	9.78
K-51149	Swift & Co.	7/30/04	14.33	14.33
K-32564	Nelson Morris & Co.	7/30/04	2.70	2.70
K-40424	Armour & Co.	7/30/04	138.36	100.84
K-48297	Cudahy Packing Co.	7/31/04	190.29	190.29
K-71395	" " "	7/31/04	4.50	.59
K-45317	" " "	7/31/04	11.83	2.90
K-22826	Agar Packing Co.	7/31/04	5.01	5.01
K-24047	S. & S. Co.	7/31/04	11.28	11.28
K-43474	C. Shenkberg	8/1/04	2.95	2.95
K-47692	E. W. Bartlett	8/1/04	5.85	5.85
K-47674	Brittain & Co.	8/1/04	13.65	13.65
K-52396	N. Berter & Sons	8/2/04	3.63	3.63
K-42085	Rocho Bros.	8/4/04	3.05	3.05
K-52629	M. F. Krebsky	8/11/04	24.50	24.50
K-41913	P. E. Cohn	8/12/04	3.78	3.78
K-47099	Cudahy Bros. Co.	8/12/04	6.12	6.12
K-34981	C. R. Wagner	8/15/04	15.69	15.69
K-40252	Armour & Co.	8/15/04	8.00	5.95
K-33687	Cudahy Bros. Co.	8/15/04	4.05	4.05
K-14589	T. M. Sinclair & Co.	8/15/04	25.25	14.25
K-40851	Armour & Co.	8/17/04	1.52	1.52
K-50774	Swift & Co.	8/20/04	4.20	4.20
K-48317	Plankington Packing Co.	8/22/04	9.53	9.53
K-53023	C. Casperson	8/22/04	12.50	12.50
K-52492	Swift & Co.	8/25/04	22.33	22.33
K-42031	Libby McNeill & L.	8/25/04	5.15	5.15
K-41844	F. A. Kawtowski	8/25/04	20.77	20.77
K-26591	Swift & Co.	8/30/04	23.21	23.21
K-50569	S. & S. Co.	8/31/04	3.88	3.88
K-52494	Swift & Co.	8/31/04	7.88	7.88
K-51924	Armour & Co.	8/31/04	4.81	2.81
K-51750	Swift & Co.	8/31/04	8.48	2.47
K-50242	Nelson Morris Co.	8/31/04	22.20	22.20
K-47431	Plankington Pkg. Co.	8/31/04	13.11	13.11
K-38610	Libby McNeill & L.	8/31/04	11.64	11.64
H-74630	Swift & Company	8/31/04	12.93	12.93
K-48384	Finnish & S. Merc. Assn.	8/31/04	2.00	2.00
K-50057	P. S. Englebrecht & Co.	8/31/04	19.21	19.21
K-40824	G. W. Randall & Co.	8/31/04	22.82	22.82
K-6056	A. E. Cayer	8/31/04	15.50	15.50
K-37815	Mrs. E. H. Kimball	8/31/04	4.78	4.78
K-47405	H. L. Brown & Son	8/31/04	17.50	17.50
K-57602	Cudahy Packing Co.	9/1/04	3.84	3.84
K-49747	Peterson Bros.	9/1/04	1.30	1.30

K-52352	Swift & Co.	9/15/04	3.04	3.04
K-40963	" "	9/15/04	8.09	8.09
K-49556	Cudahy Packing Co.	9/15/04	.58	.58
K-49550	Plankington Pkg. Co.	9/15/04	6.53	6.53
K-42553	Bodden Packing Co.	9/15/04	6.00	6.00
K-44510	Nelson Morris & Co.	9/15/04	1.00	1.00
K-56838	Swift & Co.	9/15/04	7.99	7.99
K-42999	Iowa Food Co.	9/15/04	39.83	39.83
K-56484	Coleman Bros.	9/15/04	.85	.85
K-57058	M. Telot	9/15/04	1.74	1.74
	Carried Forward			

2678*d* No. 4.

K-44068	Karls Bros.	9/15/04	2.42	2.42
K-43857	Harnern & Balcom	9/15/04	10.50	10.50
K-56715	Brittan & Co.	9/16/04	4.68	4.68
H-39015	Cudahy Packing Co.	9/30/04	64.75	64.75
K-64915	Swift & Co.	9/30/04	8.32	8.32
K-58650	Cudahy Packing Co.	10/1/04	2.98	2.98
K-39122	" " "	10/1/04	19.18	19.18
K-54458	O. Erickson	10/15/04	1.93	1.93
K-48699	Elce & Erickson	10/15/04	2.75	2.75
K-32315	Swift & Co.	10/15/04	3.63	3.63
K-44772	Omaha Packing Co.	10/15/04	1.60	.83
K-49392	Plankington Pkg. Co.	10/15/04	4.23	4.23
K-50770	Swift & Co.	10/15/04	16.67	16.67
K-54805	J. E. Anderson & Co.	10/31/04	3.80	3.80
K-58364	A. H. Livermore	10/31/04	3.04	3.04
K-38477	Karsen Thorne	10/31/04	174.40	174.40
K-54474	Landon & Boyd	10/31/04	1.50	1.50
H-5430	Cudahy Packing Co.	10/31/04	61.82	61.82
K-43556	T. M. Sinclair & Co.	10/31/04	129.04	129.04
K-49722	Swift & Co.	10/31/04	10.62	10.62
K-43788	Nelson Morris & Co.	10/31/04	8.69	8.69
K-48398	Swift & Co.	10/31/04	8.77	8.77
K-56253	" "	10/31/04	5.95	5.95
K-48444	Swift & Co.	10/31/04	4.90	4.90
K-58928	T. M. Sinclair & Co.	10/31/04	9.71	9.71
K-57522	Cudahy Bros. & Co.	10/31/04	5.37	5.37
K-58212	Cudahy Packing Co.	10/31/04	5.00	5.00
H-48642	Cudahy Packing Co.	10/31/04	20.02	20.02
K-8753	" " "	10/31/04	294.00	32.00
K-49623	Swift & Co.	11/1/04	7.10	7.10
K-61122	Cudahy Packing Co.	11/1/04	3.00	3.00
K-61204	Swift & Co.	11/1/04	1.72	1.72
K-53219	" "	11/1/04	1.37	1.37
K-72594	" "	11/1/04	12.75	12.75
K-48147	H. R. Edwards	11/1/04	8.42	8.42
K-6553	C. H. Jacop	11/15/04	6.52	3.35
H-82489	D. B. Cousibin	11/15/04	12.85	12.85

K-58931	T. M. Sinclair & Co.	11/15/04	3.83	3.83
K-58933	" " " "	11/15/04	2.01	2.01
K-19811	S. & S. Co.	11/15/04	6.23	6.23
K-42958	" " " "	11/15/04	2.25	2.25
K-59435	Armour & Co.	11/15/04	3.09	3.09
K-46991	C. J. Gardner	11/15/04	4.49	4.49
K-44285	Cudahy Bros. Co.	11/15/04	7.93	7.93
K-58383	" " "	11/15/04	3.50	2.10
K-65226	Swift & Co.	11/15/04	9.75	9.75
K-58182	Cudahy Packing Co.	11/28/04	1.44	1.44
K-47236	" " "	11/28/04	60.18	60.18
K-1040	" " "	11/28/04	17.85	17.85
K-32561	" " "	11/28/04	87.66	87.66
H-74557	" " "	11/28/04	3.40	.66
K-1077	Swift & Co.	11/28/04	.40	.40
K-756	T. M. Sinclair & Co.	11/30/04	10.60	10.60
K-75198	Armour & Co.	11/30/04	4.56	1.41
K-62663	Cudahy Packing Co.	12/1/04	.85	.85
K-62818	" " "	12/1/04	3.91	3.91
K-62817	" " "	12/1/04	6.00	6.00
K-62815	" " "	12/1/04	2.00	2.00
K-62814	" " "	12/1/04	2.00	2.00
K-62813	" " "	12/1/04	1.94	1.94
K-62771	" " "	12/1/04	6.63	6.63
K-70254	Swift & Co.	12/1/04	2.07	2.07
K-70359	" "	12/1/04	20.84	20.84
K-72595	" "	12/1/04	11.56	11.56
K-43534	J. Darrow	12/2/04	1.02	1.02
K-66299	J. B. Countrymann Co.	12/15/04	4.80	4.80
	Carried Forward			

2678e No. 5.

K-56679	J. Moreau	12/15/04	5.36	5.36
K-66365	Bainab & Davis	12/15/04	13.77	14.77
K-52617	J. E. Decker & Sons	12/31/04	9.95	9.95
K-66641	H. Martin	12/31/04	6.64	5.45
K-76802	J. Widman	12/31/04	2.30	2.30
K-52994	Swift & Co.	12/15/04	100.00	100.00
K-27073	Armour & Co.	12/15/04	13.84	13.84
K-59621	" "	12/15/04	11.75	11.75
K-54921	T. M. Sinclair & Co.	12/15/04	14.83	14.83
K-53088	Armour & Co.	12/15/04	8.00	8.00
K-56254	Swift & Co.	12/15/04	21.58	21.58
K-75642	Armour & Co.	12/15/04	5.03	5.03
K-58528	C. G. Kriell	12/15/04	.56	.56
K-71941	Plankington Pkg. Co.	12/31/04	10.94	10.94
K-19177	Cudahy Bros. Co.	12/31/04	6.75	6.75
K-66329	Morris & Co.	12/31/04	16.00	9.55

K-75279	Cudahy Packing Co.	12/31/04	7.13	7.13
K-76160	" " "	12/31/04	1.70	1.70
K-59052	" " "	12/31/04	10.79	10.79
K-42295	Swift & Co.	12/31/04	4.37	4.37
K-44749	Armour & Co.	12/31/04	5.44	3.55
K-75641	" "	12/31/04	6.02	6.02
K-75743	Nelson Morris Co.	12/31/04	22.91	22.91

2678*f* Statement Showing Number of Claims Entered and Amount Paid out in Settlement of Damage and Loss Claims During the Year- 1903, 1904, and 1905.

No. of claims.	Year.	Amount.
54103	1903	$287644.86
56495	1904	345151.17
57229	1905	283176.38

Statement Showing Number of Claims Entered and Amount Paid Out in Settlement of Live Stock Claims During the Year- 1903, 1904, and 1905.

No. of claims.	Year.		Amount.
1358	1903 (delay only)		$49266.70
1246	1904 (" ") from Jan. 1st to Aug. 1st	$39656.43	
	Loss, damage & delay	13825.70	
		$53482.13	
			$53482.13
1453	1905 (loss, damage & delay)		$40235.63

Richards Ex. Trans. p. 2679.

2678*g* Statement of Accidents Occurring on The Chicago & Northwestern Railway Between January 1st, 1905, and June 30th, 1904, in Which Persons Riding on Stock Passes were Injured.

Number.	Name.	Place.	Date.	Cost.
A-72338	John Platt.	Calamus, Iowa	2-3-04	$25.00
A-72614	Wm. Beeks.	U. S. Yards	2-24-04	
A-72817	Isaac Walker	Baraboo, Wis.	3-3-04	2085.00
A-73484	M. O. Callan	Alcester, S. D.	4-9-04	
A-76760	Hans Zimmer	Near Omaha.	4-18-04	
A-73998	O. H. Foss.	Kiron, Iowa	5-17-04	80.00
A-74003	Peter Ehlers.	Surprise, Nebraska.	5-16-04	10.00
A-74242	I. M. Olson.	40th., Chicago	6-1-04	250.00
A-74413	John A. Klous	Alton, Iowa.	6-6-04	50.00
				$2500.00

All properly on trains.

Persons Injured on Trains While in Charge of Cars of Emigrant Moveables January 1st, 1904, to June 30th, 1904.

Number.	Name.	Place.	Date.	Cost
A-72384	Frank Howard	Geneva, Illinois	2-8-04	25.00
A-72872	Wm. Switzer..... ...	Mo. Valley, Iowa.....	3-2-04	25.00
				$50.00

Persons Injured While Loading Stock (Not Riding on Trains) January 1st, 1904, to June 30th, 1904.

Number.	Name.	Place.	Date.	Cost.
A-72491	A. J. Leonard.....	Algona, Iowa..... . .	2-13-04	$15.00
A-72634	E. H. Carmichael.	Dunlap, Iowa.....	2-20-04	2.00
				$17.00

Richards, Ex. — Trans. p. 2679.

2679 A. Well, that is a statement showing the number of freight claims that were presented during the years 1903, 1904 and 1905; the amount paid in settlements; the number of stock claims that were presented, and a statement also showing the amount paid, the number of people transported on stock trains that were killed or injured, and the amounts paid in settlement of claims arising from those accidents.

Q. For those three years?

A. For those three years.

Q. Referring to the item for 1903, what is the amount?

A. Some $48,000.00 on account of injuries to persons transported, on stock claims.

Q. I wish you would explain what was the occasion for that particularly large item that year?

A. The amount was $49,850.00, to be accurate, and that large amount was caused principally by reason of a very serious wreck we had at La Fox, in which there was a large number of stock men killed and injured.

Q. That amount was paid on account of those claims?

A. Paid in settlement of those claims.

Q. There is a large number of suits pending on account of that wreck now, is there not?

A. They are all closed up.

Q. I will ask you to look at that statement, and explain what that is. (Handing statement to the witness.)

2679*a* Statement of amounts paid out during the year 1904 for damage and loss to freight as follows:

Damage and loss to—				
Live stock.		Packing house products and fresh meats.		
From—				
West of Mo. River.	Points in Iowa.	Sioux City.	So. Omaha.	St. Paul.
$11901.06	$17672.34	$1375.78	$2883.71	$530.98

Statement of Amounts Paid Out for Loss and Damage to Live Stock During the Years 1902, 1903, 1904, and 1905.

Date.	Amount.	Estimated No. of cars shipped.	Average per car.
1902	$57868.50	75000	$ .77
1903	$63893.16	75000	.85
1904	$59248.44	75000	.79
Jan. to July, 1905...	$27073.03	37500	.73
	$208083.13		

Richards Ex., Trans. p. 2680.

2679*b* C. & N. W. R. R.

Statement.

Years Ending June 30th.

	1903.	1904.	1905.
Freight Claims Presented...	47,905	58,327	54,789
Amount Paid in Settlement of Freight Claims.....	$267,305.81	$327,699.07	$309,489.54
Stock Claims Presented.....	1,470 (Nov. to June)	1,155	1,337
Amounts Stock Claims were Originally Presented for..	$121,050.57 (Nov. to June)	$112,466.56	$113,616.53
Stock Men Injured While Riding on Stock Transportation	42	11	13
Amounts Paid in Settlement of Cases of Stock Men Injured.....	$49,850.70	$2,691.00	$2,077.01

Years Ending December 31st.

	1903.	1904.	1905, Jan'y to June.
Amounts Paid in Settlement of Stock Claims.....	$63,893.16	$59,248.44	$27,073.03

Ex. 15.

2679*c* C. & N. W. R. R.

Statement Showing Amount Paid Out for Damage and Loss on Live Stock During the Eight Months Ending August 31st, 1905, East and West of the Missouri River.

West of the Missouri River.....	$3264.78	10.4%
East " " " "	27969.71	89.6%
Total.	$31234.49	

Ex. 14.

2680 A. That is a statement made up to show for the eight months of this year the amount paid in settlement of claims for damage to live stock in transit, or for delay to live stock, or both, on the line east of the Missouri river, the line west of the Missouri river belonging to the Northwestern.

Q. State the amounts?

A. West of the Missouri river the amount paid was $3,264.78; east of the Missouri river the amount paid was $27,669.71; the total was $31,234.49 for the first eight months of this year.

Mr. COWAN:

Q. That year, 1903, of the disastrous wreck, occasioning the large amount of personal injuries, was exceptional, was it not?

A. Yes, sir, fortunately.

Q. Do you know the number of live stock cars handled by your company?

A. I only know in a general way.

Q. Generally what is it?

A. About 100,000 a year, I understand.

Q. The largest proportion is on the lines east of the Missouri river?

A. Yes, sir.

Mr. LYNDE: I think it appears from the evidence about 90,000.

Mr. COWAN: He says he knows in a general way that it is about 100,000.

Mr. LYNDE: I prefer that the statistics go in.

Mr. COWAN: I supposed the other statement was a general

2680*a* Statement of amounts paid out during the year 1904 for damage and loss to freight, as follows:

Damage and Loss to—				
Live Stock.		Packing house products and fresh meats.		
		From—		
West of Mo. River.	Points in Iowa.	Sioux City.	So. Omaha.	St. Paul
$11,901.06	$17,672.34	$1375.78	$2883.71	$530.98

Statement of Amounts Paid Out for Loss and Damage to Live Stock During the Years 1902, 1903, 1904 and 1905.

Date.	Amount.	Estimated No. of cars shipped.	Average per car.
1902.....	$57868.50	75000	$ .77
1903.....	$63893.16	75000	.85
1904.....	$59248.44	75000	.79
Jan. to July 1905...	$27073.03	37500	.73
	$208083.13		

Richards Ex. —, Trans. p. 2680.

2681 statement.

Mr. LYNDE: No, the other statement was made by the general manager in the Traffic Department.

The COURT: Any other questions?

Mr. LYNDE: That is all.

J. J. RYAN, called as a witness in behalf of the complainants, having been first duly sworn, testified as follows:

Direct examination by Mr. COWAN:

Q. State your name and what your business is and where you live?

A. My name is J. J. Ryan; I live at Fort Dodge, Iowa; my business is farmer and secretary of the Corn Belt Meat Producers' Association.

The COURT: Speak a little louder.

Mr. COWAN: Speak right up.

The WITNESS: My business is farmer, cattle feeder and shipper.

Q. You are Secretary of the Corn Belt Meat Producers' Association?

A. Yes, sir.

Q. In the course of your business as such secretary have you acquainted yourself on the matter pertaining to freight rates in your part of the country on shipments of live stock to Chicago

2682 and elsewhere?

A. Yes, sir.

Q. Are you able to state whether or not those rates are reasonable or otherwise?

Mr. LYNDE: I object.

The COURT: You may answer the question, whether you state it or not.

The WITNESS: Answer it?

The COURT: Are you able to state whether they are reasonable or not, not what they are?

The WITNESS: Yes, sir, I am able to state.

Mr. COWAN: Then answer the other question.

The WITNESS: What was the question?

The COURT: Did you say whether you are able to state or not?

The WITNESS: Yes.

The COURT: Ask him how he is able to state.

Mr. COWAN:

(Q.) Were the rates reasonable or not?

The COURT: Let him show what he bases his judgment upon that he can state it first.

Mr. COWAN: State what your reasons are?

The WITNESS: For saying——

The COURT: What makes you think you know whether they are reasonable or not?

Mr. COWAN: That is the question I asked him. Now I want to ask him his reasons for it.

2683 The WITNESS: Because I know what the rates are from other places on live stock and I know what the rates are on several other commodities.

The COURT: What have you done in the way of investigating shipments on the different rates and comparing them?

The WITNESS: Well, I haven't made any general investigation further than what I have known as I picked it up right along in my business, going over my business, and my intercourse with people that know.

Mr. DAWES: I submit he can't help us, your Honor, in this case, unfortunately.

The COURT: It doesn't seem to me he can, Mr. Cowan.

Mr. COWAN: I am just leaving it for him, whether he knows.

The WITNESS: I don't know as the question——

The COURT: Do you think you have investigated the matter enough to know whether the railroads are charging too much or too little, whether they are making money on these rates or not?

The WITNESS: Your Honor, that wasn't the question. I haven't had a question to that effect, if I understand.

The COURT: I asked that now.

The WITNESS: I think I have investigated the question enough to be able to know that the railroads are charging too much.

Mr. DAWES: I object. You were told not to answer that question.

2684 The WITNESS: Well, I didn't intend to do anything improper. Read the question, please.

Mr. COWAN:

Q. Have you investigated it enough to be able to form an opinion whether these rates are reasonable or not on live stock from Iowa points to Chicago?

A. What was the question, please?

The COURT: I don't believe he has. I will sustain the objection.

Mr. COWAN:

Q. Are you acquainted with the running time of the trains carrying live stock from your part of the country to Chicago?

A. Yes, sir.

Q. State what it is.

A. Well trains, where they carry stock alone, they make about 17 miles an hour, and trains where there is other freight along, where other freight is carried, they make about 15 miles an hour.

Q. Do the trains that carry live stock also carry other sorts of freight from Fort Dodge and that locality?

A. Yes, sir.

Q. How is the comparative time of the speed made now with w[illegible] it was a few years ago?

A. They make slower time.

Q. Explain in what way?

2685 A. They carry heavier trains and they compel the shippers to load earlier than they did. We used to load at our place at about 9 o'clock and get to Chicago—and the same

generally all through that neighborhood—and get to Chicago in time for the market, and now we have to load at five o'clock in the morning and get to Chicago no earlier.

Q. What other kind of freight have you noticed being hauled in live stock trains?

A. What other kinds of freight?

Q. Yes.

A. Why, dressed meat, and I have noticed land plaster or stucco, wall plaster being hauled, and such as that—grain.

Q. Are you able to state what the comparative value of the service to the shipper is now as compared with a few years ago?

A. I would say that the value of the service today is not—the service is not as valuable today as it was some years ago.

Q. How many years ago?

A. Five, or such a matter.

Mr. DAWES: What is the reason for that?

The WITNESS: For the reason that they make slower time and load their trains heavier.

Mr. COWAN:

Q. Do you know anything about the average value of live stock per hundred pounds and the average value of dressed meat and packing house products per hundred pounds?

A. I think I do.

2686 Q. What is it?

A. The average value of the live stock hauled from our country would be probably about $4.00 a hundred and the average value of the dressed meats according to the price at which they are sold, I should say would be somewhere between $6.50 and $7.00 per hundred.

Mr. DAWES: Value where, Fort Dodge?

The WITNESS: Yes, sir.

Mr. DAWES: You value the dressed meat at Fort Dodge and also the live stock?

The WITNESS: Yes, sir.

Mr. COWAN:

Q. Who furnishes the bedding for stock cars?

A. The shippers.

Q. Who puts it in the cars?

A. They do.

Q. Who sets the cars at the chutes?

A. Sometimes the railroads set them and sometimes the shippers.

Q. Under what circumstances do the railroads set them?

A. Well, at places where the shippers cannot handle the cars, where they have switch engines, sometimes they set them at stations where the yards—where the yards are in such a condition that the shippers can't run the cars to the chutes.

Q. Are you acquainted with the value of the stock yards on the railroads in Iowa?

A. The value of their yards at the different stations?

Q. Yes.

A. I think I am, yes, sir.
2687 Q. Do you know what the value of such construction is?

Mr. DAWES: Well, where? What stations? What roads?
Mr. COWAN: I said their stations in Chicago. I didn't name them.
The COURT: In Iowa. How many stations or pens have you examined at the different places in Iowa? Have you examined them so that you can say you are acquainted with the construction?
The WITNESS: I have seen perhaps one-fourth, at least, of the pens in the yards through the state, and I have noticed the pens throughout the state for the last fifteen or sixteen years.
The COURT: Well, go ahead.
Mr. DAWES: On what roads?
The WITNESS: Nearly all. There might be one or two I missed, but the principal part of them.
The COURT: Go ahead. What do you say about it?

Mr. COWAN:

Q. What in your opinion, is the value of those stock-yards with which you are acquainted?
A. I would say the average value is not to exceed $350.00 to $400.00.
Q. Do you know what the character of the repairs is that is made on them to keep them up and what the value of such repairs is?
A. Well, the repairs are very limited that are put on those yards.
In a great many instances the shippers have to repair the
2688 yards themselves.

The COURT: Whose road is that on?
The WITNESS: Well, at the Minneapolis & St. Louis I have seen shippers repair them themselves. I have repaired yards at the Great Western myself to keep my hogs from going through the cracks.
Mr. DAWES: Do you mean all the yards on the Great Western.
The WITNESS: At Fort Yards.
Mr. DAWES: You said the yards of the Great Western.
The WITNESS: The yards would refer to the bunch of yards.
Mr. DAWES: Would it?
The WITNESS: Yes.
Mr. DAWES: I didn't know.

Mr. COWAN:

Q. What is the size of those pens?
A. They are generally about 40 feet square, I think.
Q. How many pens to the yard?
A. Well, some have two and some have four.
Q. What in your opinion, is the cost of keeping them in repair?

Mr. DAWES: He has just said it didn't cost anything. He has just answered that question.
Mr. LYNDE: He said it didn't cost the railroad anything.
The WITNESS: I didn't say it didn't cost anything.

1907

dressed meats and packing house products, such as hides, horns, bones, glue, and fertilizer, and then add to that the tonnage of supplies that go into the houses, you will find that it comes pretty close to the weight of the live animal, in the aggregate; and then the number of people employed in the live stock business compared with the number of people who find employment in the packing houses—one firm employs about 5,000 in one house at Kansas City and another 3,000—about 8,000 representing 30,000 or 35,000 population that have got to be clothed and supplied.

Commissioner PROUTY: You have to carry those supplies out there?

Mr. BIRD: Yes, sir; if the factory was here we would not carry it. We carry almost everything—the whole carcass of the animal. There is very little waste. There is more sprinkage in the blood of dressed beef than in the packing house products.

Commissioner FIFER: What effect does this differential
265 have on the producers and raisers of live stock. Are they interested most in having the packing house less than the live stock?

Mr. BIRD: I think to the producer of live stock there is a decided benefit in having the packing house there?

Commissioner PROUTY: I don't quite understand what you mean.

Mr. BIRD: I mean that the packing houses on the Missouri River give to the Western farmers much better prices for his live stock than they could get if they shipped to Chicago.

Commissioner PROUTY: And they had better have it slaughtered there?

Mr. BIRD: Yes, sir; he has better results—the Western producer. It is evident from the number of cattle going from Iowa into the Missouri River.

Commissioner PROUTY: Suppose you reduce the rate on live stock so people shipped to Chicago on the same terms; would they still continue to ship into the Missouri River?

Mr. BIRD: I had occasion to inquire into that—it is hearsay. I inquired what the relative prices were on the Missouri River for live stock at the time the rate on provisions and live stock was the same, and the consensus of opinion, or the answer that I obtained was that they obtained a better net result at the Missouri River than they could at Chicago when you take into account the additional haul of the live stock, the additional run and additional shrinkage; that the difference would not pay a reasonable freight rate.

The CHAIRMAN: Is that equivalent to saying that in your opinion if the rates to Chicago from these Iowa points of production were on the same basis, having reference to distance, as the rates from that same producing territory to Omaha, still the live stock would go to the Missouri River rather than to Chicago?

Mr. BIRD: I think within a certain reasonable zone; yes, sir; but when they come to equal distances, or approximately so, I
266 think the stock would come here. It does come now, in my opinion, much farther distances to Chicago than it does to the Missouri River.

The CHAIRMAN: What Mr. Tomlinson complains of is that the rates are so much higher on the live stock from this territory in Iowa to Chicago than they are to Omaha, having reference to distance; and now you say, in your opinion, that if they were put on the same basis, still the advantages of the near by market to the producer—that those advantages would lead the shipper to that market rather than to Chicago?

Mr. BIRD: My belief is that an enormous percentage of the live stock consumed at the Missouri River, at the packing houses, comes from west of the Missouri River. That which goes in there from the east side of the Missouri River—back westwardly to the river—is a very small percentage. Now, I cannot verify that without going into it, but I am sure that a very large proportion of the supply of live animals used by those packing houses come from the west; and if the packing house rate from the Missouri River was the same as the live stock rate, still the Western producer would get better general results by marketing his cattle on the Missouri River than in Chicago.

The CHAIRMAN: Now, one or two minor question-. In the very early part of your testimony you were speaking with reference to the rates from the Missouri River and you said that the lines east of Chicago get the same whether that traffic originates in Chicago or on the Missouri River.

Mr. BIRD: I think they do.

The CHAIRMAN: Is that true also of traffic that originates in St Paul?

Mr. BIRD: I believe it to be so.

The CHAIRMAN: So with reference to all the traffic here in controversy, cattle, hogs, sheep, dressed meat, and packing house products, whether originating at St Paul or on the Missouri River or at Chicago, the lines east of Chicago get exactly the same—
267 without reference to the point of origin?

Mr. BIRD: I think that is true.

The CHAIRMAN: Mr. Hanson, do you desire to ask Mr. Bird any questions?

Mr. HANSON: I was only brought into this case this afternoon, without notice and without conference, and I would like to talk with Mr. Bird and see if it is necessary to call him in the morning.

The CHAIRMAN: You will have an opportunity to call him if you desire to examine him. Mr. Kellogg, do you, or any of counsel for the railroads desire to interrogate Mr. Bird?

Mr. KELLOGG: Mr. Bird, is it not necessary that the rate to move farm products to far eastern points must necessarily be lower than the intermediate locals?

Mr. BIRD: I think if there was an attempt to handle all the farm products from far and near on the sums of the locals, it would narrow the zone of possible shipments to Eastern markets. In other words, the making up of through rates by adding the locals is impracticable.

Commissioner PROUTY: What do you mean by "local"?

Mr. BIRD: Well, the tariff rates from Kansas City to Chicago on

packing house products to-day is 20 cents. I do not believe that the system of making rates such as adding 20 to the rate from here east would, if applied to freight traffic, generally, especially to farm products, move the crops or farm products to market successfully after you get a certain distance.

Commissioner PROUTY: That is the way you have made the rate on packing house products in the past. You have added the rate from Kansas City to Chicago to the rate from Chicago to New York.

Mr. BIRD: Because those rates were at times unusually low, unreasonably low.

Commissioner PROUTY: You made the rate in that way when the rate was 23½ cents from Kansas City to Chicago, did you not?

Mr. BIRD: We thought it was too low. We got $70. a car
268 from Council Bluffs to Chicago on the old style of car.

Commissioner PROUTY: How do you make the rate on grain from Kansas City to Chicago?

Mr. BIRD: It is a proportional rate made up to the Mississippi River, and from thence to New York.

Commissioner PROUTY: Well, take the rate from Kansas City to St. Louis and the rate from St. Louis to New York, and the rate from Kansas City to Chicago and Chicago to New York?

Mr. BIRD: Yes; but the rate from the wheat-producing belt, away out in Kansas and beyond, to New York, are not made up of the locals from the wheat belt to Kansas City, Kansas City to Chicago, Chicago to Buffalo and Buffalo to Albany and Albany to New York.

Commissioner PROUTY: That is not what I meant by locals. If you take the locals every ten miles, that would not be so. You treat the rate from Chicago to New York as a local.

Mr. BIRD: It is not the local. It is the combination of rates of two systems of roads. The rate from here to New York on any commodity, certainly as a general proposition, is greater than from here to Buffalo and from Buffalo to New York on the same article, or combination on Pittsburg or any of the western Trunk Line termini.

The CHAIRMAN: Have you said all that you desire to say with reference to the history of these rates?

Mr. BIRD: I think I have, sir. I want to go back and make it plain that the establishment of the 23½ cents rate, which for a considerable period applied on both live stock and the products, was not a rate arrived at upon its merits, but a rate which was especially forced in by reason of a contract of a single carrier and was the maximum that anybody else could obtain; and that is true to-day of the 20 cent rate. I mean that some one line made a rate, or made a contract, and has undertaken to carry at that price.

Mr. COWAN: I want to ask one question and that is whether or not the 23½ cent rate was an agreed rate between all the rail-
269 roads reaching Missouri River points from Chicago?

Mr. BIRD: That was the rate they all adopted at that time within a short limit.

Mr. COWAN: Did they all meet and agree, through traffic associations or otherwise, to put that rate into effect?

Mr. BIRD: I cannot testify on that point. I do not remember.

Mr. COWAN: Was it not done by the Western Freight Association or traffic Association?

Mr. BIRD: I do not understand—I do not recall the time when the Western Traffic Association or any other association had the power to make rates.

Mr. COWAN: They did publish them?

Mr. BIRD: They published information circulars, and at one time we had a printing bureau in the association which printed our tariffs for economy; publishing joint tariffs showing the rates on each road. They were not all alike, the tariffs.

Mr. COWAN: Don't you recall that in the Terminal Charge case there was introduced in evidence a joint circular issued by the Western Freight Association that put into effect the terminal charge, and also stated the 23½ cent rate from Kansas City, signed by all the railroads—a whole string of them?

Mr. BIRD: The railroad companies independent of any organization or agreement in an association had an arrangement among themselves to have their tariffs printed in one place, where they were all alike and when there were exceptions they were noted. That was a plan for economizing the cost of printing tariffs in large numbers by a great many railroads.

Mr. COWAN: That would not account for making them all the same figure.

Mr. BIRD: They were not all the same in every case by any means.

270 Mr. COWAN: 23½ cents to Kansas City?

Mr. BIRD: That might have been the uniform rate. The uniform rate to-day is 20 cents on packing house products to Chicago. They are all charging the same rate.

Mr. COWAN: You spoke of an agreement as the basis of the 23½ cent rate. I want to know whether the agreement was one between the railroads.

Mr. BIRD: I do not think I stated that there was an agreement to make the rate 23½ cents.

Mr. COWAN: I thought you said there was a compromise.

Mr. BIRD: Between that railroad company that had that contract and the packer.

Mr. COWAN: I thought you said you consulted.

Mr. BIRD: We did a great deal more than consult. We talked a good deal besides about that contract; that that rate was there and was liable to pull down all the rates and there was a compromise; but I know the highest rate that could be had under that contract finally was 23½ cents.

The CHAIRMAN: It amounts to this: That it transpired at some time that there was a contract between one road, or one or more roads and one or more large packers for a rate which was materially less than the published tariff?

Mr. BIRD: Yes, sir.

The CHAIRMAN: And you felt obliged, perhaps, for reasons which need not especially be referred to here, not to carry stuff at other than the tariff rates?

Mr. BIRD: That was the desire and intention.

The CHAIRMAN: So it came about that some compromise was effected with that particular shipper in respect to that contract finally as the result of which all roads filed a tariff of 23½ cents?

Mr. BIRD: Yes, sir; and incidentally, if you please, the *the* tariff bureau printed the tariff in joint tariff form and covered all articles as well as live stock. The roads did not charge the same on everything, and there was a foot-note to show that this road or
271 that charged this rate and that rate.

The CHAIRMAN: Mr. Mills, perhaps you would like to ask Mr. Bird some question.

Mr. MILLS: I think not at present.

Mr. TOMLINSON: I want to ask one or two questions. I have one witness here that I would like to call this evening before we adjourn—Mr. Doud. I suppose he will consume the remaining time and the other witnesses might be excused.

The CHAIRMAN: We will not sit much longer than 5 o'clock.

Mr. TOMLINSON: Mr. Bird, the live stock rates from Iowa points to New York are made up of the sums of the locals from and to the Mississippi River, are they not, or on Chicago?

Mr. BIRD: I do not want to testify positively about that, Mr. Tomlinson?

Mr. TOMLINSON: What is your impression?

Mr. BIRD: My impression is that it is neither.

Mr. TOMLINSON: The tariffs show.

Mr. BIRD: The tariffs show what the rates are. But my recollection is—of course the maximum rate that can be charged from a given point in Iowa to New York is the local rate to the Mississippi River plus the tariff rate then to destination. There is a great variety of distances from common points or common area to the Mississippi River. For instance, from Ottumwa, Iowa; the Burlington line from Ottumwa to Burlington is much less than any other line from Ottumwa or the vicinity of Ottumwa to the Mississippi River. So there is a scale of rates which applies to the Mississippi River from that group or zone, and it is applied by all lines regardless of distance, except that in no case can it be higher—no; there is an average rate charged to the Mississippi River.

Mr. TOMLINSON: Now, as a general proposition, from Western Iowa points to Eastern points, to New York, would it not move on the sum of the two local rates, via Chicago?

272 Mr. BIRD: It might.

Mr. TOMLINSON: Would it not, as an absolute proposition?

Mr. BIRD: You have got to sit down and figure out the Iowa tariff to the Mississippi River.

Mr. TOMLINSON: It is 18½, 5 cents less than to Chicago.

Mr. BIRD: 18½?

Mr. TOMLINSON: Yes, sir.

Mr. BIRD: What is?

Mr. TOMLINSON: The rate on cattle and hogs from Iowa points to the Mississippi River. Take hogs, for example.

The CHAIRMAN: That is, from the same point, the rate is 23½ cents to Chicago and 18½ cents to the Mississippi River?

Mr. TOMLINSON: Yes, sir. But it is needless to consume time in discussing it. The tariffs show, and it can be shown on brief.

Mr. BIRD: I do not remember the exact figures.

Mr. TOMLINSON: I will waive the question for the present. Do you charge terminal on fresh meat and packing house products brought in here?

Mr. BIRD: No, sir.

Mr. TOMLINSON: Why don't you?

Mr. BIRD: For the same reason we made the 20 cents rate. The other line made the rate 20 cents net.

Mr. TOMLINSON: Do you charge terminal on live stock, Mr. Bird?

Mr. BIRD: Yes, sir.

Mr. TOMLINSON: That is all.

Witness excused.

Mr. TOMLINSON: I must call Mr. Doud now because he is very busy at the Yards in the morning and cannot come down.

The CHAIRMAN: We will excuse Mr. Bird for the present.

273 After Recess.

NOVEMBER 7, 1902—p. m.

The CHAIRMAN: Gentlemen, you may proceed.

Mr. BIRD: Mr. Chairman, if you please, I would like to make some correction in the testimony I gave yesterday, which I think was misunderstood.

The CHAIRMAN: If there is no objection, you may resume the stand now for that purpose.

There being no objection, Mr. Bird resumed the stand.

Mr. BIRD: In my testimony yesterday—I find that what I said may be construed as a bald statement that rates in this western territory are too low. I had in my mind in testifying the fact that there was a distinct charge that the rates on live stock were too high in themselves, that in other respects the complaint was based upon comparisons. Now, I had two other facts in my mind which influenced my statement and which I wish to state to the Commission, as to the rates in the West being relatively too high. I had occasion during the fore part of this year to investigate the facts, comparing eastern trunk lines with the western roads. I found that the total traffic on the St. Paul's 6,600 miles reduced to ton miles for a year's operation was equal to 551,000 mile tons per annum for each mile of road. I found that the traffic on the Pennsylvania and New York Central Railroad east of Pittsburg and Buffalo, reduced to ton miles, was equal to about three and a half million mile tons for each mile of railroad per annum, showing the enormous difference in the concentration or density of traffic in the west and east.

The CHAIRMAN: Nearly seven times as much.

Mr. BIRD: Yes, sir; nearly seven times as much. So that while our rates in the West are higher per mile than the rates on the Trunk Lines which have this enormous tonnage, the difference is not so much when it comes to the mere matter of comparison of density of traffic. While the Pennsylvania mile tons was something in excess

of that of the New York Central, it was in round figures three
274 and a half million mile tons per annum for each mile of road.

Answering as to the reasonableness of the live stock rates, I had in mind facts which had been fully impressed upon my mind in a general way in the preparation of the previous case. I was trying to show the relative fairness or just comparison between values and service on live stock in the West and other articles; and while the basis of rates which I used as a comparison were not precisely the same, in some instances they were so nearly alike and the comparisons are so startling as to afford a very substantial bit of evidence bearing upon the question of relative fairness of live stock rates, the prices and values which were then used as a basis were at the time accurate. They are not accurate at this time, but the prices of the various commodities have probably advanced in the same general ratio. I have the figures here for a haul of 200 miles and the values based upon 20 head of cattle in a car, averaging $42.50, or a total of $850: and the rate for 200 miles was $22.61—2.6 per cent. of the value of the property. That is, the transportation charge was 2.6 per cent. of the value of the property. The rate on coal—taken from the standpoint of cost to the carriers at the mines in the interior, soft coal—was in Iowa and Illinois at the same time $2.50 a ton. Based on 20 tons to the car, the value would be——

Mr. TOMLINSON: Can I interrupt you as you go along?

Mr. BIRD: I prefer you would ask me afterwards any question that you have. I am not a lawyer and I cannot talk connectedly if I am interrupted.

Mr. TOMLINSON: What rate are you using—the Illinois distance tariff?

Mr. BIRD: Yes, sir; the Illinois distance tariff.

Mr. TOMLINSON: Not the actual rates in Iowa for that distance.

The CHAIRMAN: Proceed, Mr. Bird.

275 Mr. BIRD: There are a great variety of articles here. The value of a carload of brick was $48. and the rate—a basis of rates entirely too low in proportion to other business—was 85 per cent. of the value of the property. And so it goes on all the leading articles of coarse freight—freight not subject to fast service or great risk. Cattle for that distance, as I have explained, pay only 2.6 per cent.; coal 92 per cent.; staves and heading 15 per cent.; brick 85 per cent.; lumber 23 per cent.; salt 51 per cent.; refrigerators—that is, domestic refrigerators—2.82 per cent.—2.8 per cent. The rate on ice, based on $1.50 a ton, was 113 per cent. of the freight rate, while cattle, as I have explained pay only 2.6 per cent. for that distance. I want to say in connection with these rates that they are approximately correct. They are not far away from the rates which are complained of.

I had occasion at the same time to compare the railroad's earning capacity on live stock with the total charge exacted, or to which that stock was subjected to after the transportation act was complete, and I found on a 50-mile haul and the rate on this basis was not much in excess, if any, of the average through rates charged from Chicago

on Iowa stock. The freight was $14.63 and the yardage $5.; commission $10.; hay $1.25; making a total of $16.25, which was 111 per cent. of what the railroad got out of it on a 50-mile haul; and on sheep in single deck cars they got 139 per cent. of the freight rate. On hogs in double-deck cars, they got 114.10 per cent. For 100 miles it was, on cattle $16.25 terminal charge against $18.05; and on hogs in single decks the railroad charge was $19.50 and the charge here was $12.05 and so on down. I wanted to make clear the statement that I made yesterday, or explain the statement, which appeared to be that the present rates were too low.

Mr. HANSON: You mean in comparison?

Mr. BIRD: In themselves—that was the inference that might be drawn from my testimony of yesterday. I did not mean it
276 in that way. I did say in answering Mr. Tomlinson's question that they were too low, but I had in mind all the time the question of comparison generally, and his allegation that the live stock rates were in and of themselves too high, independent of any question of comparison.

Commissioner PROUTY: Suppose you were to apply the same test to your rates on live animals and dressed meat which you have applied here; what would be the relative per cent. of the freight rate to the value from the Missouri River?

Mr. BIRD: It would make a more unfavorable showing than on live stock, but we do not make those rates voluntarily. We had to make them. As far as the St. Paul Company is concerned, so far as my influence and action are concerned those rates are involuntary in every respect.

Commissioner PROUTY: It has been said that there is one class of commodities in this country where the product takes the same rate as the raw material. That is grain and grain products, and where that is true it is due to the fact that there are competitive conditions which force that. There are mills in the east and west and mills all along the lines of railroads, and in order to maintain those industries you have to make about the same rate on grain products as on the grain. Don't you think the same condition applies to an extent in the case of live stock rates and packing house rates?

Mr. BIRD: Whenever the rate has been within reason from our point of view, where the rates have not been excessively low, we have not charged a greater rate on the live stock than on the product, but where the product rate went down below what we believed to be a fair rate we did not think there was any reason why we should extend the area or the operation of a rate which seemed to be lower than it ought to be by comparison with other rates. So that whenever it has been reasonably free from competition we have not made it that way.

277 The CHAIRMAN: Do you think, Mr. Bird, that any conditions, competitive or otherwise, would justify a higher rate upon wheat than upon flour?

Mr. BIRD: I think so, sir. To illustrate it by a proposition which is the reverse, it would be simply justified if the conditions were reversed, and to reverse those conditions would not be an impos-

sibility. The rate on wheat has been usually the same as on flour, and complaint was made against the western carriers because they were carrying wheat at a less price than flour. I believe it was complained of before this Commission, and it was shown that there were competitive conditions which affected the wheat transportation that did in like manner affect the flour, and it was admitted then that there was a justification for a reasonable difference between them on account of the difference in competition, which affected wheat and not flour. While it may not be probable under existing conditions to-day that the case would be reversed, if it were reversed the same line of reasoning would be reasonable. If there was strong competition upon flour which did not affect the wheat business there might be a justification for making a lower rate than upon wheat. One is just as reasonable and just as straight in its logic as the other. In this case wheat was carried by water from Milwaukee and Chicago or to Duluth and by water from there and exported at a very low rate from the seaboard. The Commission held that there might be a difference of 2 cents between flour and wheat; and I presume—and it is a logical presumption—that had the competition converged upon flour and not upon wheat they would have arrived at the same conclusion, because it was competition and nothing else that decided the case and we claim that is the case to-day in the matter of live stock and its products. From the 1st of July and thereafter for some little period—the railroads being comparatively at liberty—did charge the same on the product as on the live animal.

278 Commissioner PROUTY: It rather appears from this testimony that your rates on packing house products to-day is higher than it has been for the last 15 years, on the average.

Mr. BIRD: I could not admit that at all, sir. I do not believe it is correct, on an average. The rate for a period perhaps was lower, but as a general proposition I cannot admit it. I do not believe it is correct.

The CHAIRMAN: Without accepting your views as to what the Commission held in the case to which you referred—as my understanding of it is somewhat different—what you say now may be true with reference to the reasonableness of rates on one article or the other, but when two articles are highly competitive with each other then the question of discrimination comes in, and there surely must be a limit within which the force of competition can be held to justify discrimination.

Mr. BIRD: That must be naturally very largely a question of opinion. I find no criterion, no set rule by which these questions of difference or co-relation shall be adjusted; we do not know, and the conditions on one railroad may be very different from those on other railroads, different from what they may be on other railroads at the same time.

The CHAIRMAN: The question is whether as a general proposition you can maintain that if a normally low rate is forced upon one article that no complaint can be made of a competitive article except with reference to its reasonableness. That is to say, in this case if

it be true that for one reason or another you make or accept a lower rate than you think you ought to get or are entitled to get on packing house products and fresh meat, does that justify you in charging all that is reasonable *per se* on live animals?

Mr. BIRD: I do not suppose it would—I cannot answer that question, but I want to assume in answering that the 23½ cent rate on live stock is not reasonable *per se*. It is too low in itself, and it will be found to be too low on comparison and by any other test
279 you may make. If you will take the value of that property itself, the market value, and see what 23½ cents means, what the percentage that is of the rate, and take articles of low value not subject to damage or any such as requires any such services as live stock, you will find that the percentage of the value is low, showing at once that it is in fixing rates with reference to values that the rate of 23½ cents is too low on live stock.

Commissioner PROUTY: The competition which you claim is the act of the Great Western Railroad in putting in the 18½ cent rate?

Mr. BIRD: A 20 cent rate to Chicago.

Commissioner PROUTY: It put in that rate on packing house products alone. Now, suppose our attention was addressed not to your company, but to the Chicago Great Western Company; has that company any justification for making a lower rate on packing house products than on live stock?

Mr. BIRD: I have this to say on that, that while I differ essentially, as to the justification, I differ with the views of the Great Western Company, I am not sufficiently familiar with its traffic, and all the conditions which must guide the Great Western in its judgment and decision; I cannot judge them from that standpoint. Theoretically, to make a tariff on every article that we carry and put each article in its proper relation to the others, while it is very difficult, you would naturally put a greater tax on articles of high value and of greater concentration than on the coarser article; and if it were left to my judgment and decision, free from all competitive force, I would put a higher rate on dressed meat than on cattle, but when this competition on cattle by which the rate has been forced down from year to year, to a basis of 23½ cents, beyond all reason, less than it should be in comparison with coarse articles of freight and then from any cause some other article was reduced, I should simply try to determine whether we could meet that competition or
280 pay the cost incidental to transportation, and have something left over to the general fund, and if I thought we would I would meet it.

Commissioner PROUTY: It does not appear that there was any special competition that the Great Western had to meet; none of you were making that rate that compelled that road to put in that rate, but made it by virtue of a contract by which it secured for seven years an agreement for so much traffic. Can you conceive of any reason to justify that road in making a lower rate on packing house products than upon the live animal?

Mr. BIRD: I think so.

Commissioner PROUTY: Well what?

Mr. BIRD: If they could earn more money on the packing house product at the 20 cent rate than on the live stock at 23½ cents, I think that would be perhaps a reason—probably not sufficient, but a reason that would go far towards influencing them.

Commissioner PROUTY: Suppose we were to direct the Great Western—that we had power to compel the Great Western road to put in the same rate on live stock that it makes on the packing house product, what effect would that have upon your live stock?

Mr. BIRD: It would reduce them very greatly in Western Iowa and Central Iowa, Southern Minnesota and North and South Dakota—reduce them so much that the net loss would be greater than any possible profit obtained from hauling the packing house property from Sioux City and Omaha, and if it was a requirement—that a condition of doing that business was to pull down the stock rates we would go out of the business; we would choose the least of two evils, but it would not materially relieve the situation complained of by these gentlemen:

Commissioner PROUTY: You say the live stock rate has been forced down by competition. Do you remember what the live stock rate was from the Missouri River, say, twelve years ago?

281 Mr. BIRD: No, sir; I am not clear. I have two leading facts, in my mind, and I do not place them in proper relation to each other as to the time; I am not clear about them.

Commissioner PROUTY: Was not the rate lower at that time than it is now?

Mr. BIRD: My impression is that it was higher. It was the same—23½; it had been reduced to 23½ somewhere about that time.

Commissioner PROUTY: Has there been any proposition which has gone to the length of filing a tariff since then to raise the rate beyond 23½ cents?

Mr. BIRD: I do not recall any.

Commissioner PROUTY: Has there been any proposition to raise the packing house rate to 23½ cents?

Mr. BIRD: Within the last twelve years?

Commissioner PROUTY: Within the last twelve years.

Mr. BIRD: When this contract of the Chicago Great Western road was made known I met various railroad representatives at various times, and there was a question whether the rate ought not to be advanced on dressed beef, but no action—no formal conference or anything of the kind; it was simply passed up and down the line whether it would not be advisable to advance the rate instead of reducing it, but no serious attempt was made and no very serious effort. The question was, What shall we do? And it was canvassed from almost every standpoint. So I can say there has been an effort to advance the rate. We thought on the 1st day of July, when we got back to a net rate of 23½ cents on live stock and packinghouse products, it was a betterment over conditions during the previous six — or a year, and there was no disposition to go beyond that. But my impression is that it is useless to attempt to advance the rate beyond 23½ cents on pro-

visions because of the contract which I suppose yet to be in existence which makes that the maximum.

282 Mr. KELLOGG: What contract do you refer to?

Mr. BIRD: The Chicago & Alton contract with the Swift Company, a contract which was to run a certain number of years and under which there was a certain minimum fixed below which they should not have to go in meeting other people's rates. It was to run subject to a specified notice and is still in effect. That prevented any advance of the rate on dressed meat and packing house products.

Mr. KELLOGG: Mr. Bird, is it not a fact that there was a contract with one of the lines in existence which expired on July 1st of this year making a maximum rate of 18½ cents?

Mr. BIRD: Yes, sir. That was not the maximum rate on local business after the middle or latter part of January. The maximum rate was 23½ local and the proportional was 18½, expiring by limitation on the 30th of June. After the 30th of June and following this hearing before this Commission in May in which we asked for a postpon-ment of this case, the rates were then put back to 23½ cents. The tariff which had been issued in January, or February, expired by limitation. New tariffs made the minimum rate 23½ cents on dressed meats and packing house products, which was the same as the live stock rate to Chicago, whether on through or local business, and that continued until your company (The Chicago Great Western) contract was made and announced, and then we met that rate only.

Mr. KELLOGG: Now, Mr. Bird, there are lines reaching St. Paul and Kansas City that were not included in the injunction, were there not?

Mr. BIRD: Yes, sir.

Mr. KELLOGG: Is it not a fact that after July 1st, when that rate was increased—in fact, after and during the summer that the Chicago Great Western Railroad did not get much packing house products at Kansas City and St. Joe? Don't the returns show that?

Mr. BIRD: I really do not know. The returns are available. You can easily find out.

283 Commissioner PROUTY: I think they are in this case.

Mr. KELLOGG: I think you will see that. You believe the Great Western got all it could, don't you, on the packing house products?

Mr. BIRD: I think you got as much as the packers were willing to pay.

Mr. KELLOGG: And we got all the packing house product we could get to haul? You believe that, too, don't you?

Mr. BIRD: Certainly I do.

Mr. KELLOGG: Mr. Bird, is it not a fact that the surplus agricultural products of this country, are mainly exported—manufactured product?

Mr. BIRD: That is my general understanding. I think it is.

Mr. KELLOGG: And the rate that the railroads can get for the

surplus manufactured product is largely governed by market conditions?

Mr. BIRD: You cannot get any more for transporting a carload of freight from Kansas City to Chicago than the difference in the market price.

Mr. KELLOGG: Nor from Kansas City to New York destined for any foreign port, can you?

Mr. BIRD: You cannot get any more from the Missouri River to New York than the difference in the market value.

Mr. KELLOGG: There are times when market conditions justify and force the railroads to make a less rate on flour than on wheat, are there not?

Mr. BIRD: Market conditions?

Mr. KELLOGG: Yes, sir; for the export business, for the surplus business of this country?

Mr. BIRD: I am not informed upon that point as much as I am as to the competitive conditions.

Mr. KELLOGG: Those competitive conditions are largely market conditions, are they not?

Mr. BIRD: Well, Mr. Kellogg, I am not very well informed upon those points.

284 Mr. KELLOGG: Don't you know, Mr. Bird, that it is better for this country to export its surplus as manufactured product than as raw material?

Mr. COWAN: That raises a political question.

Mr. KELLOGG: It raises questions bearing on this packing house rate.

Mr. BIRD: I have no doubt that it increases the value of the exports.

Mr. KELLOGG: Does it injure the public generally, the producer, the consumer and the manufacturer to have this manufactured rate, or this packing house product rate, less than the stock rate?

Mr. BIRD: I think that the stock rate—I think that the fact that the rate on provisions is less than on live stock has this result—that it is the greatest good to the greatest number of people.

Mr. KELLOGG: I think that is all.

Commissioner FIFER: At whose expense are the packing house products loaded and unloaded?

Mr. BIRD: By the owner of the property.

Commissioner FIFER: And the same with the live stock?

Mr. BIRD: Not wholly so. We pay for handling live stock at the stock yards and unloading; we pay a small fee.

Commissioner FIFER: Does the railroad incur any expense at all in loading and unloading of packing house products?

Mr. BIRD: No, sir.

Commissioner PROUTY: When you say the low packing house rate as against the higher live stock rate benefits the greatest number, what do you mean by that?

Mr. BIRD: I mean the producer—I mean that the only persons involved in this case that are subject to any possible injury, is the live stock commission men of Chicago; whereas the method of han-

dling the business on the Missouri River and at South St. Paul results in taking a market nearer to the producer and giving him a higher price than he could get by shipping to a more distant market.

285 He gets a better price and he gets it nearer home.

Commissioner PROUTY: Assuming that there was competition in the purchase and slaughter of these live animals, it would be desirable to afford the producer just as many competitive markets as possible in which to sell? It would be desirable to so adjust the freight rate that those animals could be slaughtered with equal advantage at the Missouri River or in Chicago?

Mr. BIRD: I do not believe that—I don't quite understand the question.

Commissioner PROUTY: It was in the testimony this morning, or rather yesterday, that on the Missouri River nobody bought these animals but the packers, but at Chicago there were other purchasers; so that the Chicago market might be said to be competitive for the sale of live stock to an extent that other markets were not; but assuming now that all markets were equally competitive when you get the animals there, would it not be for the interest of the public that the freight rate should be so adjusted that animals might go equally to the Missouri River or to Chicago for the purpose of being sold and slaughtered?

Mr. BIRD: We could not make a tariff, in the first place, or enforce a tariff that would make it as profitable for the Western farmer to ship to Chicago as it would to ship to Kansas City, because Kansas City business is not confined to Chicago and the East. It ships back into the country moderately from which the stock came and to the South and Southwest. It is that market for their manufactured goods, among other things, which enables them to pay prices so high to the farmer or producer that he could not possibly get the same beneficial results if he shipped it to Chicago, no matter how moderate the rate was. In other words, the conditions of market supply and demand in the Missouri Valley are such as to logically and effectively head off a large volume of this business, no matter how fair and just the rates may be.

286 Commissioner PROUTY: That is to say, that a certain amount of the stock slaughtered on the Missouri River is sold west of the Missouri River?

Mr. BIRD: West and south, and exported by way of the south, through Gulf ports.

Mr. KELLOGG: And that is competitive with the railroads to Chicago?

Mr. BIRD: Yes, sir; and east of Chicago.

Mr. TOMLINSON: You say, Mr. Bird, that the only people concerned in what may be called these preferential rates are the commission men of Chicago. Suppose you were a farmer out in Iowa and raising cattle, about 100 miles east of the Missouri River, and the farmer in Nebraska, on less valuable land, was able to market his product in the City of Chicago by shipping it to Omaha, for example, and coming east at a rate not in excess of the rate you were

charged from your shipping point to Chicago; would you not consider yourself discriminated against?

Mr. BIRD: No; not if I got a fair rate for the service performed for me; I would be satisfied.

Mr. TOMLINSON: Is not the Iowa man entitled to the benefits arising from his geographical location?

Mr. BIRD: Yes, sir; he is much nearer the Missouri River than Chicago, and is entitled to the benefit of that market.

Mr. TOMLINSON: Do you claim that the rates are fairly adjusted now from the Missouri River on packing house products and live stock?

Mr. BIRD: They are not what we would like to have them. I am speaking about the rate on live stock from Iowa to the Missouri River or Chicago, one or the other; the rate in one direction is fair as compared with the other direction.

Mr. TOMLINSON: As it is now the man adjacent to the Missouri River is compelled to go to the river market?

Mr. BIRD: He is only forced to do it because he is getting better results.

Mr. TOMLINSON: He is able to get better returns why?

287 Mr. BIRD: Because of the price paid by the packers on the Missouri River.

Mr. TOMLINSON: What does the price depend upon?

Mr. BIRD: Upon the supply and demand, not only in Chicago but elsewhere.

Mr. TOMLINSON: And on what the packer can market his product for?

Mr. BIRD: Not altogether on the price he can market his goods in Chicago for, but all around the country.

Mr. TOMLINSON: You said a few moments ago that under ideal conditions that you would make the rate on fresh meat higher than on live stock. For what reason would you make it higher than on live stock?

Mr. BIRD: Simply because the relative values ought to be taken into account, not literally, but to some extent, and because of concentration of values should pay something more than that which is less competitive.

Mr. TOMLINSON: Is that the only reason?

Mr. BIRD: I believe the tariff should be made on the basis of what the traffic will bear.

Mr. TOMLINSON: I am not quite clear as to your views upon that. Yesterday you said competition controlled rates. Now, you are submitting some comparisons as to value——

Mr. BIRD: I expressed myself clearly yesterday, and to-day intend to. We are simply getting all out of the dressed meat and packing house product which competition will permit us to get. If there was no competition and we are at liberty to adjust our rates upon a general theory or scientific basis we would doubtless put a higher rate upon dressed beef than we do upon cattle.

Mr. COWAN: I understood you to answer Judge Prouty that the provision rate of 23½ cents was the result of a contract made between

the Alton Railroad and Swift and that the present rate is also the result.

Mr. BIRD: I said it resulted from that contract.

Mr. COWAN: That is the word I used—as the result of it. And the present rate is likewise the result of a contract between the
288 Great Western Railroad and all these packers. Now, then is it not necessarily a conclusion from those two facts as a premise, that none of the rates are affected either by supply or demand of the product or by competition, but solely by the fact that these contracts were made and the other roads put the rates in to meet the competition? It is not the natural competition?

Mr. BIRD: That is competition and nothing else. You cannot make anything else out of it.

Mr. COWAN: It arises from a contract.

Mr. BIRD: Primarily it does not arise from the contract, but from the determination of some one road to take the business.

Mr. COWAN: One other question. I believe you said in answer to Mr. Kellogg that the relative prices at which you would charge,—which should be charged—for moving produce from Kansas City to New York, or from Kansas City to Chicago, was the difference in the market value of those articles?

Mr. BIRD: No, sir; I did not. I said all we could get for carrying a carload from the Missouri River to Chicago was the difference in value at the two markets.

Mr. COWAN: Does the difference in market values fix the freight rate or does the freight rate fix the difference in market value?

Mr. BIRD: Sometimes one and sometimes the other.

Mr. COWAN: Does not the fact that you made a low rate on packing house products have a tendency to make the values of those products very nearly the same at the different markets at the Missouri River and Chicago, and would there not be a corresponding difference if you were to advance or lower the rates on packing house products?

Mr. BIRD: Not in this case; it would have no effect.

Mr. COWAN: Would it have any effect upon the market in New York if you put in an 18½ cent proportional as against 23½?

289 Mr. BIRD: No, sir; I do not think it would.

Mr. COWAN: Would it not have exactly that much difference?

Mr. BIRD: No, sir; I do not think so.

Mr. COWAN: Why wouldn't it? It would cost that much more to put it there.

Mr. BIRD: If I am correctly informed, the people who manufacture and sell live stock products at the Missouri River are the same that manufacture and sell it here or in New York.

Mr. COWAN: Then they have a monopoly of the business?

Mr. BIRD: I don't know whether they have or not; I have heard that they had.

Mr. COWAN: It is a strong suspicion. Is not that monopoly aided by the fact that you make them a lower rate upon their

product than you do upon the live animal on which there is no monopoly?

Mr. BIRD: I am not going to attempt to defend the rate on the manufactured product. It is not what I am satisfied with. I don't want to swear to——

Mr. *Bird:* I don't mean to challenge your judgment.

Mr. BIRD: I don't want you to put me on oath to swear to what I guess.

Mr. COWAN: There is a great deal of this guess work. Well, now referring to another matter. Have you not a statement from Swift & Company showing the number of cars of packing house products handled by them during the year 1901, which shows the total tonnage on fresh meat separate from the other? Have you such a statement?

Mr. BIRD: No, sir; I have not. I left my papers on the desk here last night, and I presume you have the wrong information as to what was in them.

Mr. COWAN: Let's see the paper.

Mr. BIRD: It is private property. It is erroneous and I have not intended to use it.

290 Mr. COWAN: Why do you think it is erroneous, Mr. Bird?

Mr. BIRD: That is my business, I don't propose to talk about it unless the Commission ask me. I will tell them anything I know about it.

Mr. COWAN: Counsel have a right to ask you questions.

Mr. BIRD: I do not mind explaining it; but you are off the track; you have lost your trolley. It was the entire weight of live stock that went into the packing house from these various roads. It was not anything that passed over the St. Paul road.

Mr. COWAN: Have you ever obtained a statement from Swift & Company showing the amount of tonnage—of the dressed meat and packing house products—which your road has handled—the number of cars—whereby it could be divided up showing the average weight per car of dressed meats and per car of packing house products?

Mr. BIRD: I do not recall any.

Mr. COWAN: You say that is a private paper?

Mr. BIRD: I want to explain to the Chairman that in my haste last night I left my papers upon this desk, and they were mixed up with the gentleman's papers, and he took the liberty to investigate them himself. I do not propose to be cathauled in that way.

Mr. HANSON: Did you leave your pocket-book?

Mr. BIRD: No, sir; I would not have gotten that back.

Mr. COWAN: Mr. Bird, have you from the books of the Auditor's office or any other person engaged with your railroad a statement showing the tonnage and the average weight per car of fresh meat and the average weight per car of other packing house products?

Mr. BIRD: I do not know whether I ever had or not.

Mr. COWAN: You heard Mr. Stickney's testimony this morning in which he stated the weight that his road——

Mr. BIRD: I want to say that I do not remember any statement.

291 Mr. COWAN: How are you able to know whether these rates are reasonable and proper or not unless you know these factors which go to make it up?

Mr. BIRD: I do not attempt to defend these rates, their reasonableness *per se*, for one minute.

Mr. COWAN: Are you willing to furnish to the Commission a correct statement as to what this tonnage has been, going over the period of 1901? Certainly you have a record in your office of the average weight of the dressed meat and the average weight of the packing house products as compared with cattle and hogs?

Mr. BIRD: In the first place, there is no such record in the St. Paul Company's archives. If it could be obtained it would have to be gotten from papers put away on storage and segregated from an immense amount of data and picked out of the waybills. It would require a great deal of time to prepare it if it could be had at all. If the commission asks the St. Paul Company for information of that character, it will exercise its best efforts to supply it, but without that order, a positive order from this Commission my answer is no.

Mr. COWAN: Let me ask you another question. Do you know as an officer of the company whether or not a carload of dressed meats pays you more money than a carload of cattle from the Missouri River to Chicago? Do you know that fact now?

Mr. BIRD: What do you mean—to Chicago or on through business?

Mr. COWAN: Put it either way. Put it on through business.

Mr. BIRD: I would prefer to have an opportunity to do some figuring before I answer that question.

Mr. COWAN: Were those figures taken into account at all when you made the rate to meet that which the Great Western put in?

Mr. BIRD: No.

292 The CHAIRMAN: If there are no further questions, Mr. Bird, you may be excused.

There being no further questions, Mr. Bird was excused.

Mr. HANSON: Take your papers with you this time.

Mr. BIRD: Yes, sir; I have them this time.

Mr. TOMLINSON: I want to say in explanation only that *that* the papers were wrapped up by the janitor with mine and sent over to the hotel. I will call Mr. Boyd, if you please.

293 CHICAGO, ILL., *January* 22, 1903
9:30 o'clock a. m.

The CHAIRMAN: Gentlemen, are you ready to proceed?
Mr. HANSON: Yes, sir. We will call Mr. Bird.

A. C. BIRD, a witness on behalf of defendants, having been duly sworn, testified as follows:

Mr. HANSON: I think it appears in the record, but I will ask you, Mr. Bird, what your position is with the Chicago Milwaukee & St. Paul Railway?

Mr. BIRD: I am Vice President, in charge of traffic.

Mr. HANSON: How long have you been connected with the Chicago Milwaukee & St. Paul Railway Company in its traffic department?

Mr. BIRD: Twenty years on the first day of this month.

Mr. HANSON: And you had considerable experience before that time with other companies?

Mr. BIRD: About eighteen years.

Mr. HANSON: I desire first to call your attention to the testimony of Mr. Tomlinson given in this proceeding, in respect to a statement which he procured from the Auditor of the Interstate Commerce Commission and which he introduced in evidence for the purpose of showing that there had been no reduction in the rates for a number of years last past on live stock. His testimony is this:

"Based upon this statement and what I know from examination of other tariffs, there have been no substantial changes in the rates on live stock from points in Missouri, Iowa and Wisconsin to Chicago in the past ten or twelve years. From some of these stations there have been slight reductions; from others a good many advances; the only important change has been an advance in the hog rate, on December 1st, 1894, from 22 to 23½ cents."

294 I will ask you to refer to that statement which Mr. Tomlinson had in mind when he gave his testimony and state briefly to the Commission what that statement shows in reference to advances or reductions.

Mr. BIRD: The exhibit presented by Mr. Tomlinson covers eight or nine different statements. Taking the entire period covered by his exhibits down to the present time there is shown a material reduction in every case, or in substantially every case. There are three stations in Missouri, namely, Plattsburg, Lawson, and Lexington, which are on the St. Joe branch of the Santa Fe road, lying between St. Joseph on the northwest and North Lexington on the southeast. There seems to have been no record in the Interstate Commerce Commissioners' office of the rates from those three stations. On April 30, 1888, to and including July 20, 1889—those three stations were a part of the road I represented for twelve years, the St. Louis, Kansas City and Northern, and I know what the rates were. Part of that road was under a separate receivership. But from the Auditor's statement, the rate charged in 1888 was $55.00 a car, on short cars, of much less capacity than the present cars. On January 10th and thereafter the rate was 26 cents per hundred, whereas the

rate today is 23½ cents. I do not find any other cases in this statement except those which show a material reduction.

Mr. HANSON: Outside of those three stations in Missouri—every other station shows a reduction in the live stock rate from the first date given there up to the last date given?

Mr. BIRD: Yes, sir.

Commissioner PROUTY: I suppose those rates all speak for themselves.

Mr. HANSON: I simply want to call the Commission's attention to this in connection with Mr. Tomlinson's statement, which
295 is absolutely contrary to what the statement itself shows. Mr. Tomlinson also testified in connection with that exhibit that there was a slight reduction for just a month or two,—I think August or September of the same year. What was that reduction and how long did it actually continue as shown by that statement, Mr. Bird?

Mr. BIRD: On the 20th day of July, 1889, it appears from this statement, the rate was 22 cents per hundred pounds from these stations, which are a short distance east of the Missouri River. They continued in effect until December 20th, 1889, and at that time the rate was reduced to 18 cents. The rates continued until the 5th day of August, 1890, and were then further reduced to 12½ cents.

Mr. HANSON: How long did that rate remain in effect, Mr. Bird?

Mr. BIRD: Until the 24th day of August 1890, when it was made 22 cents. That continued until the 21st day of January, 1891. Then the 23½ cents rate was established. There was a rate war, quite an extensive war of rates, along the whole Missouri River, and the rate went as low as 12½ cents. It went to 22, then to 18, then 12½, then up to 22, and then back to 23 or 23½ cents.

Mr. HANSON: Was that reduction, instead of continuing a month or two, not in effect from December to August?

Mr. BIRD: The low rate was put in on the 6th day of August and advanced on the 25th day of August from 12½ to 22 cents, and on the 1st day of January that rate was advanced to 23½ cents.

Mr. HANSON: Mr. Bird, referring again to the testimony of Mr. Tomlinson, he testified that in the transaction of the live stock commission business the expense of transacting that business was from 75 to 80 per cent. of the receipts from the business. Have you made any inquiries into that and are you able to testify in regard to that?

Mr. COWAN: We consider that question irrelevant in this case. It was not brought into the case by us, but by Mr. Stickney
296 when he was on the stand. It is utterly foreign to this case. I asked at the close of the last hearing that what was said might be stricken out. It was not intentionally drawn out by us, and I do not think that matter ought to be again gone into. If we are going into it at all, we ought to have the witnesses who know the exact facts. Surely it is not material.

Mr. HANSON: It was brought out by Mr. Tomlinson without any question being put to him.

Mr. COWAN: You must remember that Mr. Stickney is the man

who first mentioned it voluntarily, if you were here. You were not here at the time, I believe.

Mr. HANSON: Yes, sir; I was here.

Mr. COWAN: I asked that it be stricken out at the last hearing.

The CHAIRMAN: Whatever may be said as to the relevancy of the fact, we are doubtful whether Mr. Bird is a competent witness.

Mr. HANSON: Just as competent as Mr. Tomlinson.

The CHAIRMAN: Mr. Tomlinson is in a somewhat different relation to the matter. He is not an officer, but an attorney for the Live Stock Exchange.

Mr. COWAN: He is employed by the Exchange.

The CHAIRMAN: I infer from your question, all that Mr. Bird knows about it is what he learned of it from inquiry.

Mr. HANSON: That is the way Mr. Tomlinson knew about it—by inquiry of commission houses. Now, our information does not agree with his. It is not, I concede, relevant to any real issue in this case. I simply want to show the Commission that our information shows an entirely different ratio of expense to receipts as testified to by Mr. Tomlinson.

The CHAIRMAN: Do you claim to have any personal knowledge in respect to the matter, or such connection with the business yourself as to make you familiar with it?

Mr. BIRD: I do not claim to have examined their books.

297 I have had an investigation made to see the relative value of Mr. Tomlinson's testimony; I went into it for that purpose—to see whether that sworn statement was entitled to weight. That was the purpose and motive of all my investigation. I have no information taken direct from the books of these firms. My figures differ very much from Mr. Tomlinson's testimony. I investigated with that in view. I thought he was testifying to things he was guessing at.

Mr. COWAN: He was necessarily guessing at it. He simply gave it as his opinion. He had not examined the books.

The CHAIRMAN: As the matter now stands, according to my recollection, Mr. Tomlinson made some general statement to the effect that their expenses were 75 to 80 per cent. of their gross receipts, while Mr. Stickney gave some testimony to the effect that their profits were extravagant, and Mr. Cowan, whether he objected to that testimony or not, made a motion to strike it out. Now, on that state of the record, it does not seem to us of sufficient significance to justify us in straining a rule of proof to allow hearsay testimony. If it is important to go into that, someone should be called to testify who knows about it.

Mr. HANSON: I do not think it is very important, except that I have some testimony to contradict Mr. Tomlinson generally, to show that his testimony was not formed upon the facts. I withdraw the question. Mr. Bird, I now call your attention to a table put in evidence by Mr. Tomlinson—I think it is his Exhibit No. 9; it is headed, "Statement of rates on cattle, in carloads, to Chicago, Illinois, from stations on the Chicago & Northwestern Ry. in Iowa, and from stations on the C & N W Ry. and C St P M & O Ry. in Wis-

consin and Minnesota, with distances to Chicago, compared with rates on cattle for similar distances." Mr. Tomlinson has here Clinton, Iowa, on the North-Western; distance to Chicago 138 miles, and the rate 14 cents. He compared that rate with the rate
298 from Madison, Wisconsin, on the Nortl. Vestern; distance to Chicago 138 miles, and the rate 12 cents; the object being, I understand, to show that the rate from Clinton, Iowa, for the same distance—14 cents—is too high. Will you explain those two rates to the Commission?

Commissioner PROUTY: Do you understand, Mr. Hanson, that the complainant is claiming that these intermediate rates which are less than 18½ cents are too high?

Mr. HANSON: Mr. Tomlinson is complaining that our rates from Iowa to Chicago are too high in and of themselves. That is one of the causes of this complaint, and he introduced this table for the purpose of making proof. I want to show that the table does not sustain that contention or inference at all.

Mr. COWAN: What exhibit is that?

Mr. HANSON: No. 9.

Mr. BIRD: This exhibit shows in the second column rates from Wisconsin points to Chicago, the distances varying from 138 miles up to 409 miles, and the rates which that second column carries, on the face of them, compared with rates for equal distances on the Northwestern road from points in Iowa and beyond to Chicago. Madison, Wisconsin, is 138 miles from Chicago by the short line.

It is 82 miles to Milwaukee. The highest rate that can be obtained on live stock from Madison to Chicago is the local rate from Madison to Milwaukee.

Mr. HANSON: Why is that so?

Mr. BIRD: The rates on all classes generally from Milwaukee to the East, to all Eastern markets, are the same as from Chicago. The Chicago, Burlington & Quincy line, starting in at Minneapolis, extending down the east bank of the Mississippi River through Wisconsin, reaches the Chicago market, but does not reach the Milwaukee market. The Illinois Central Railroad, running up into
299 the interior or the central part of the State, branching off to Madison in one direction, and still further up into the northwestern or western part of the State in another, are in the same condition as to competitive conditions with reference to Milwaukee as the Burlington line.

Mr. HANSON: It has no line into Milwaukee?

Mr. BIRD: No, sir. The market conditions at Milwaukee and Chicago are the same, excepting as to the volume of the stock business and the packing house interests. There are two or three considerable packing houses at Milwaukee. Those lines have invariably and by sheer force applied the Milwaukee rates to Chicago. So far as the North-Western and St Paul Companies are concerned it is impossible for them to get a higher rate to Chicago than to Milwaukee. So that, in fact, this exhibit compares the rate for 138 miles from Clinton, Iowa, with the rate from Madison to Milwaukee, 82 miles; the 82 mile rate being in fact 2 cents less than the 138 miles.

And this is true of all the stations embraced in the first and second columns of this exhibit. For instance, from Stillwater, Minnesota, the distance is 398 miles to Chicago, and the distance to Milwaukee by the shortest possible line is 338 miles. As a rule the difference in distance is 85 miles; in other words, Chicago is 85 miles farther away from the shipping point than Milwaukee, and when you get into the Southern part of Wisconsin, in a limited area, the distance to Chicago is the same as to Milwaukee. On the reverse side of the question where other comparisons are similarly made, the distance to Milwaukee is greater somewhat than to Chicago, probably from Central Iowa 36 miles and from other points nearly 80 miles, and the rates are made uniform to Chicago and Milwaukee as basing points. That is true, generally speaking, of other parts of the exhibit where rates into Omaha, Kansas City, and St Joe are compared mile for mile from the west with rates from points east of the
300 Missouri River to Chicago. The Missouri River does not run north and south, and yet it is necessarily a basing line.

There is a large area of territory west of the Missouri River in Kansas and Nebraska from which the rates to Omaha, St Joe and Kansas City are the same. So that there is a manifest discrepancy on the face of it with the rate according to distance that these various roads are charging. The district is grouped, and there are long horizontal runs in Nebraska as there are in Western Iowa, and when you take the rate from the western limit of some horizontal run and compare it with reference to distance, it compares unfavorably with the rate from some place, for instance, at the eastern limit of the horizontal run; one rate is lower per mile than the other. That is the character of the exhibits all the way through.

Mr. HANSON: I see in the exhibit Fall Creek, for instance; it is 253 miles from Milwaukee and the rate is 21 cents. Belle Plain, Iowa, is 254 miles to Chicago, and the rate is 21½ cents. Is that generally true through these exhibits, so that when the distances are compared the rates from Iowa points to Chicago are the same as from Minnesota and Wisconsin points to Milwaukee; that Chicago takes the same rate as Milwaukee and that additional distance is absorbed?

Mr. BIRD: That is true.

Mr. HANSON: Mr. Bird, some mention here has been made of the Illinois and Iowa tariffs in comparing the rates into Chicago. Will you briefly state to the Commission whether these rates are low or reasonable or not in your judgment.

Mr. COWAN: I do not object to Mr. Bird testifying upon the subject, but, if I recollect correctly, I think the matter was quite thoroughly gone into before. I leave it to the Commission. I think he testified before and testified they were too low.

Mr. HANSON: Mr. Bird testified that rates in the West gen-
301 erally were low as compared with Eastern lines.

The CHAIRMAN: He may answer.

Mr. BIRD: My belief, from experience and knowledge of general conditions, is that the rates in Illinois and Iowa are unreasonably low.

Mr. HANSON: Take the rates on live stock in these two States. Are

they unreasonably low as compared with rates on other articles in those States?

Mr. BIRD: Yes, sir; decidedly so. I do not think the rates on live stock from any of the territory, but especially Iowa and Illinois, bears a just proportion of the general charge, because considering the cost,—which is capable of demonstration—the cost of transporting live stock, the business is less valuable than dead freight that is carried on rates much lower than live stock. There is not a proper relation between the various rates, if you are to consider the value of the property, the value of transporting it, and the value to the property of the transportation service.

Mr. HANSON: Mr. Bird, have you the exhibit there introduced by Mr. Tomlinson which showed, I think, the increase of shipments into Missouri River points in the last few years?

Mr. BIRD: Yes, sir.

Mr. HANSON: One feature of the complaint here is that the rates, for instance, from points in Western Iowa to the Missouri River and from the same points into Chicago are so adjusted that the preference is with the Missouri River points. I will call your attention to another case. You happen to know of the case of the Chamber of Commerce of Milwaukee, where the question was as to the difference that should prevail in rates on grain into Minneapolis from Minnesota, South Dakota, and Northern Iowa points and from the same points into Milwaukee. Having reference to the rule fixed by this Commission as to arriving at the proper differential on those rates between Milwaukee and Minneapolis, have you applied that rule to these rates from points in Western Iowa to the Missouri River
302 and the same points to Chicago?

Mr. BIRD: Yes, sir.

Mr. HANSON: Applying that rule, what does that prove as to the present rates from these points to Missouri River points and Chicago?

Mr. COWAN: Before you begin, Mr. Bird, I will ask Mr. Hanson to state briefly what that rule is.

Mr. HANSON: There the rule was that a just and reasonable differential in such rates should be obtained by applying the interstate distance tariff of the St. Paul Railway or the North Western Railway, the short line mileage from the several points of shipment to Minneapolis and Milwaukee, and just and reasonable rates would be made to Milwaukee by adding the differential in effect to the rates to Minneapolis.

Mr. BIRD: I have used that tariff to ascertain the rate difference—not to determine the rate itself—to see if its application would show a discrimination against either one of the markets. As applied to the present relative rates, it would increase the differential against Chicago. I have applied it to Manila and Dawson as illustrative points. Dawson is 128 miles east of Council Bluffs; say, 135 miles east from South Omaha; and it is 371 miles from Dawson to Chicago. There is where the rate breaks. The horizontal run on the cattle rate commences at Dawson and runs west that 128 miles to Council Bluffs. Applied from Dawson, the present rate shows Chi-

cago is 9.24 cents greater than the rate from Dawson to South Omaha. This tariff would make the difference 11 cents. The rate on hogs from Dawson to Chicago is also 9.24 — greater than to South Omaha. It applies equally on hogs, sheep and cattle. So that if the rates were made to these markets, respectively (South Omaha and Chicago) on a properly and evenly distributed distance tariff, it would
303 result in a relatively lower rate to South Omaha.

The CHAIRMAN: That is to say, if the rule suggested by the Commission for the adjustment of relative rates on wheat to Minneapolis and Milwaukee, respectively, should be applied to the adjustment of relative rates on live animals as between Omaha and Chicago, respectively, using the lower rate as the basis, the result would be to increase the present rates into Chicago on live animals?

Mr. BIRD: Yes, sir.

The CHAIRMAN: Did you test that rule with reference to any other Missouri River market besides Omaha?

Mr. BIRD: I did not. I did not have the time; but the rates are no greater on the St. Paul road, on the Kansas City & Sioux City line, but the distances from Sioux City and Kansas City are greater. The main line to and from Omaha is fairly representative of the conditions. There are some differences, here and there, some inequalities of rate grading on account of shorter lines; but as nearly as I can figure it out—and I have tried to find the worst aspect as well as the best—South Omaha is a fair illustration of the whole situation with regard to the lines of the St. Paul Company.

Mr. HANSON: Mr. Bird, for the purpose of getting it into the record, I wish you would state briefly the rates on live stock and its product on March 31 and April 5, 1902—just what the situation was on those dates.

Mr. BIRD: Where from?

Mr. HANSON: From Missouri River points and from St. Paul to Chicago.

Mr. BIRD: The rates on the 31st of March and the 5th of April, 1902, were the same. From Kansas City and South Omaha to Chicago the rates on all classes of live stock were 23½ cents. From Sioux City the rate on cattle was from one to two cents
304 greater. I think it was 25 cents on cattle. On live stock originating in Kansas, Nebraska and points beyond, destined locally to Chicago, there was a percentage division of through rates, or a rate difference (commencing at St. Paul and running along the Missouri River, including Kansas City) which ranged from 14 cents to about 17 cents per hundred pounds. That represents the average rate received from these four packing points on live stock to Chicago.

Commissioner PROUTY: What do you mean by the differential—that the rates were so much higher to Chicago than to those points, or that the rate to Chicago was made up by adding that differential?

Mr. BIRD: Take Union Pacific business in connection with the St. Paul road. There are through rates from all Union Pacific stations to Chicago, and these through rates are divided upon a percentage basis. I took it in blocks of 50 or 100 miles, for a long distance, and found what that percentage yielded to the line east of the Missouri

River, or the price at which the line east of the Missouri River carried that stock to Chicago.

The CHAIRMAN: What the line east of the Missouri River got for hauling that stock?

Mr. BIRD: Yes, sir; and what the consignee paid the railroads for that service.

The CHAIRMAN: That was from 14 to 17 cents?

Mr. BIRD: Yes, sir.

Commissioner FIFER: On stock originating west of the river?

Mr. BIRD: Yes, sir.

Mr. HANSON: And what was the local rate—you omitted to state that—on packing house products from Sioux City to Chicago at these times?

Mr. BIRD: From Sioux City, Omaha, Kansas City, St. Joseph and Leavenworth the local rate on provisions to Chicago—pro-
305 visions of all kinds—was 28½ cents. The local rate from Missouri River points on live stock was 23½ cents. On packing house products from Missouri River points to Chicago, when destined East, they were covered by a through tariff which named the rates in every instance from Kansas City or Omaha to final destination, and the roads west of Chicago received 18½ cents as their proportion of that rate.

Mr. HANSON: Now, these rates that you now testify to, how long did they continue *to* force, and when did they change?

Mr. BIRD: The rate from Missouri River packing points to Chicago continued until the 30th day of June, 1902, with the exception that there were some modifications of the through rate on fresh meat and packing house products such as were necessary to conform to the changes demanded by the lines east of Chicago.

Mr. HANSON: What was done on the 1st of July, 1902?

Mr. BIRD: On the 1st day of July 1902, the rate on live stock, locally to Chicago, and on live stock products to Chicago was made 23½ cents. There was no change in the proportional or divisional rates on live stock from points west of the Missouri River. The 23½ cent rate on packing house products and fresh meats to Chicago also applied on business destined to points east of Chicago. There was no change at that time in the rates on live stock or its product from St. Paul to Chicago or to the east. That continued until the 8th day of August, 1902.

Mr. HANSON: Well, what was done at that time?

Mr. BIRD: On the 8th day of August, 1902, the rates on live stock products were reduced to 20 cents to Chicago.

Mr. HANSON: From what points?

Mr. BIRD: From Kansas City, Atchison, Leavenworth, and St. Joe to Chicago locally; and from the same points to Chicago on through business, the rate was made 18½ cents. On the 16th day of
306 August, 1902, the rates from South Omaha and Sioux City on live stock products were reduced to conform to the rates then applying from southwestern Missouri River points.

Mr. HANSON: Mr. Bird; why was the reduction made in rates on

packing house products and fresh meats at this time and not applied to live stock?

Mr. BIRD: The rate on the product was reduced because one of the lines thought it expedient to make that rate; and the rates on live stock were not reduced by the St. Paul Company because it believed that the rates on live stock were already too low, and that there was no obligation on the part of that company to make an unreasonably low rate to preserve a co-relation with rates which it did not establish.

Commissioner PROUTY: Who do you mean by which it did not establish?"

Mr. BIRD: Well, it did not institute the rate.

Commissioner PROUTY: It did not institute the 18½ cents rate. You said you did not feel obliged to maintain a co-relation of rates which it did not establish.

Mr. BIRD: I did not state my case as I should have done.

It did not feel obliged to maintain the previous evolution of rates, as it did not establish the lower rate on live stock products.

Commissioner PROUTY: I did not know but what you referred to the previous order of the Commission.

Mr. BIRD: No, sir; From the 1st of July the rates were the same on the two articles.

The CHAIRMAN: You meant simply, then, that you were not responsible for the reduction in the rate on dressed meats and packing house products that took place about that time?

Mr. BIRD: Originally and primarily, no, we were not.

Mr. HANSON: As an officer of the St. Paul Company in charge of its traffic, did you feel compelled to meet the rate on the product or go out of the business?

Mr. BIRD: There was no alternative. We had to meet it or go out of the business; I felt compelled to meet it. And while the
307 rate was lower than what I personally thought it should be, we considered it still yielded something over and above the incidental cost of the transportation of that particular business, and that if we failed to compete in the direction we would lose some other business which would yield us a profit over and above the cost of transporting the business and also probably affect westbound traffic that was much more valuable.

Mr. HANSON: You did not at the same time reduce the rate on live stock because you felt that the rates then were as low as they ought to be?

Mr. BIRD: Yes, sir. It was eight days later that we caused the rate from Omaha and Sioux City to be reduced to the same basis as Southwestern Missouri River packing points.

The CHAIRMAN: Your answer to a preceding question implied that you regarded the rates of 20 cents and 18½ cents on dressed meats and packing house products as unreasonably low. You may have testified already upon that point, but I would like to have you give in this connection your reasons for claiming that the rate on the product is unreasonably low.

Mr. BIRD: I do not think that the live stock product at that rate

pays a proper share of the general charge. The only reason I can see for a lower rate on provisions——

The CHAIRMAN: I do not ask you now to go into a comparison of rates as between live animals and dressed meats; but independent of the rate on live animals what are your reasons for claiming that the rate on the product is lower than it ought to be.

Mr. BIRD: I do not think it yields us sufficient revenue.

Commissioner PROUTY: While the published rate had been 23½ cents for ten or twelve years, the actual rate had not been much above 18½ and 20 cents, had it?

308 Mr. BIRD: Yes, sir; I think it was not through the year 1901, perhaps; the worst period of demoralization as to that traffic. But I do not admit that 18½ and 20 cents is as much as we had been getting before.

Commissioner PROUTY: You think you got more before that?

Mr. BIRD: I know it, so far as the St. Paul Company is concerned: I do not know about anybody else. When it got down to 22 or 23 cents on local business we thought it was a pretty low rate. There were times previous to 1901 when the rates were as low as they are now.

Commissioner PROUTY: Your line in this case did not take the initiative in reducing the packing house product rate?

Mr. BIRD: Not primarily at the Missouri River points, nor at any other place.

Commissioner PROUTY: You simply followed the action of another line?

Mr. BIRD: I beg your pardon; we followed the action of another line at Kansas City, but we anticipated it at Omaha.

Commissioner PROUTY: I suppose you felt obliged to put Kansas City and Omaha on the same basis?

Mr. BIRD: We were compelled to do that. There were other reasons than those which appear on the surface. Shortly following the reduction on provisions there was a very material reduction of the local rate on live stock from Kansas City and St. Joseph to Chicago, whereas the lines previously had seemed satisfied to keep rates on live stock and provisions on a parity. The live stock rate was reduced to less than the local rate on provisions; and that reduction was applied as a local rate and as the maximum at intermediate points. That affected a large part of that territory in Nebraska and Kansas from which the rates to Omaha, St. Joseph and Kansas City were the same and diverted the business in a large measure from the Omaha market.

309 Commissioner PROUTY: So you reduced the packing house rate from Omaha to meet the reduction in the live stock rate from the points which contribute live stock to those other Missouri River points?

Mr. BIRD: Yes, sir:

Commissioner PROUTY: Suppose you had taken the initiative in reducing the packing house rate; would you have felt justified in reducing that rate without reducing the live stock rate?

Mr. BIRD: I do not know what I would have done. I do not

think I would have taken the initiative. I am only speaking for myself. There may be conditions that would affect one line of railway that would not apply with equal force, and could not apply, to others. Conditions affecting or surrounding one road are vastly different from those of another road.

Commissioner PROUTY: Suppose conditions had induced you to reduce the rate—to take the initiative in reducing the rate on packing house products; would you have felt justified in doing that without making a corresponding reduction in the live stock rate?

Mr. BIRD: If I may be permitted to answer that in my own way, I would say this most emphatically; That if I had power to make the rates solely on the basis of what I thought they ought to be and what traffic could justly bear, I would have made the rate on provisions no lower than on live stock.

Commissioner PROUTY: This reduction of the rate up to Chicago, when it is a part of the through rate, is in reality a reduction of the entire through rate? The reduction of your rate from Kansas City to Chicago operates as a reduction of the entire through rate from Kansas City to the point of consumption, does it not?

Mr. BIRD: Those rates, were made, as I understand it, in order to arrive at what would be a fair, reasonable rate from
310 Kansas City to New York, and having reached that conclusion, the next question was to determine how that through rate should be divided as between the lines east and west of Chicago. Inasmuch as the lines east of Chicago occupy a curious position in respect to that particular traffic, the reduction had to come out of the lines west of Chicago.

Commissioner PROUTY: The reduction which you followed was a reduction by the Chicago Great Western line?

Mr. BIRD: In this case; yes, sir.

Commissioner PROUTY: And that reduction applied entirely, did it not, to traffic between Kansas City and Chicago?

Mr. BIRD: No, sir.

Commissioner PROUTY: What else did it apply to?

Mr. BIRD: From Kansas City and St. Joseph.

Commissioner PROUTY: From those Missouri River points to Chicago?

Mr. BIRD: Yes, sir.

Commissioner PROUTY: It had no reference to the rate east of Chicago, did it? That reduction in and of itself had no reference to the rate east of Chicago?

Mr. BIRD: I think it had.

Commissioner PROUTY: In what way?

Mr. BIRD: I think that the purpose was to establish a rate to Chicago locally and a reasonable through rate from the Missouri River to the Eastern seaboard.

Commissioner PROUTY: The tariff was filed by the Chicago Great Western road, I expect.

Mr. BIRD: Yes, sir.

Commissioner PROUTY: Did that tariff apply to any traffic except traffic between Kansas City and St. Joe to Chicago?

Mr. BIRD: I think it did.

Commissioner PROUTY: To what traffic did it apply?

Mr. BIRD: From the Missouri River to Chicago locally on the one part and from the Missouri River to Eastern points on the
311 other. There were two separate classes of business. One was local and the other through.

Commissioner PROUTY: Was the rate from Chicago, the division to Chicago or east of Chicago in any way changed?

Mr. BIRD: No, sir; they occupy a position in respect to live stock and live stock products essentially different from their position in reference to other traffic on which they make their rates from Chicago with reference to the origin of the traffic.

Commissioner PROUTY: So that in point of fact that was a reduction from St. Joe and Kansas City to Chicago?

Mr. BIRD: I do not regard it so. I think every initial road on the Missouri River is under obligation to make a rate, for instance, from Kansas City to New York, that is just and reasonable, and when they have determined in their own mind what that rate ought to be to New York the next question is, how can we divide that rate? To what extent will our connections join us in applying that rate? If they hold up to the arbitrary basis of local rates, there is nothing to do but shrink the difference. Under ordinary circumstances applying to through traffic, the lines east of Chicago accept less from Chicago to New York than they charge from Chicago locally.

Commissioner PROUTY: But you say in this particular case they do not?

Mr. BIRD: In this case they do not; in the matter of live stock and its products.

Commissioner PROUTY: Before the reduction, the rate at that time from Chicago to New York was 25 and 30 cents?

Mr. BIRD: I think it was about that.

Commissioner PROUTY: And it remained just exactly the same after the reduction by the Chicago Great Western as before did it?

Mr. BIRD: Yes, sir.

Commissioner PROUTY: The reduction by the Chicago Great Western from Kansas City to Chicago reduced in effect the en-
312 tire rate, of course, from Kansas City to New York, and that necessarily compelled a corresponding reduction by other lines, but the action which induced that was simply a reduction in the rate from Kansas City to Chicago, was it not?

Mr. BIRD: The reduction in the rate which was applied on through business; yes, sir:

Commissioner PROUTY: And what you did was to meet that reduction from Kansas City to Chicago?

Mr. BIRD: Yes, sir; we had to. We tried to get the lines east to divide that rate on a different basis, but they refused to do it.

Commissioner PROUTY: Although you published a rate applicable to business through Chicago it was in effect a reduction in the rate from what it had been, of the local rate from Kansas City to Chicago?

Mr. BIRD: It was a burden which we thought was unjustly put upon the lines west of Chicago if the through rate had to continue (from Kansas City to New York). The question was, how could we divide it. They refused to divide it upon a pro rata basis.

Commissioner PROUTY: You do make a local rate from Kansas City to Chicago of 20 cents. Do packing house products actually move on that local rate to Chicago?

Mr. BIRD: Yes, sir:

Commissioner PROUTY: And they are consumed here in Chicago?

Mr. BIRD: Yes, sir; in this district around here. I should say there are a half a dozen cooling houses or store-houses between here and Evanston on the St. Paul Company's line for that business.

Mr. HANSON: And which business takes the local rate?

Mr. BIRD: Yes, sir.

313 Commissioner PROUTY: There is an actual local rate upon which traffic moves to Chicago?

Mr. BIRD: Yes, sir; there is a substantial amount of business which moves on that rate.

The CHAIRMAN: It all comes to this, then, that the lines east of Chicago get just as much now as they did before this reduced rate which you have been speaking of took effect?

Mr. BIRD: Yes, sir.

The CHAIRMAN: The entire reduction had to be borne by the lines between the Missouri River and Chicago?

Mr. BIRD: Yes, sir.

The CHAIRMAN: And that reduction was initiated by the line and under the circumstances already described in Mr. Stickney's testimony.

Mr. BIRD: At Southwestern Missouri River points.

Commissioner PROUTY: I want to ask you in this connection whether the first tariff filed by the Chicago Great Western road was a local tariff of 20 cents and a through tariff of 18½ cents, or was it simply a through 18½ cent tariff?

Mr. BIRD: It was a tariff of 20 cents locally into Chicago, and a minimum proportion of through business of 18½ cents. That is my recollection. It is on file with the Commission.

Commissioner PROUTY: Suppose the Chicago Great Western road when it put in that tariff had put in a corresponding rate on live stock; would you have felt obliged to meet the live stock rate also?

Mr. BIRD: No, sir; not by reason of any rate made from the Missouri River. If the Great Western had reduced its rate on live stock at the same time the same as on the product, in the course of time we might have been compelled, in some parts of the territory, to make some revision of our live stock rates, whenever we

314 were in direct competition perhaps, but in a comparatively limited area.

Commissioner PROUTY: So that if the Great Western road were ordered to reduce its live stock rates to correspond with its packing house product rates, that would not of necessity affect your live stock rates?

Mr. BIRD: I will have to examine the map very carefully before

I undertake to answer that question. It would depend not so much on what the Great Western might do as upon what some other roads would do to meet the action of that road and what we would be obliged to do in consequence of the action of those other roads. It grades up, you know, and overlaps,—one line laps over another and that into another and so on, and doubtless I should say it would effect a reduction of live stock rates as far north as Aberdeen, in South Dakota.

The CHAIRMAN: That is, whereas as between your road and the Great Western it might not be necessary to reduce your live stock rate except at a very few places——

Mr. BIRD: Except at a few places.

The CHAIRMAN: That reduction by the Great Western might——

Mr. BIRD: I would like to add that the Great Western, as I understand, will soon be completed, and in operation, to Sioux City and Omaha. That would change the situation very materially.

The CHAIRMAN: If I understand you, you mean this, that while if the Great Western had reduced its live stock rate you might not have been obliged to make a corresponding reduction except at a very few places——

Mr. BIRD: Comparatively few.

The CHAIRMAN: That action by the Great Western might have forced reductions by some other line?

Mr. BIRD: Yes, sir.

The CHAIRMAN: And then by another line; so that to meet
315 the resulting reductions by various other lines you would sooner or later be compelled to reduce your live stock rates?

Mr. BIRD: It is the old story; if you knock down the first brick in the row you knock them all down.

The CHAIRMAN: To go back to the other point, Mr. Bird. When you say that the present dressed meat and packing house product rates are too low, that that traffic does not bear its just share of the transportation tax, do you mean that that traffic, considering its nature, value, volume, and uses, is carried at less rates than other merchandise and food articles generally?

Mr. BIRD: I can not answer that question, for I do not know of any other food articles which furnish a basis of comparison.

The CHAIRMAN: You answered the former question a few moments ago by simply saying you did not think it paid its fair share of the general transportation charge. What do you mean by that, exactly?

Mr. BIRD: When you compare the rates on live stock with rates on live stock products and take into account the cost of handling the business and nothing else, I do not think that there is much difference, and if cost only is to be considered the rate on the product may be lower than on the live animal. But to illustrate it: There are many articles classified as first class which are no more difficult to handle and which can entail no greater loss than many other articles in the second class, and that is true of each class descending; but there is no reason why first class articles should not be charged more than second class. We must haul the products of the soil and forest

as low as possible, consistent with reasonable profit, because the rate per hundred pounds, or per ton, on such business is a large factor in determining its value at the point of consumption. It makes very little difference whether the rate is $1.00 or $2.00 a hundred
316 on the common Derby hat; you can hardly figure the added cost to the hat of that rate; and so in my judgment the added charge should be laid where it will be felt the least. That is the justification for the first, second, third, fourth and fifth class; and in that sense only I mean that packing house products might well stand a higher charge than the live animal.

The CHAIRMAN: I do not want to draw you now into a comparison of the two rates, but I want to get your estimate of the reasonableness of the rate on the product as compared with other transportation charges.

Mr. BIRD: Well, if you compare it with the transportation charge on live stock and take into consideration the relative cost of carrying those two articles, I do not think there is any reason to object to the provision rate. I think it costs fully more to carry live stock than live stock product.

The CHAIRMAN: If I understand you, then, regarding transportation as a tax, that it ought to be applied more or less in proportion to the value of the article carried, and that on that theory dressed meats and packing house products at the rates in question do not pay their just share of that tax?

Mr. BIRD: That is my view of it.

Commissioner PROUTY: Has this traffic been what you call highly competitive traffic in the past?

Mr. BIRD: Exceedingly so.

Commissioner PROUTY: The parties who had that traffic to offer for transportation were so situated that they could get as low a rate on that as anybody could get on anything?

Mr. BIRD: Well, judging by the record; yes, sir.

Commissioner PROUTY: Now, you have carried grain from Kansas City to Chicago for from 5 to 7 cents per hundred pounds at times, have you not?

Mr. BIRD: No, sir.

Commissioner PROUTY: Some other lines have.

317 Mr. BIRD: From the Mississippi River perhaps.

Commissioner PROUTY: From Kansas City to Chicago, from the testimony before the Commission, grain was carried during the larger part of the summer of 1901 at not much above 7 cents per hundred pounds.

Mr. BIRD: I believe that is right.

Commissioner PROUTY: It rather appears that the rate on packing house products has never got down much below 16 or 17 cents. How do you account for the fact that it has not gone much below 16 or 17 cents?

Mr. BIRD: I think the rate on corn of 7 cents to Chicago, considering the load which the car will carry and the manner in which it may be hauled, time, etc., and the fact that the car is loaded both ways and used for nearly all kinds of business, perhaps the net re-

sult, when you come down to a basis of cost; is quite as good in one case as in the other; and I think the present rate on dressed meat and packing house products is so low and so near the cost mark that railroad people feel that they cannot safely go any lower; that they would be carrying the traffic below cost.

Commissioner PROUTY: Does that not show that 16 or 17 cents is pretty near the limit of cost of packing house products?

Mr. BIRD: I think that is pretty close to the cost mark.

The CHAIRMAN: Mr. Bird, I intended to ask you a question later on, but some of your answers have brought it to my mind and suggest that it might be asked now. You have had large experience with the business in this Western territory, and something you have said implies a belief on your part, or an opinion, in respect to the proper relation of rates as between the live animals and their products. Now, I want to know what is your judgment as to the just and fair relation of rates as between the live animals and
318 their products, and the reasons for your opinion. I mean to ask the question in the broadest possible way, without reference to the situation or interests of your line or any other particular line.

Mr. BIRD: I do not think I can give an intelligent or reasonable opinion as to the exact relation, or as to the approximate relation there should be between the live animal and the product. The cost of transportation is necessarily an element in determining these differences, but I do not think that the cost of transportation should fix the difference between the different articles carried by the railroad companies.

Mr. HANSON: In all cases.

Mr. BIRD: In all cases, no. I can only go back to that old phrase, that the traffic should be taxed what it will bear, and that the tax should be laid where it will be least felt and in adjusting taxes on that basis that traffic of higher values can well afford to bear the greater rate than property of a very low character or a very low price. I do not think there is any material difference, or ascertainable difference, between the cost of carrying a ton of third class freight and a ton of first class freight; there may be some little difference; but you can hardly determine what it is. Still no one doubts the propriety of charging first class goods more than third class; and I think that answers the question. The higher class property is the property that will bear the highest rate. When you carry the live animal you are charging for some portion of the animal that goes to waste.

Commissioner FIFER: They are commodity rates, are they not?

Mr. BIRD: The rate on packing house products was originally a class rate, but that was before there was any such industry in this country. You find "cattle" in the classification, but it says "See cattle rates."

319 The CHAIRMAN: If I understand your answer to my question, you mean the rate on the product should be higher than the rate on the live animals.

Mr. BIRD: I think so; I think that is a matter of economy and successful business operation.

The CHAIRMAN: Speaking not with reference to the interest of a particular line, but regarding it as a broad question of public interest and of the largest application—the charges which the public has to pay—you say that the rate on the product ought to be higher than the rate on the live animals?

Mr. BIRD: I think the public can afford to pay a higher rate.

The CHAIRMAN: Then you think it ought to be higher?

Mr. BIRD: Yes, sir; as high at least; that is, without regard to the relative cost of transportation; if you take that and nothing else into consideration it changes the aspect of the case somewhat.

Commissioner FIFER: The cost of carriage of packing house products is more than of live animals?

Mr. BIRD: No, sir; I believe it costs a little more, if anything, to carry live stock than it does the live stock products loaded to the maximum capacity in refrigerator cars.

The CHAIRMAN: Do you desire to add anything by way of further reasons for the opinion you have expressed?

Mr. BIRD: Where tariffs have been made without regard to competition, but with the design of making a just tariff, rates per ton per mile are graded gradually down as the distance increases and the co-relation of rates of the various classes are preserved, as in the Minnesota tariff which has been referred to so often. I find that in that tariff the rate on live stock, for example, is a greater percentage of the first class rate than in any of the tariffs which have been made in such States as Illinois and Iowa, the latter made largely under political pressure. That relation in Minnesota between first, second, third, fourth, and fifth classes is quite different from the relation which exists in rates in Iowa and in Illinois, and I believe they are justified by the conditions. I believe that tariff was constructed under proper care, and the result is that it is the best that has been found in the Northwest, the second, third and fourth classes being a certain percentage of the first class. It places the rate on live stock nearer the first class than any of the so-called Granger tariffs. This is what I have in mind when I say that if free from competition and other compelling forces I would, if left to my own judgment, make the rate on dressed beef and packing house products higher than the live animal; certainly not any lower.

320

Commissioner FIFER: There was a time when packing house products took the class rate.

Mr. BIRD: Yes, sir; it is in the classification now.

Commissioner PROUTY: East of Chicago they take a class rate now.

Mr. BIRD: That is hardly a fair comparison. The class to which they assign them is one of the lowest rates in the classification, the fifth class, and the fifth class in the Western Classification bears quite a different relation to the general traffic. We have classes 1, 2, 3, 4, 5, A, B, C, D, and E—ten or eleven classes, besides tariffs on coal and cattle, and various other things, and you can hardly com-

pare the classification rates east of Chicago with the Classification rates west of Chicago. They are radically different.

Commissioner PROUTY: It comes to this, then, that your only reason for making a lower rate on the product than on the live animal is the action of your competitors?

Mr. BIRD: That is true.

Mr. HANSON: Given the factor that the rate on packing-house products is fixed beyond your control to change it, and if you were adjusting the rate on the live animal on the basis of cost,
321 what rate would the live animal take in comparison with the fixed rate that you cannot change on the product?

Mr. BIRD: My belief is that they are not far apart today from what they should be, not different from what they should be. I believe there is just as much profit, and I believe a little more profit—if you take those two articles alone into consideration—in carrying the manufactured product as the live animals on the basis of existing rates.

Mr. HANSON: So the existing rates between the Missouri River and Chicago on the live animal fairly represents the spread in the cost of transportation?

Mr. BIRD: As near as I can figure it.

Mr. HANSON: Now, to get back to another matter that we were considering. You stated that the Santa Fe, I think, in the early part of August put in a 12 cent local rate on live stock from Kansas City to Chicago. How long did that local rate continue in effect—up to about what date?

Mr. BIRD: I do not remember.

Mr. HANSON: Do you know, Mr. Tomlinson?

Mr. TOMLINSON: January 1st, 1903, the Santa Fe advanced its rate to 18½ cents. Will you ask Mr. Bird why they advanced it.

Mr. HANSON: I don't know.

Mr. BIRD: Neither do I. The reasonable supposition is that they thought 12 cents was too low.

Mr. HANSON: Mr. Biddle testified in this hearing that the rate of 12 cents per hundred pounds on live stock from the Missouri River to Chicago pays the Atchison road as much in the gross as the 18½ cent rate pays for the transportation of fresh meat, and therefore he justified putting in the 12 cent rate. What has Mr. Biddle done since he testified?

322 Mr. BIRD: He advanced the rate to 18½ cents.

Mr. HANSON: How soon did he advance it?

Mr. BIRD: I cannot state the exact date; it was about the first of January, this month.

Mr. HANSON: And it was taken out on the 1st day of January, 1903?

Mr. BIRD: Yes, sir.

Mr. HANSON: Now, what effect, Mr. Bird, did this low local rate from Kansas City to Chicago have in increasing the Santa Fe's shipments on live stock over the amount of their shipments prior to that reduction to 12 cents? I think this shows it, Mr. Bird (handing paper to witness).

Mr. COWAN: I shall object to that. There ought to be better evidence than Mr. Bird's knowledge on that subject.

Mr. BIRD: I have taken this information from the Statistical Bureau of which the Santa Fe is a member.

The CHAIRMAN: That seems to us proper.

Mr. BIRD: This statement which I have prepared dones not cover the entire period because the statistics are made up by weeks, from the 15th of August to the 31st of August, for the month of September, the month of October, November, and from the 1st to the 21st of December, taken from the statistics of the Freight Bureau or the Statistical Department. This is by tons. In 1901 the total tons of live stock carried by the Santa Fe was 10,061 tons. For this period of August 15th to December 21st 1902, it was 20,917 tons. Now, upon the application of the local rate of 12 cents by the Santa Fe, two other roads, and possibly later one other, put in a rate of 12 cents as a proportional rate from Southwest Missouri River points to Chicago on live stock coming from trans-Missouri territory. The St. Paul did not meet that rate at any time or put in a proportional rate or reduce any live stock rate. The total for the period mentioned of live stock shipped over all the lines in 1901 from August 15th, to December 21st, was 78,317 tons. During this period of

323 EX. TO MR. BIRD'S TESTIMONY. See p. 343, Testimony.

Chicago, Milwaukee & St. Paul Railway Company, Office of Third Vice President, Chicago.

(Copy.)

JANUARY 13*th*, 1903.

Memorandum.

Showing rates on livestock and its product upon various dates named, March 31st and April 5th, 1902.

From Kansas City, South Omaha and Sioux City, live stock to Chicago locally 23½ cents; fresh meat to Chicago locally 23½ cents; packing house products to Chicago locally 23½ cents.

Live stock originating in Kansas, Nebraska and points beyond, destined locally to Chicago, between Missouri River and Chicago, a percentage division of the through rate, averaging 17½ and 18½ cents per 100 pounds. (Note.—These divisions of through rates have continued until the present time.)

Packing house products and fresh meat from Missouri River points to Atlantic Coast, and other points east of Chicago, were covered by through tariff (I. C. C. 284) which provided through rates to each eastern destination shown in said tariff. The share of each through rate which accrued to the lines from the Missouri River to Chicago was 18½ cents per 100 pounds. This through tariff continued in effect until June 30th 1902. It was modified in one or two instances

to meet changes in rates required by eastern connections, but the proportion received by western roads remained at 18½ cents.

All the foregoing rates from the Missouri River continued in effect up to June 30th 1902. On July 1st, 1902, the follow-
324 ing rates became effective:

On live stock, Missouri river to Chicago, 23½ cents.

On fresh meat, Missouri River to Chicago, 23½ cents.

On packing house products, Missouri River to Chicago, 23½ cents.

These rates applied to Chicago regardless of destination beyond, and continued in effect until August 8th 1902, when in consequence of a contract made by the Chicago Great Western with the Missouri River Packers the following rates went into effect:

From Southwest Missouri River points to Chicago locally, fresh meats and packing house products, 20 cents; to Chicago, when destined east thereof, 18½ cents. There was no change in the proportional or local rates on live stock.

The last named rates on fresh meat and packing house products were made effective from South Omaha and Sioux City August 16th. No change in live stock rates.

Rates from South St. Paul (March 31st and April 5th, 1902) to Chicago locally were:

Packing house products, 18½ cents.

Fresh meat, 20 cents.

Cattle, 25 cents.

Hogs and sheep, 27 cents.

Proportional rate on hogs from beyond St. Paul to Chicago 17½ cents.

On packing house products destined New York, 13½ cents.

On fresh meat, destined New York, 15 cents.

325 These rates from South St. Paul continued in effect until August 21st, 1902, at which time the Wisconsin Central established the following rates:

Packing house products, destined east, 14.6 cents.

Fresh meat, destined east, 15.7 cents.

Packing house products, to Chicago locally, 15.7 cents.

Fresh meat, to Chicago locally, 17. cents.

The C. M. & St. P. adopted these rates September 9th, 1902.

It will be observed that from July 1st to August 8th the rates on live stock and all live stock products, shipped locally from Missouri River to Chicago was 23½ cents, and that there were no proportional rates applying on business to points east of Chicago, but at the same time the rate on live stock locally from St. Paul to Chicago was greater than the rate on fresh meat or on packing house products, and the reason why there was no revision at St. Paul on July 1st to correspond with the revision made from the Missouri River was the issue raised by the Railroad Commissioners of Minnesota. The facts in the case were reported verbally to the Interstate Commerce Commission.

326 the reduction in the rate it was 113,314 tons; showing an increase of 34,997 tons. Of that increase the Santa Fe's increase was 10,856 tons, or a little bit less than one-third of the total increase by all lines.

Mr. HANSON: About one-third of the increase by all the lines?

Mr. BIRD: Yes, sir.

Mr. HANSON: To return to the rate from South St. Paul to Chicago on the 5th of April, will you briefly state what the rate was on live stock and its products on that date?

Mr. BIRD: The rates from South St. Paul on the 31st of March and the 5th of April, 1902, were the same; Packinghouse products 18½ cents; fresh meats 20 cents; cattle 25 cents and hogs and sheep 27 cents. On packing house products destined to New York, 13½ cents; fresh meat, destined to New York, 15 cents. These rates continued from South St. Paul until the 21st of August, 1902, at which time the Wisconsin Central established the following rates: Packing house products destined East, 14.6 cents; fresh meat, destined East 15.7; packing house products, to Chicago locally, 15.7 cents; and fresh meat, 17 cents. These rates were established on the 21st of August by the Wisconsin Central and on the 9th of September were adopted by the Chicago, Milwaukee & St. Paul Company. There were no changes made in the rates on live stock.

Mr. HANSON: I will have this paper marked "Exhibit No. 1, to Mr. Bird's testimony," and introduce it in connection with his testimony.

(The same is hereto annexed and marked "Exhibit No. 1" to Mr. Bird's testimony.)

Mr. HANSON: (Handing paper to witness.) Mr. Bird, state briefly what this is?

Mr. BIRD: The statement has been made by the other side that the rate on live stock is in itself too high—too high *per se*—and I have undertaken to show that live stock is not paying its just share
327 of the general charges according to the information I have been able to obtain from experts in the business by direct conference. A carload of harvesting machines is worth about $1600. and the rate between Dawson, Iowa and Chicago is 29 cents. I have used Dawson for reasons which I have already given. Based on 25,000 pounds, which is about what that class of machinery will load in an ordinary car, the revenue is $72.50. It is about 4½ per cent. of the value of the products. That is the rate relation to the value of the property transported. I have undertaken to show that if livestock is the raw material for the packer, hay and corn are the raw material of the steer, and if you take the rate on a carload of that grade of corn which is usually fed and compare it with the value, you will find that it is $68. as compared with $404. or 16.8 per cent of the value of the product. Hay, another item of raw material for beef is worth about $200. a car according to the current market value during September. The rate is 17½ cents. It pays $70. a car. The transportation charge is 35 per cent. of the value. Taking cattle, the valuation of a carload is about $1456. and the rate from the point I have mentioned to Chicago is 23½

cents, which yields $51.70, or 3.54 per cent. of the value of the property transported. If the Commission will permit me later on I will give figures showing the relative cost of transportation of cattle and these articles. This statement takes certain articles of about the same value as live stock, or as near as I can find to correspond, and shows the percentage relation which the rate bears to the value of the article transported. The result is that agricultural implements will pay 4½ per cent; mowers, which load heavier, 6.45 per cent.; common brick, upon which the rate is very low 93¼ per cent. of the value of the product, and it is actually used and being paid; eastern soft coal, carried from Chicago to Dawson at a rate of about one-half of one cent per ton mile, a very low rate—lower than the average rate—based upon valuations taken last September and not
328 the high values that prevail to-day the rate is 58.3 per cent. of the value of the product; from which I submit that live stock is not paying its just share of the transportation charges.

The CHAIRMAN: You speak of the value of the product in each case at destination or at the consuming market?

Mr. BIRD: Yes, sir.

Mr. TOMLINSON: I will ask if there is any soft coal moved from Chicago to Dawson?

Mr. BIRD: There is a great deal of soft coal moved to western Iowa and to Omaha. If I had made the comparison on Omaha where that coal is consumed, it would have shown the same relative results.

Mr. TOMLINSON: Is there any coal shipped there now?

Mr. BIRD: A little of inferior quality. It does not come into competition with eastern soft coal.

Mr. HANSON: I now offer Exhibit No. 2 to Mr. Bird's testimony.

(The same is hereto annexed and marked "Exhibit No. 2 to Mr. Bird's testimony.)

Mr. HANSON: I now hand you exhibit No. 3. You may state as briefly as you can what this statement is.

Mr. BIRD: I have had prepared under my immediate supervision and given time to it myself an analysis of the freight train service over one division of the road entering Chicago, that division which is best able to handle a large volume of traffic on a minimum of expense—the most favorable division of the St. Paul road to handle freight over.

Mr. HANSON: What division is that?

Mr. BIRD: The Chicago & Milwaukee Division. There were 350 trains taken within a given period the month of September. There were 223 trains of ordinary dead freight moved from Milwaukee to Chicago in 8 hours and 2 minutes, on the average. The average train tonnage was 1436 tons. There were 59 straight trains of live stock.

Mr. HANSON: Nothing but live stock in the train?

Mr. BIRD: No, sir; and 25 other trains of live stock and

329 Ex. 2 to Mr. Bird's Testimony. See P. 346, Test.

Statement Showing Values and Rates on Cattle, Hogs, and Other Commodities Between Dawson, Ia., and Chicago.

Values and Rates During September, 1902.

	Values per carload.	Rates.	
		Per 100 lbs.	Per carload.
Agricultural Implements:			
Harvesters and Binders	$1600.	29.	$72.50
Mowers	$1125.	29.	$72.50
Brick	$800.	14.	$56.00
Cattle	$1456.48	23½	$51.70
Coke	$800.	11.75	$47.00
Corn, No. 3, yellow	$1048.	17.	$68.00
Hay	$800.	17½	$70.00
Hogs	$1193.40	23½	$39.95
Lumber	$800.	13.	$52.00
Nails	$800.	19.	$76.00
Soft Coal, eastern	$800.	$.75	$35.00
Wheat	$868.32	20.	$80.00

Basis of Calculation.

Cattle	22,000 lbs. per carloads.
Hogs	17,000 lbs. per carload.
Agricultural Implements	25,000 lbs. per carload.
Other Commodities	40,000 lbs. per carload.

[Endorsed:] Comparison of rates and values Various Commodities.

330 other freight mixed. The dead freight averaged 49.8 cars to the train. Straight live stock trains averaged 28 cars to the train with an average train of 732 tons, about one-half what we carried in the dead freight trains. The mixed stock trains averaged 28.8 cars to the train and the tonnage averaged 795 tons. You get more tonnage of dead freight over the same number of wheels than you can of live stock. The trains which are run at the highest rate of speed, second only to live stock trains, carrying merchandise to the far north west, averaged 1108 tons.

Mr. Hanson: What was the average time?

Mr. Bird: Five hours and 54 minutes; and the live stock trains 3 hours and 37 minutes.

Mr. HANSON: The live stock trains were run faster than your fast freight?

Mr. BIRD: Yes, sir. There were 25 way freight trains in that month, stopping along at different stations. Their average was 1021 tons. I want to say in explanation of that, if you please, that the live stock is loaded at as convenient an hour for the shipper as is consistent with the necessary running of the trains and the live stock train is run with a view of reaching this market in the early morning hours.

Mr. HANSON: I now offer Exhibit No. 3.

(The same is hereto annexed and marked "Exhibit No. 3 to Mr. Bird's testimony.")

Mr. HANSON: Mr. Bird, is there an expense chargeable solely to the transportation of live stock from local stations in the way of stock yards, weighing scales, water conveniences, etc., that is not chargeable to any other class of traffic?

Mr. BIRD: There are material expenses chargeable to live stock only.

Mr. HANSON: To live stock shipped from local stations largely, is it not?

Mr. BIRD: Altogether so.

Mr. HANSON: Can you state to the Commission about what the investment is of the St. Paul company in these local stock

331 EX. 3.—MR. BIRD'S TESTIMONY.

(See p. 348, Testimony.)

Statement Showing Number of Trains Run, Class, Average Cars to Train, Time, and Tonnage, Eastbound, during Month of September, 1902.

C. & M. Div.

Class.	Number of trains run.	Average cars to train.	Average time.	Average tonnage.
			Hrs. Min.	
Dead freight.....	223	49.8	8 02	1436
Straight stock.....	59	28.	3 37	732
Mixed stock.....	25	28.8	3 49	795
Time freight.....	18	38.8	5 54	1108
Way freight	25	41.4	15 53	1021
Total and average..	350	43.4	7 26	1225

[Endorsed:] Average tonnage of various freights and trains.

332 yards?

Mr. BIRD: The investment in yards, paving, etc., water power, water supply, scales for weighing—I have taken considerable pains to get at the average cost of the country yards.

Mr. HANSON: The average cost at each station?
Mr. BIRD: Yes, sir.
Mr. HANSON: What do you find it to be?
Mr. BIRD: About one thousand dollars.
Mr. HANSON: How many of those stations have you at which there are stock yards averaging that cost?
Mr. BIRD: About a thousand.
Mr. HANSON: About a thousand stations?
Mr. BIRD: Yes, sir.
Mr. HANSON: Have you investigated the annual cost of maintaining those stations?
Mr. BIRD: As near as I can ascertain from the men in charge and the reports made by them it is about equal to 10 per cent., or one hundred dollars.
Mr. HANSON: That is one hundred dollars per station?
Mr. BIRD: Yes, sir.
Mr. STICKNEY: The investment is a million dollars and the annual expense about one hundred thousand dollars?
Mr. BIRD: Yes, sir.
Mr. HANSON: I will now call your attention to Exhibit No. 4. You may state very briefly what that statement is.
Mr. BIRD: This (referring to Exhibit No. 4) is a statement showing the actual loading tonnage and weights of cars of hogs, cattle and their products, taken from actual operations in the month of September.
Mr. HANSON: Why did you take September?
Mr. BIRD: Well, it was first used in testimony, I think, by Mr. Stickney and I wanted our data made up for the same month.

333 EX. 4.—MR. BIRD'S TESTIMONY.

See p. 351, Test.

Statement Showing Weights of Cars and Contents.

	P. H. P.	Fresh meat.	Hogs.	Cattle.
Actual loading	32,398	22,129	16,937	22,714
Weight of car	37,000	37,000	27,100	27,100
Total weight hauled	69,398	59,129	44,037	49,814

[Endorsed:] Average weights of cars and contents.

334 *Statement Showing Shipments of Live Stock from Kansas City, Leavenworth, Atchison, and St. Joseph, from August 15th to December 21, 1901, and 1902.*

	Shipments via A., T. & S. F. Ry., 1901.	Total, 1901.	Shipments via A., T. & S. F. Ry., 1902.	Total, 1902.
Aug. 15th to 31st.....	1,396	13,267	1,691	20,417
September	3,569	27,656	6,533	34,259
October.....	3,950	21,281	7,623	35,785
November	590	8,966	2,999	14,724
December 1st to 21st	556	7,147	2,071	8,129
Total	10,061	78,317	20,917	113,314
Increase	.....	.....	10,856	34,997

335 Mr. HANSON: For that reason?

Mr. BIRD: Yes, sir. The actual loading was, on packing house products 32,398 pounds per car; on fresh meats 22,129 pounds; on hogs 16,937 pounds, and on cattle 22,714 pounds. The weights of the cars, taken from an actual examination for the month were, packinghouse products and fresh meat cars 37,000 pounds, and hogs and cattle cars 27,100 pounds.

Mr. HANSON: I will offer that in evidence.

(The same is hereto annexed and marked "Exhibit No. 4 to Mr. Bird's testimony.")

Mr. HANSON: Mr. Bird, I now hand you Exhibit No. 5 and ask you to state briefly to the Commission what it is.

Mr. BIRD: It is a statement showing receipts of cattle, hogs and sheep in Chicago over the Chicago, Milwaukee & St. Paul Railway from points on the Chicago & Council Bluffs Division in Iowa and a comparison of revenues derived from the transportation of that live stock with the commissions of the Chicago Live Stock Exchange.

Mr. COWAN: If the Commission please, I object to that. It looks to me, from the little experience I have had in law, like folly to introduce before the Commission, or anybody else anything in relation to the commissions charged. They may charge immensely too much. It may be the worst character of trust, but it cuts no figure in this case. Why encumber the record before a body as intelligent as this with any such stuff? I cannot see any reason for it. If we are going into it, we should go into the merits of it. We object to it as absolutely irrelevant to anything involved in the proceedings.

Mr. HANSON: It is admissible, if the Commission please, upon this theory, if at all, that you can only get at the reasonableness of anything by comparing it with something else. We are comparing what we are earning here on the transportation of this live stock with what this Live Stock Exchange get out of it for selling it. The same live stock that we transport, they sell, and this shows their business for one month and our business for one month, and on that ground I

336 Ex. 5, Mr. Bird's Testimony. See P. 353, Testimony.

Receipts of Cattle, Hogs, and Sheep in Chicago over C., M. & St. P. Ry. from Points on the C. & C. B. Division in Iowa, and Comparison of Revenue on Same, with Commissions of Chicago Live Stock Exchange, Month of September, 1902.

	Number of cars.	Number of head.	Revenue received by C., M. & St. P.	Average revenue per car.	Commission Chicago Live Stock Exchange.	Percentage commission to C., M. & St. P. revenue.
Cattle	88	1848	$4095.71	$46.54	$924.00	22½ %
Hogs	121	7865	$4216.35	$34.85	$1210.00	28.7%
Sheep	7	1400	$171.20	$24.46	$70.00	40.8%
Total	216	11113	$8483.26	.....	$2204.00	26 %

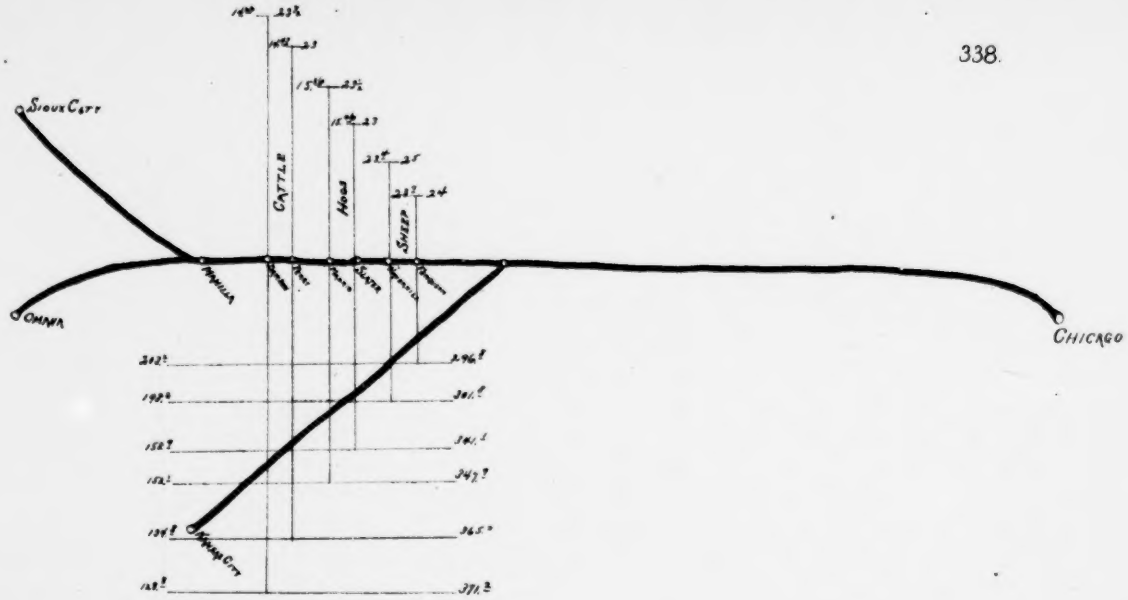
[Endorsed:] Receipts of live stock. Comparison of freight revenue with commissions.

337 *Statement of Tonnage of Live Stock Forwarded from Points on Main Line of the C. & C. B. Division in Iowa to Chicago During September*, 1902.

	Cars.	Pounds.	Average per car.
Cattle	88	1,998,900	22,71[illegible]
Hogs	121	2,049,400	16,937
Sheep	7	74,000	10,571

[Endorsed:] Tonnage of live stock forwarded from points on C. & C. B. div. in Iowa during Sept., 1902.

(Here follows diagram marked p. 338.)


Sioux City
Omaha
Chicago
Cattle
Hogs
Sheep
Manilla
Slater
Kansas City

339 (Copy.)

State of Minnesota.

Office of
Railroad and Warehouse Commission.

SAINT PAUL, *May* 19, 1902.

A. C. Bird, Esq., Third V. P., C. M. & St. P. Ry., Chicago, Ill.

DEAR SIR: We notice in the Railway Age that the Interstate Commerce Commission recently met in Chicago and heard a complaint filed by the Chicago Live Stock Exchange complaining that the local rates on live stock from many points in Minnesota, Iowa and Missouri, to Chicago are in excess of the proportional rates from the Missouri River points to Chicago, on dressed beef, and that Chicago is being injured as a livestock market, and that the railroad companies interested have asked an extension of time, so as to adjust their present tariffs on livestock and dressed beef:

This Commission desire to call your attention to the fact that when the rates on livestock were recently readjusted from points in the southwest portion of this State, to St. Paul, it was the general understanding with the various railroad companies represented at that meeting, that the rates into Chicago from those points affected by the readjustment were not to be interfered with, as it would lead to a further investigation on our part.

We do not wish in any manner to be understood as interfering with interstate business, but desire to express the hope *the* in adjusting the livestock rates into Chicago, from Minnesota points, that a
340 corresponding reduction be made into St. Paul; otherwise, it will necessitate a further examination by us in this matter, which is to be avoided, if possible, in view of the fact that the present rates appear so far to be perfectly satisfactory to all parties interested.

An early reply will greatly oblige.

Yours truly,

For the COMMISSION,
Per T. YAPP.

341 *Statement of Tonnage of Fresh Meats and Packing House Products Forwarded from Points Named Below to and via Chicago, During September*, 1902.

To and via Chicago. From	Total number of cars.	Straight carloads. Fresh meats.			Straight carloads. Packing house products.			Mixed carloads. Fr. meats, P. H. P. & other freight.		
		Number of cars.	Pounds.	Average weight per car.	Number of cars.	Pounds.	Average weight per car.	Number of cars.	Pounds.	Average weight per car.
South Omaha	558	349	7,815,764	22394.7	145	4,681,412	32285.6	64	1,542,290	24098.3
Kansas City	457	311	6,687,391	21504.8	38	1,197,774	31520.	108	2,418,976	22397.9
Sioux City	171	89	2,070,920	23268.7	76	2,527,540	33257.1	6	169,410	28235.
South St. Paul	20	....	.....	.....	20	632,283	31614.	...	....	..... .
Average	....	...	.....	22129.	....	.....	32397.8	. ..	..... .	23206.1

[Endorsed:] Tonnage of Fresh Meats and Packing House Prod's from Mo. River points and South St. Paul to and via Chicago during Sept., 1902.

342 think it is admissible, especially as it has been gone into before and is already in the case.

Mr. KELLOGG: I would like to make a suggestion. I do not suppose this Commission can legally dismiss a complaint because the complainant has no interest, but I suppose the Commission can take into consideration whether anybody is complainant about this rate that is entitled to be heard. I say it is none of the business of the Live Stock Exchange what the rate is. The shippers are not objecting. I think the Commission should take into consideration the good faith of this complaint. We may be able to show other reasons why it is being prosecuted.

The CHAIRMAN: We do not consider the testimony of much importance one way or the other. The statement has been prepared and may be useful as showing what the actual movement over this one road is.

Mr. HANSON: Well, we will offer it without comment.

(The same is hereto annexed and marked "Exhibit No. 5 to Mr. Bird's testimony.")

Mr. HANSON: You may state briefly what it is, Mr. Bird.

Mr. BIRD: It shows that the live stock commission merchants of Chicago, if they charge their regular schedule of commission prices receive of the amount that the railroad company obtain for the transportation 26.1 per cent.

Mr. HANSON: You say, if they do charge their regular commissions. Do you know whether if they do not charge their regular commissions they will be fined by the Association?

Mr. BIRD: I have been told so.

Mr. STICKNEY: That is only one commission, if they sold it to the packers. If part of this were feeders and were sold out in the country, they would get another equal commission on it, would they not?

Mr. BIRD: I do not really know. I understand that if they sent it somewhere else——

The CHAIRMAN: My recollection is that the constitution, by-laws and regulations of this complainant are already in evidence
343 and show what their charges are, that is the gross charges. I think Mr. Tomlinson said that 75 or 80 per cent. of those charges are expenses. In like manner you show what you get for bringing a car here.

Mr. BIRD: And what they get out of the sale of the stock.

The CHAIRMAN: How much is profit and how much expense is another question.

Mr. STICKNEY: The Chairman did not understand the force of the inquiry. He has figured up on that one commission. That is what the commission house gets that sells to the packers. Under the rules, if that stock is sold—if a farmer comes here and wants to buy some feeders to take out to his farm and feed, he must employ another commission house to buy that for him, and that commission house charges the farmer the same amount of commission. That is double commission. On a carload of cattle the commission is $12. or $12.50. That is what the first commission man gets for selling it. The Com-

mission man that the farmer employs also gets a commission of $12. There is $24. commission. This statement only shows one commission.

Com'r PROUTY: His statement only shows one railroad transportation.

Mr. STICKNEY: That same stuff may pay another commission.

Com'r PROUTY: But it must also pay another railroad transportation.

Mr. STICKNEY: No.

Com'r PROUTY: How do you get it out into the country?

Mr. STICKNEY: There are lots of people that feed stock within driving distance from here.

Com'r PROUTY: Are they worse here at Chicago than they are at Kansas City, Omaha or St. Paul?

Mr. STICKNEY: Well, yes, sir; the live stock exchanges at those places have something else to do besides filing petitions before the Interstate Commerce Commission and compelling 20 or 30
344 railroads to appear here to thrash over, straw that has been thrashed twice already before this Commission. They take us away from our business and bring the Commission here, and for what purpose, I do not know. Possibly we may put some inquiries before this hearing is closed which may disclose some reason for doing it.

Mr. HANSON: In this connection, if the Commission please, I would like very much, to have Mr. Bird testify what his information is as to the cost of the live stock commission men transacting their business.

The CHAIRMAN: I think we will not go into that.

Mr. HANSON: As the record now stands, as the Chairman stated, it is 75 to 80 per cent., but that is not the fact and I do not want the Commission to act upon it. Now, Mr. Bird, state briefly what Exhibit No. 6 is.

Mr. BIRD: I have undertaken to ascertain what it would cost the St. Paul Company alone if the conclusions of this case is that we must reduce our rates on live stock to a basis of 20 cents from Missouri River points to Chicago and what it will cost if we must reduce the rates to Chicago to the basis of 18½ cents. I have had a chart or plat of the road made, an accurate map, and have noted at each station the rates on live stock as they are now and what they would necessarily be, following the same line of grading as at present. If the Sioux City and Omaha rates were put down to a basis of 20 and 18½ cents. I found the difference in cents per hundred pounds at each station and I have had a report made showing the amount of stock of each class shipped from those stations, showing the amount of loss that would accrue to the St. Paul Company alone.

The CHAIRMAN: What is the period?

Mr. BIRD: I have taken the month of September for an average month. I find that our heaviest stock business is in Novem-
345 ber and December and that a fair average is the month of September.

The CHAIRMAN: You have taken September, 1902?

Mr. BIRD: Yes, sir.

The CHAIRMAN: And assume the same movement from the same points?

Mr. BIRD: Yes, sir.

The CHAIRMAN: That you actually had during that month?

Mr. BIRD: Yes, sir. Then I multiply it by twelve.

The CHAIRMAN: And you show the difference between the rates you get and the rates you would get?

Mr. BIRD: Yes, sir; and I want to say in explanation of this statement, that it does not represent more than half the loss in net revenue because in making this compilation and referring only to the rates directly to Chicago I overlooked the fact that if the rates were reduced from Sioux City and Omaha to Chicago they would necessarily be reduced from those places in a northeasterly direction diagonally across the country to St. Paul and Duluth; the lines running from the Missouri River across in a northeasterly direction cross east and west lines at short intervals and such lines would apply the reduction from all intersecting points to Chicago and the east.

The CHAIRMAN: Your statement simply shows what the loss would be on the movement to Chicago.

Mr. BIRD: No, I think it shows only half, because the lines running to the north east intersecting the east and west lines and making the reductions north would carry a corresponding reduction from points not affected by Sioux City.

Mr. HANSON: Would it not extend to the trans-Missouri territory?

Mr. BIRD: It would be extended into trans-Missouri territory to some extent, but I have not been able to figure that out.

Statement Showing Earnings of C., M. & St. P. R'y on Live Stock Handled on Chicago Basis of Rates in September, 1902, and Comparisons with Results Under Proposed Tariffs, Showing Monthly and Annual Decrease.

	Earnings in September under tariffs in effect.	Earnings under proposed tariffs.					
		Chicago local.			Chicago proportional.		
		Earnings.	Decrease for 1 month compared with previous rate.	Annual decrease.	Earnings.	Decrease for 1 month compared with previous rate.	Annual decrease.
Cattle	$90,037.39	$76,160.35	$13,877.04	$166,524.48	$73,868.73	$16,168.66	$194,023.92
Hogs	47,107.75	40,216.62	6,891.13	82,693.56	37,630.47	9,477.28	113,727.36
Sheep	6,562.08	5,217.90	1,344.18	16,130.16	4,844.02	1,718.06	20,616.72
Total	$143,707.22	$121,594.87	$22,112.35	$265,348.20	$116,343.22	$27,364.00	$328,368.00

[Endorsed:] Earnings of C., M. & St. P. Ry., handled on Chicago basis of rates, in Sept., 1902. Comparison with results under proposed tariffs showing decreases.

347 BIRD.

Statement of Number of Cars of Live Stock Shipped from All Stations on the C., M. & St. P. Ry. into the Various Markets Shown Below, During the Year 1902.

	Horses.	Cattle.	Hogs.	Sheep.	Total.
Union Stock Yards	543	20663	23717	3454	48377
Kansas City	45	1076	1121	68	2310
Omaha-South Omaha	31	914	2013	40	2998
Sioux City	64	4676	4765	177	9682
St. Paul-Minneapolis	123	282	170	13	588
South St. Paul	1	823	1364	103	2291
Austin	...	5	351	...	356
Milwaukee	86	602	2464	99	3251
Cedar Rapids	2	31	834	...	867
Ottumwa	...	46	657	..	703
Points east or south of Chicago	63	57	462	5	587
Miscellaneous	766	4506	649	187	6198
Total	1724	33771	38567	4146	78208

348 Mr. HANSON: What does that statement show?

Mr. BIRD: On the basis of the 20 cent rate a loss of $265,348.20 and on the 18½ cent basis $328,368.00 per annum; and I verily believe that those figures are about half of what the actual loss would be.

Mr. HANSON: I offer this in evidence.

(The same is hereto annexed and marked "Exhibit No. 6 to Mr. Bird's testimony.")

Mr. COWAN: Did you file the map?

Mr. HANSON: No, sir.

The CHAIRMAN: He takes all his stations from which the stock moves to Chicago and the amount moved from each station and he multiplies that by the rate they got and it is a certain figure. Then he multiplies the same thing by 20 in one case and 18½ in the other and the difference is $265,000. in the first case and $328,000. in the other.

Mr. COWAN: I was asking if he filed the map. He says he did not. I say these are the conclusions he arrived at.

Mr. HANSON: Have you that map Mr. Bird?

Mr. BIRD: No, sir, it is a thin proof, penciled, used for compilation purposes.

Mr. HANSON: Are you able to state from investigations you have made the percentage of live stock cars that go west empty after having been brought to Chicago?

Mr. BIRD: Yes, sir; I have taken pains to ascertain that.

Mr. HANSON: State what it is.

Mr. BIRD: I have a memorandum here. It is a fraction over 80 per cent.

Mr. HANSON: Have you a memorandum that you can put in evidence?

Mr. BIRD: I do not seem to be able to lay my hand on it.

The CHAIRMAN: That is 80 per cent. of the cars you bring to Chicago go back empty?

Mr. BIRD: A little more than 80 per cent. go back empty.

349 Mr. HANSON: For the purpose of getting it into the record, I would like to have Mr. Bird introduce in evidence the rule of the St. Paul Company in respect to the transportation of parties with live stock.

Mr. BIRD: It is published and on file with the Commission and the rule is found in what is known as Western Trunk Line Tariff No. 4, I. C. C. No. 286, effective April 1st, 1902. It is reprint so far as these rules are concerned.

Mr. HANSON: If that is the case, I will not introduce anything further on that.

Mr. BIRD: It is found on page 12 of that tariff.

Mr. HANSON: Mr. Bird, some reference has been made here to what is called the Minnesota Distance tariff. I wish you would briefly state to the Commission what you know as to the construction of that tariff with reference to the gradation of rates as to distance and also the relative position of commodities one with the other.

Mr. BIRD: That tariff was made a number of years ago—I think ten or more—by the railroad companies in conjunction with the Commissioners of Minnesota. It was the joint production of the Commission and the railroads. I think it is right to say that the railroads felt compelled to a great extent to conform themselves to the opinion of the Commission, because they had the power to make the tariff anyhow. The tariff was made with proper respect to the descending grade per ton per mile according to increasing distance. It was graded gradually and scientifically with reference to the long and short haul. First class was established and each class had a fixed relation to the first class, carried clear through. It is the only tariff of the kind I know. It is described briefly as the Minnesota Distance tariff. It is not the Commission's tariff, except that the Commission accepted it as a proper schedule for southern Minnesota. It was adopted by the St. Paul and the Northwestern Company in Southern Minnesota first as their distance tariff and after-

350 wards as the distance tariff between Minnesota and Iowa and I think between Wisconsin and Minnesota; but certainly between Minnesota and Iowa.

Mr. HANSON: Now, Mr. Bird, there was testimony given here that if the rates from Southern Minnesota on live stock to Chicago were reduced there would be a corresponding reduction of rates from that territory to St. Paul. Have you anything to state to the Commission on that?

Mr. BIRD: I think this case was first heard about the middle of May last year. The first hearing under this present complaint was on the 15th of May, and it was postponed on the request of the railroads, which I presented at the time. The reason for the request for a postpon-ment was our belief that by July 1st rates would be revised so as to conform generally to the previous practice of

uniformity of rates on live stock and products. Soon after that hearing one of the Commissioners from Minnesota with the secretary called on me to know what we intended to do, especially to know if we intended to reduce live stock rates from St. Paul to Chicago and if that reduction would apply at intermediate points through southern Minnesota. I was given to understand very clearly and forcibly by the Commissioner that if we did reduce our rates, in the absence of a final hearing, or in the absence of a proper order, it would be regarded as the voluntary act of the railroads and that they (the Minnesota Commissioners) would reduce the rates in Minnesota, not specially from points in southern Minnesota, but in making an order for reduction it would have to be universally applied throughout the State. It meant a wholesale reduction of rates upon all live stock in the State of Minnesota.

Mr. HANSON: I suppose the Commission will take notice of the laws of Minnesota under which the Commission of Minnesota act—that they do have power to fix rates, subject to the limitation that they shall not be unreasonably low.

The CHAIRMAN: More than that, the Minnesota laws in
351 reference to the Commission and its powers were made part of the record.

Mr. HANSON: Taking the rate from southern Minnesota on live stock into St. Paul and from the same points into Chicago, what have you to say to the Commission as to the adjustment of those rates, whether one is properly adjusted as to the other as they now are; and you may take into consideration the testimony which has been given here showing the movement of live stock under those rates into St. Paul and into Chicago.

Mr. BIRD: I have not had time to tabulate the movement of the traffic.

Mr. HANSON: It shows that there is more stock moving from southern Minnesota into Chicago than into St. Paul under the existing rates?

Mr. BIRD: That is true. It has been a subject of contention and investigation for nearly two years, and in that connection I think I should say that I was notified about two years ago by the Secretary of the Commission or the Commission's representative that they were in receipt of a good many complaints as to the relative rates, and that the Commission contemplated a reduction of live stock rates. I was asked why certain relative conditions at certain places existed and I told them that it was impossible for the representative of any one railroad by himself to give a satisfactory explanation of the general situation, that if they were going to investigate that matter they should have all the interested roads represented or all the roads in that district represented at the time; that it was impossible for any one man to keep in view the various conditions that affected the grading of those rates. The result was that the Commissioners appointed a day for a meeting to consider those questions and they came to Chicago because the principal representatives were here. It was a conference which resulted in a readjustment in some districts.

It was one of the sort of conferences where one party had to
352 face the man behind the gun. He had the power to make the rate and we felt obliged to reach a basis of figures that was satisfactory to the Commissioners, and those rates were really adopted under those circumstances.

Mr. HANSON: And the now existing rates are those rates that were then adopted?

Mr. BIRD: Yes, sir.

Mr. HANSON: And so far as you know, the shipments under those rates have not worked disadvantage to the Chicago market, but rather an advantage?

Mr. BIRD: A greater portion of the live stock from southeastern Minnesota, where the St. Paul operates comes to Chicago.

Mr. KELLOGG: Does not the greater portion of the cattle from the intermediate territory come to Chicago?

Mr. BIRD: That is my belief, from a general knowledge of the business.

Mr. HANSON: Mr. Bird, if you have any knowledge on the subject I would like you to state whether considerable of the live stock product at Missouri River points is moved to the west and south and consumed there?

Mr. BIRD: I have no accurate knowledge in detail, taken from the records of the packing houses, but I have a general knowledge of the facts. I know that the material proportion and substantial proportionn of the traffic is shipped to points west of the Missouri River and south of the Ohio River through St. Louis and southern outlets as well as to the far west. I know that a large portion of the traffic from Omaha goes to the Southwest, because there was a long controversy and a very high tension of competition between Omaha and Kansas City as to relative rates to the Southwest and Southeast. It resulted at one time in making the same rate from Omaha to southwestern and southeastern points as was made from Kansas City, 200
miles farther south than Omaha. It prevailed a long time
353 and it was understood to be a very material question at Omaha. I know that large quantities of product have been shipped to the Northwest because once in a while when business was dull they have taken provisions and packing house products from Omaha to the North Pacific Coast by way of—the Northern Pacific.

Mr. HANSON: I think it is in evidence here that very few finished cattle are shipped westward to Missouri river points from Iowa points and slaughtered there.

The CHAIRMAN: That was Mr. Kenyon's testimony yesterday.

Mr. HANSON: Would you say there is a much larger product moved west from Missouri River points and consumed there and in the Southwest than there are animals shipped in to Missouri River points from east of the Missouri River?

Mr. BIRD: I think that so far as beef is concerned that is true, and that is confirmed by the fact that Swift & Co. and Armour, the two large packers have just opened large plants at Ft. Worth, Texas, to supply their local demands from the home market.

Mr. HANSON: So there is no shipment of beef from Iowa points

shipped into Missouri River on the local, slaughtered there and the product shipped back to Chicago?

Mr. BIRD: It is very difficult to state that case clearly. Cattle and live stock are going into Omaha and Kansas City from every direction that they can be drawn from and a large portion goes to the South, Southeast, Southwest and Northwest, and a portion comes East. They ship beef from Kansas City to Chicago. The same man that manufactures here in Chicago does that. It is just as natural and proper for a live animal to be shipped from western Iowa, slaughtered at the Missouri River and the product sent west as it is for an animal from trans-Missouri territory to be shipped to the River, slaughtered and the product shipped east, but it all goes in there and I do not know that it makes any difference.

The CHAIRMAN: What Mr. Kenyon testified to was that the animals shipped to the Missouri River from points east were
354 not nearly enough to make the products that went west from that point, and Mr. Bird expresses the same opinion.

Mr. HANSON: One more question Mr. Bird. I wish you would explain to the Commission, in view of the testimony of Mr. McVann in reference to the handling of live stock brought into Sioux City from the west which is consigned to either Sioux City locally or to Chicago on local and through bills of lading, just how that is handled if you know.

Mr. BIRD: I can only state that so far as the Chicago, Milwaukee & St Paul Company's business is concerned. Take Mitchell, South Dakota, as an illustrative point. It is in the center of the stock producing territory in South Dakota. Sioux City is on the direct line to Chicago. It is on the main thoroughfare from Mitchell to Chicago. Some of the live stock is stopped at Sioux City solely for the purpose of feeding and watering and coming on. It does not go on the market. A large part of it is billed locally to Sioux City and if the market is not agreeable to the owner it is forwarded to Chicago. The method which obtains on the St. Paul road in such a case is, that if an owner demands a change of destination of his property while it is within our control, and presents evidence of ownership and the right to change the destination of the car from Mitchell to Sioux City to Mitchell to Chicago, the same way bill is used through; the words "Sioux City" are erased and "Chicago" substituted, the correct rate from Mitchell to Chicago is charged, and all way bills are forwarded to the General Auditor at the end of the week. It works the same in either case. It may be billed to Chicago and stopped at Sioux City, but the same way bill is used and is returned to the Auditor and when the week's report comes in it shows simply a change of the destination of the property and a change of the rate to correspond. It is done by the St. Paul Company on demand of the owner of the property, but it must be done within a reasonable time. Live stock from all over the north and northwest coming to Milwaukee and Chicago is handled precisely the same way. Wherever Mil-
waukee is on the direct line to Chicago from the point of
355 origin and where the rate from the initial point to Chicago is the same as to Milwaukee the property is forwarded within

the car service rules and the way bill is changed. If the rate to Chicago is greater than the rate to Milwaukee the bill is altered so as to show the correct rate. It is a fact that at Sioux City the rule is susceptible of abuse. I do not believe that that abuse has attached the last year to the St. Paul Company's traffic. At all events, every possible care is taken to prevent any fraud on the tariff, but if a carload of stock is sold at Sioux City, the owner can without our knowledge if we are not very shrewd say, I want to change that bill to reach Chicago at the Chicago rate, and I do not know why he could not, with the concurrence of the Stock Yards, substitute another carload of stock.

Mr. HANSON: If there is a through way bill from Mitchell to Chicago by way of Sioux City and the stock is brought into Sioux City and sold there, is that way bill taken up and reported?

Mr. BIRD: The way bill is changed to read "Mitchell to Sioux City" and is no longer a Chicago way bill.

Mr. HANSON: Is that way bill floating around so that it represents an incomplete shipment into Chicago?

Mr. BIRD: It is not.

Mr. HANSON: You do not agree with Mr. McVann so far as the St. Paul Company is concerned as to the way that business is handled at Sioux City?

Mr. BIRD: I do not pretend to contradict what Mr. McVann said but I intend to say that so far as I know and believe, every care is taken to prevent the mis-use of the rates in that way.

Mr. HANSON: Have you made inquiry since Mr. McVann's testimony as to the practice of the St. Paul Company?

Mr. BIRD: I have

Mr. HANSON: And it is as you state?

Mr. BIRD: I believe it to be.

356 Mr. HANSON: Is there any live stock product to any amount moved from St. Paul to Chicago on the local rates?

Mr. BIRD: I understand so—a little.

Mr. HANSON: Does it amount to anything?

Mr. BIRD: I do not think the movement from St. Paul eastward amounts to much.

Mr. HANSON: It is largely consumed there and at points north and west?

Mr. BIRD: I think we carry product into St. Paul.

Mr. HANSON: Instead of carrying it out?

Mr. BIRD: We carry some out.

Mr. HANSON: Does it amount to anything?

Mr. BIRD: Not much.

Mr. HANSON: You do have a division of the rate from points west of St. Paul into Chicago?

Mr. BIRD: Yes, sir.

Mr. HANSON: Do you know whether there is any live stock moved on the local rate from St. Paul to Chicago?

Mr. BIRD: I do not know that I ever heard of any. I do not think that any live stock moves from any packing point on the local rate.

Mr. HANSON: That was as Mr. Kenyon testified.

Mr. BIRD: From terminal points, I mean.

Mr. HANSON: As a rule they move on through billings.

Mr. BIRD: They come through. The stock comes clear through, as it does from Nebraska and Kansas.

Mr. HANSON: I think that is all, unless I have omitted something, Mr. Bird, that you have in mind.

Mr. BIRD: I do not think of anything.

357 Cross-examination:

Mr. COWAN: Mr. Bird, you said, taking the entire period covered by that statement made up by the Auditor of the Interstate Commerce Commission and submitted by Mr. Tomlinson, that there were some reductions, and you pointed out the reductions.

Mr. BIRD: No, I said there were reductions within that period and, going to the beginning of the period, the rates were then higher than they are now.

Mr. COWAN: You pointed out some reductions, as I have stated, did you not?

Mr. BIRD: I will refer to the record and show what I said.

Mr. COWAN: You need not go to the record. I will withdraw the question rather than take the time. Mr. Hanson asked you the question after reading Mr. Tomlinson's testimony to the effect that within the last 10 or 12 years there have been substantially very few reductions and have been a few advances. Will you point out on that statement of the Auditor where there have been any reductions—material reductions—within the period that Mr. Tomlinson names?

Com'r PROUTY: Why is it necessary to take up time on that?

The CHAIRMAN: We understand the matter as your question implies. Mr. Tomlinson confined his statement to the last 10 or 12 years and Mr. Bird goes back 15 or 18 years.

Com'r PROUTY: You can point that out in argument.

Mr. COWAN: I wanted to show that it did not have the effect that Mr. Hanson desired to give it. Is the division of the rate on shipments from points west by way of the Missouri river markets to Chicago the same in dollars and cents per hundred pounds as the balance of the rate? I am just asking that for general information on the subject. The term "balance of the rate" has been used and you used the term "division of the rate" or "proportion" accepted by the railway this side of the river.

358

Mr. BIRD: I cannot answer that without having all the tariffs from Nebraska and Kansas to Chicago.

Mr. COWAN: Well, I will withdraw it.

Mr. BIRD: I meant to say in the case of Sioux City that the rates from points west of Sioux City to Chicago were about 14 cents greater than they were to Sioux City. That showed the difference in rates. The percentage divisions vary somewhat according to the distance west of the river as well as the differences and therefore I cannot state it without the tariffs before me.

The CHAIRMAN: Generally speaking, Mr. Bird, is the balance

of the through rate approximately the share of the through rate that the line east of the Missouri River gets?

Mr. BIRD: I think it would vary somewhat. I cannot answer that. Approximately, perhaps; not altogether.

The CHAIRMAN: I can see how it might vary.

Mr. BIRD: It must vary. There is no specified co-relation between the balance of the through rate and the percentage division of the through rate.

Mr. COWAN: Do you know what the balance of the rate is on shipments from Kansas points through Kansas City to Chicago?

Mr. BIRD: I could not testify as to that without the tariffs. There is a difference though, owing to the point of origin of the live stock.

Mr. TOMLINSON: Do you think it is more than 14 cents Mr. Bird?

Mr. BIRD: The rates have changed so rapidly and violently since last September that it is difficult for me to express an opinion.

359 Mr. TOMLINSON: It was previous to September?

Mr. BIRD: It is a matter of exact answer and I do not think I ought to be called on to express an opinion on such a vast amount of figures.

Com'r PROUTY: Did you not testify that the differences ranged from 14 to 17 cents?

Mr. BIRD: I did not intend to say so. What I intended to say was that the price Chicago people had to pay on stock over what Omaha, Sioux City and Kansas City pay, would range all the way from 14 to 17 cents. It might be by a balance of a rate, or a percentage division of the through rate, but for the service rendered from those packinghouses on live stock it would not average more than 14 to 17 cents.

Com'r PROUTY: That would not necessarily correspond with the division——

Mr. BIRD: It would represent in a general way how much more these people had to pay for their transportation than the packers are paying for their meat.

Mr. COWAN: I did not mean to start a long discussion. I wanted to know whether the "division of the rate" and "balance of the rate" are synonymous terms?

Mr. BIRD: They are not.

Mr. COWAN: They are not based one upon the other.

Mr. BIRD: They could not be in all cases.

Mr. COWAN: You spoke of the value of your stock yards at the different points where you have stock yards. You, of course, do not have stock yards at all your stations?

Mr. BIRD: Generally at all stations. There are about twelve hundred stations on the St. Paul road.

Mr. COWAN: Some are quite extensive plants and some quite small?

Mr. BIRD: Some are larger than others; some are also smaller than others.

Mr. COWAN: Are the small pens very expensive affairs?

Mr. BIRD: No, but it costs just as much for scales and a windmill and water for a little stock yard as a big one.

360 Mr. COWAN: They do not have scales at the little ones, do they?

Mr. BIRD: Very generally.

Mr. COWAN: At what percentage of your stations do you have scales?

Mr. BIRD: I cannot figure it out.

Mr. TOMLINSON: Is it not shown in your station list at what stations you have scales?

Mr. BIRD: No, I made an estimate and presented it to the Commission, taken from the best sources of information at my command.

Com'r PROUTY: Are they track scales?

Mr. BIRD: No, sir: Track scales cost eight hundred dollars. They are smaller scales. The cattle are driven in and weighed.

Com'r PROUTY: How many animals do you weigh at once on those scales?

Mr. BIRD: I do not know. I think a carload—perhaps less.

Com'r PROUTY: They are weighed before loading?

Mr. BIRD: Yes, sir.

Com'r PROUTY: And charged on that weight?

Mr. BIRD: We do not get that weight. We get the weight here of the Weighing Association—the shrunk weights.

Com'r PROUTY: Why do you weigh them before loading?

Mr. BIRD: The shipper wants it.

Com'r PROUTY: That is entirely for the convenience of the shipper?

Mr. BIRD: Yes, sir; we would not put in scales if we did not feel obliged to. The demand is increasing right along.

Mr. TOMLINSON: Is it not a fact that a good many shippers on your line own scales and put them in at their own expense?

Mr. BIRD: No, sir; I do not think so.

361 Mr. COWAN: You spoke about that Minnesota Distance Tariff. Have you a copy you could furnish us?

Mr. BIRD: A copy is on file with the Interstate Commerce Commission, because it is an interstate tariff between Minnesota and Iowa. I think there is a copy here.

Mr. COWAN: Never mind. Mr. Tomlinson says he has a copy. That is all.

Com'r PROUTY: How many carloads of live stock do you handle on all your lines a year?

Mr. BIRD: I do not like to make an estimate. It may be from fifty to seventy thousand. We handled yesterday six hundred and two carloads on the road.

Com'r PROUTY: You could furnish a statement showing that?

Mr. BIRD: I could furnish a statement showing the total number of carloads of stock handled in 1902.

Com'r PROUTY: Please do that.

Mr. BIRD: It will take some days to do it.

Mr. HANSON: Can you state to the Commission about how much

the St. Paul paid out for damage loss to live stock transportation the last two years?

Mr. BIRD: Yes, sir.

Mr. COWAN: On that point, I believe at the last hearing we proposed to introduce some testimony on that line and undertook to get as near the facts as we could and the Chairman announced that as far as that point was concerned it was not deemed a material point and we need not proceed.

Mr. HANSON: The Commission held that the burden was with us, as I recollect.

Mr. COWAN: As I recall, the Commission said we need not introduce testimony on that.

The CHAIRMAN: If such a remark was made as you indicate, it was upon our general understanding that the loss incurred by the railroads in transportation is so small as to really not cut any figure.

362 Mr. BIRD: I do not think that is a correct view.

The CHAIRMAN: Then, you may state what your experience is?

Mr. BIRD: I cannot separate 1901 and 1902, but I have an exact statement. There were filed with us for those two years claims for $120,000. damage to live stock, of which we have paid up to date $60,000.

Com'r FIFER: For what period?

Mr. BIRD: For 1901 and 1902.

Mr. STICKNEY: What kind of damage to live stock?

Mr. BIRD: Any damage they could make apparent. Detention of trains—I remember a large number of claims came in because there had been a wreck on the eastern end of the road which blocked the entire line; that is, blocked that thoroughfare, and instead of notifying the shippers west that we could not take stock that day, we expected to clear the wreck in time to let the stock trains through, and were disappointed. They were held back 15 hours and there was a great rush of claims on those days because of the plea that we had not used due diligence and notified them that they could not come through.

Mr. HANSON: During the same period of time, how much did the Company pay out for loss and damage to the products of live stock?

Mr. BIRD: Seventeen thousand five hundred and some odd dollars. I recollect one case where the train was entirely destroyed by wreck and fire. We had to pay for the meat and the cars too.

Mr. HANSON: Can you state how much the Company paid out for injury to persons in charge of live stock while in transit?

Mr. BIRD: About five thousand dollars a year for four or five years. It will not vary from that more than a few hundred dollars in five years—about five thousand dollars a year.

Mr. HANSON: Death and personal injuries?

Mr. BIRD: Death and personal injury to men on trains in
363 charge of live stock.

Mr. HANSON: That is all.

The CHAIRMAN: If there are no further questions to be asked Mr. Bird, he will be excused.

The witness was excused.

364 After Recess.

JANUARY 8, 1904—2 p. m.

WILLIAM A. GARDNER, having been duly sworn, testified as follows:

MR. COWAN: State you- name and official position to the stenographer.

Mr. GARDNER: William A. Gardner, General Manager, Chicago Northwestern Railway.

Mr. COWAN: Are you the General Manager of the entire system, Mr. Gardner?

Mr. GARDNER: Not of the Omaha Line. I am General Manager of something like 7,500 miles.

Mr. COWAN: And that is what part of the lines, generally speaking?

Mr. GARDNER: All of the lines out of Chicago. It excludes the lines which center at St. Paul. I have charge of Nebraska, a portion of Minnesota, South Dakota, Illinois, Iowa and Wisconsin.

Mr. COWAN: Your line hauls a considerable amount of grain from points on the Missouri River and originating points west of the Missouri River to Chicago, does it not?

Mr. GARDNER: It does.

365 Mr. COWAN: Will you kindly tell the Commission, if you know, what the average loading of your cars hauling grain from that locality is?

Mr. GARDNER: Well, I could not be specific as to that particular locality. The average loading of box-cars on the road is about 14 tons.

Com'r PROUTY: Do you refer to grain, or to all commodities?

Mr. GARDNER: All commodities.

Com'r YEOMANS: In box cars?

Mr. GARDNER: Yes, sir.

Mr. COWAN: What is your average loading of grain?

Mr. GARDNER: I have never had occasion to go into that. Of course it would fluctuate with different kinds of grain and different years. We frequently get a load of light weight of oats. There is considerable amount of oats—oats and corn comes to Chicago.

Mr. COWAN: What is considered and average loading of wheat, or if not an average of wheat, tell us all about the loading of grain.

Mr. GARDNER: We insist upon loading every car to its capacity and we check that up to see that it is loaded. Consequently a fifteen ton box-car would probably be loaded with 14 to 14½ tones of grain.

Mr. COWAN: Is it not a fact that a larger majority of cars used in the shipment of grain will load 25 to 30 tons?

Mr. GARDNER: No, sir; we have only a few forty ton box-cars on our road out of 29,000.

Mr. COWAN: Have you a book of tonnage ratings of your engines?

Mr. GARDNER: We have them printed on the back of our time schedules.

366 Mr. COWAN: Does that give the number of your engines and their tonnage ratings?

Mr. GARDNER: Yes, sir; the classification of engines as to their size and gross tonnage they will pull in a train over certain lines of railroad.

Mr. COWAN: Can you furnish us a book of tonnage ratings?

Mr. GARDNER: I can send you the time cards. We have some fifteen divisions. What I can send you will be a file of the time cards.

Mr. COWAN: That is as near as you have it?

Mr. GARDNER: Yes, sir.

Mr. COWAN: The Burlington System has a book of printed ratings, giving the tonnage capacity of their engines, and I thought you might have such a book on your line.

Mr. GARDNER: Our time cards will probably answer the same purpose, except that it will require a longer time in examination to ascertain it.

Mr. COWAN: What has been the improvement which has been made in the track of your road for the last few years? The Commission would like to have something of a history of the improvements and development of the property?

Mr. GARDNER: I do not know that I am competent to go into that as extensively as they might like. Our annual reports will disclose how much money we have expended. I should say we have expended approximately $10,000,000 to $15,000,000 between Chicago and Omaha in the reduction of grades, curves, and permanent improvements. The average grade now between Chicago and Omaha is seven-tenths.

Mr. COWAN: That is the maximum?

Mr. GARDNER: Yes, sir.

367 Mr. COWAN: A great deal of your line is practically level, is it not?

Mr. GARDNER: No, I cannot say in the affirmative as to that. It is particularly rolling between here and the Mississippi River; there are some long grades, and we have some grades over the water-sheds in Iowa.

Mr. COWAN: Over what divisions of the road does the maximum grade obtain—over all divisions?

Mr. GARDNER: The maximum grade is from the Cedar River to Cedar Rapids. There is a maximum grade out here at Creston in Illinois. There are as many maximum grades in Illinois as in Iowa.

Mr. COWAN: How far is your line double-track?

Mr. GARDNER: The entire distance.

Mr. COWAN: That is, between Chicago and Council Bluffs?

Mr. GARDNER: Yes, sir.

Mr. COWAN: Is it not a fact that there has been a very large increase in the tonnage handled over your line in the last few years.

Mr. GARDNER: Per train, or in the aggregate?

Mr. COWAN: In the aggregate.

Mr. GARDNER: Yes; not a tremendous increase. We handled thirty million in the last fiscal year; twenty-nine in the previous years, and I think twenty-seven or twenty-eight the previous year—about a million tons a year, increase.

Mr. COWAN: There has been a development of the country supplied and served by your lines of railroad, has there not?

Mr. GARDNER: Continually.

Mr. COWAN: Increase in population and industries?

Mr. GARDNER: Yes, sir.

Mr. COWAN: And that has brought about a permanent increase in the tonnage over what it was a few years ago?

368 Mr. GARDNER: We hope so, but not always.

Mr. COWAN: In ordinary times it might be so?

Mr. GARDNER: You might call the present an ordinary time, and in the last few months we have not averaged 20 cars of grain a day out of the whole State of Iowa.

Mr. COWAN: What do you credit that to?

Mr. GARDNER: The farmer does not want to sell it, I suppose.

Mr. COWAN: Possibly he is shipping it to the Gulf, is he not?

Mr. GARDNER: I am not positive about that, I hear rumors about that.

Mr. COWAN: Upon what information do you base the suggestion that the farmer does not care to sell it?

Mr. GARDNER: Simply because it is not moving; that is what I base that upon, and my inquiries elicit that reply.

Mr. COWAN: Does the reduction in the rate of freight made from that territory stimulate the movement of grain?

Mr. GARDNER: Yes, sir; to a small extent. I think we are loading five cars a day or more this week than last; it is pretty small.

Mr. COWAN: Have you a memorandum in your office that will show the comparative tonnage which an engine of a given rating can pull over your line now and what it could five years ago?

Mr. GARDNER: No; not in the office, but I can tell you if you will take my word for it. We of course have locomotives very much heavier.

Mr. COWAN: I mean locomotives of the same capacity.

Mr. GARDNER: They would pull probably 25 per cent. more.

Mr. COWAN: And that is owing to improvements in the track, reduction in grades, etc.

369 Mr. GARDNER: Yes, sir.

Mr. COWAN: Bridges, culverts, and such things.

Mr. GARDNER: Yes, sir.

Mr. COWAN: Do you have charge of the matter of determining what character of improvements shall be charged in the item of operating expenses, or the different items of operating expenses, towit: repairs of roadway, renewal of rails and ties, renewal of

bridges and culverts—do you have charge of determining what account they shall be charged to?

Mr. GARDNER: No, sir; I do not.

Mr. COWAN: Do you happen to know the method used by your road in charging up improvements of that character?

Mr. GARDNER: I should say it was all charged to operation.

Mr. COWAN: That is, if you take out a wooden culvert and substitute cast-iron drain pipe or steel girders, that would be charged to expense of operation?

Mr. GARDNER: There is a fixed, set rule for that. The Northwestern road, as the reports show, are very liberal in its charges to operation.

Mr. COWAN: So that in addition to the improvements charged to income account or to capital account, the road has been largely improved by additions charged to operating expenses?

Mr. GARDNER: Well, I do not know that I consent to the qualification of "largely"; but it has been improved.

Mr. COWAN: Are you able to state, or are you able to furnish the Commission with information as to what extent it has been improved by those additions which have been charged in the operating expense account?

Mr. GARDNER: No; I cannot give you that information.

Mr. COWAN: Do you know whether your books will show that?

370 Mr. GARDNER: I do not.

Mr. COWAN: The traffic man does not know and we called the General Manager to try to find out. Do you know who would know?

Mr. GARDNER: The proper accounting officer, I suppose.

Mr. COWAN: Who would that be?

Mr. GARDNER: Mr. Kirkman is the Vice President in charge of accounts.

Mr. COWAN: Is his office here?

Mr. GARDNER: Yes, sir; it is in Chicago.

Mr. COWAN: Now, have you as General Manager of this railroad made any effort to ascertain what it costs you in fact to move the traffic over your line of road? I do not mean as a whole, but taking a large class of traffic like grain or live stock?

Mr. GARDNER: I have been untiring in that effort most of my life, but I have not arrived at very many satisfactory results so far.

Mr. COWAN: Admitting that it could not be stated with absolute mathematical certainty, but as a matter of approximation, could you state what it costs you per ton to move trains of grain from the Missouri River to Chicago, over your line?

Mr. GARDNER: No, sir; I could not, because we very seldom have a full train of grain—very seldom indeed.

Mr. COWAN: Take dead freight generally, then that moves in train load lots.

Mr. GARDNER: I can tell you accurately what it costs for engineers and firemen on locomotives, wages of conductors and train crew.

I can tell you it costs $40 per car a year to repair freight cars
371 and from $1,500 to $1,800 a year for repairs of locomotives.
But that is only a small portion of the expense when you come to analyze it.

Mr. COWAN: That would not bring you any nearer to a solution of the problem than the general items of conducting transportation.

Mr. GARDNER: It would not; no, sir.

Mr. COWAN: You move grain trains at such a moderate rate of speed that you are enabled to get the largest amount of traction power out of your engines?

Mr. GARDNER: Yes, sir.

Mr. COWAN: I believe you said a while ago that you were not informed as to the financial condition or system of accounts on your road?

Mr. GARDNER: No, sir; I am not.

Mr. COWAN: So it would not do much good to go over these amounts with you for explanation, but take for illustration the statement in the annual report furnished from it by the Commission's Auditor. It appears——

Mr. DAWES: For what year?

Mr. COWAN: I will give you that. It appears that for the year ending June 30, 1903, the costs of maintaining roadway per mile of line was $548.00 against $594.00 per mile of line in the year 1902. Is that reduction due to the fact that you had previously been improving your road, so that the cost of maintenance of way is reduced by reason of the condition you have put it in?

Mr. GARDNER: No, sir.

Mr. COWAN: If you happen to know how to explain the less cost for the year ending June 30, 1903, than for the year ending June 30, 1902, you may do so.

Mr. GARDNER: Yes, sir; I am conversant with that. We
372 could not obtain sufficient labor to do the work we wanted to do.

Mr. COWAN: What labor?

Mr. GARDNER: Track labor, for repairs. Notwithstanding we offered $2.00 a day on *may* portions of the railroad we were unable to secure men.

Com'r PROUTY: Do you mean you were unable to secure men to keep the track in order?

Mr. GARDNER: No, sir; the track is always in good order; but we were unable to secure men to do ditching, if you please, and such things as that they did the year before.

Com'r PROUTY: Take the line from here to Omaha. You put that down in good shape.

Mr. GARDNER: We assume it is in good shape always; but there is renewal of ballast and rails, ties and there is the work of cleaning ditches every year.

Com'r PROUTY: Was there any work on that portion of your track necessary, during the year ending June 30, 1903, which you were unable to do?

Mr. GARDNER: From the standpoint of safety, no, sir; from the standpoint of economy, yes, sir.

Com'r PROUTY: Why?

Mr. GARDNER: Because, for instance, if you do not clean out your ditches this year, and you have two years work to do next year, it costs more.

Com'r PROUTY: Is there anything more of a permanent nature to be done on that line?

Mr. GARDNER: Yes, sir; there are some renewals and put-ing in culverts which are not permanent: a great many of them.

Com'r PROUTY: What do you mean by renewal?

Mr. GARDNER: Taking out piling and putting in stone arches.

373 Com'r PROUTY: You have to put in culverts between there and Omaha?

Mr. GARDNER: Yes, sir. I think our estimate for next year is something like a million dollars for replacing wooden culverts and bridges, and it will take considerable money for several years to come.

Com'r PROUTY: Do you apprehend you will get to a time when there will not be no more work of that kind to do?

Mr. GARDNER: I talked with the President the other day about that, and we thought it would not be during our time.

Com'r PROUTY: How many gross tons will one of your standard freight locomotives haul from here to Omaha?

Mr. GARDNER: In either direction 1,600 tons right straight through, the maximum size of locomotive.

Mr. COWAN: You are not able to give us more definite information than you have already done with respect to the cost of hauling grain? You cannot say what it does costs to move it, actually?

Mr. GARDNER: I could not tell what it costs to haul a ton of any commodity on the Northwestern, and I am as close to getting at that cost as anybody else has gotten, I think.

Mr. COWAN: Disassociating ourselves from any interests in the controversy, how is a man able to tell what is a reasonable rate of freight to charge on a given commodity if you cannot tell what it costs to perform the service? How is he able to figure out what is reasonable, either the rate to the shipper or to the railroad if he cannot tell what it costs to perform the service?

Mr. GARDNER: If some one would outline what they considered a reasonable and fair profit for operating a railroad, I might answer that inquiry.

374 Mr. COWAN: Suppose we take a hypothetical case. We will take it in your case. You were earning a sufficient profit, were you not, when you earned interest in the year 1906 at 4.74 per cent. on the bonded indebtedness and paid a dividend of 6 per cent. on the common stock and 7 per cent. on the preferred stock? You paid interest of 4.74 per cent. on the bonded indebtedness. If that was a fair return on the value of the property—if that was a fair return—earning your fixed charges and 6 and 7 per cent. on the preferred and common stock—how could you from that figure what

would be a reasonable rate on grain or other dead f-eight, say, over your line, from the Missouri River to Chicago, or from here to the Missouri River?

Mr. GARDNER: I hardly think it is reasonable to select any one year. You would have to carry that over a term of years. Take this present year and I do not believe the showing will be quite as complimentary.

Mr. COWAN: For the sake of getting down the figures, I will say that it appears that for this year, the year ending June 30, 1903, the rate of per cent. which you paid upon your common stock was 7 per cent. and on the preferred stock a per cent., and in addition to that the interest upon your bonded indebtedness.

Mr. GARDNER: Go back three or four years and you will find where we were only paying 4 and 5 per cent. on our stock. I am frank to confess that I do not assume to be a competent witness in that matter. If somebody would fix what was a fair return on the property, then I *I* might figure what was a fair and reasonable rate.

375 Mr. COWAN: As a hypothetical case, take that as a basis of a fair return on your property; then what would be a reasonable rate of freight and what would be your method of estimating it.

Mr. GARDNER: I am not a traffic official and could not tell you.

Mr. COWAN: The traffic official we had here said he did not know, and he said we would have to take an operating man.

Mr. GARDNER: I will stand for anything I have to do with. I do not know about the making of freight rates, and don't know about the making of fair and reasonable freight rates.

Mr. COWAN: Is there any official, individual or combination of individuals, on your road or any other railroad, who can furnish the basis upon which to make an estimate of a reasonable rate? Is there such a thing in existence in railroad management?

Mr. GARDNER: Yes, sir; there are a great many railway men in the country who might explain that. I do not know that I can name them.

Mr. COWAN: Have you with your railroad any other individual who can make an estimate on any basis known to you of a reasonable rate—of what it takes to constitute a reasonable rate?

Mr. GARDNER: Well, the Traffic Department frequently applies to us to find what it costs to do certain things. The competition is such that costs does not always settle the question, and most generally the figure I name to them they do not accept; they nearly always get a great deal lower.

Mr. COWAN: If you cannot tell them any more than you can tell us, you would not expect them to adopt your figures, Mr. Gardner, would you?

Mr. GARDNER: Possibly that is the reason they do not fall to my views.

376 Mr. COWAN: The Commission would like to know, and indicate a desire to me, to ask some questions of an operating man, to ascertain upon what basis the rates are figured, the reasonableness of the rates. The traffic men all claim they are reasonable—

at least that they are not too high to be reasonable, but they say they do not know the basis upon which they make them, because they do not know how much it costs to perform the service, and refer us to operating men.

Mr. GARDNER: I appreciate that, and would be glad to give you any suggestions I can. I suggest this, that their basis of rates is something that will yield a profit under good conditions as well as under poor conditions. With reference to the grain business, if all the cars that came eastbound loaded with grain went westbound with load, we could afford to haul grain pretty cheap and afford to haul westbound traffic pretty cheap; but in my experience with the Northwestern road of twenty-three or twenty-four years, I have yet to see the time when one-half or two thirds did not have to be hauled empty.

COMR. PROUTY: The testimony in this case is that the empty car movement is westbound.

Mr. GARDNER: Yes, sir; it is, and consulting our annual report you will see that from 26 to 28 per cent. of all car mileage of the Northwestern Railway is empty car mileage. That is not from choice, of course, but from necessity. We are hauling empty cars up into the lumber territory in Wisconsin. After while the grain traffic will start in and there will be no commercial coal traffic going out, and than we will have to haul empty cars out to bring grain back. That is the way it works. That has something to do with the fixing of the rate of freight, the rate on grain and other carload commodities. The expense is not just that of hitching a locomotive on at one end of a train and hauling it to the other end. That is a very small portion of the expense. You have to associate your cars with switch engines, and you have to classify them as to trains that are going to various localities and with reference to different consignees, because when we get them here in Chicago we deliver the grain to forty different places, and the switching, very frequently, of a carload of grain will cost as much, or more, as it does to haul it from Omaha to Chicago; and then we are subject to all the claims for detention. If we have derailments and wrecks and break up perhaps fifteen or twenty carloads of grain. All that goes into the expense.

COMR. PROUTY: What percentage of your receipts from train traffic do you pay out in the way of damages?

Mr. GARDNER: I cannot answer that. Our records will show that last year we paid out $600,000 for claims arising from or on account of personal injuries. Most of that was chargeable to freight trains, and half as much again for damages to freight. More or less of that was grain. Take the situation in Chicago last winter, when we had several hundred carloads of grain on our tracks here. There was great congestion here and we could not deliver the grain to consignees on other railroads on which their elevators and grain houses were located. The lines would not accept it. Meanwhile prices of grain went down, and consequently now we are negotiating on claims for damage.

COMR. FYSER: When is your heaviest movement of grain from the West? What time of year?

Mr. GARDNER: That varies, Mr. Fifer; it is sometimes be-
378 fore the holidays.

Com'r YEOMANS: Corn is not ready to move from the western country yet, is it?

Mr. GARDNER: No, sir; it is pretty wet. At the close of navigation, about that time, there is a scurrying of rates east and west of Chicago, and that very frequently brings on a movement of grain, but it has not this year.

Com'r PROUTY: It would be a comparatively easy matter to tell the cost of moving a train of grain from Omaha to Chicago, would it not?

Mr. GARDNER: I could tell the cost of engine service and train crew and coal, for instance.

Com'r PROUTY: What is about the cost per train mile of moving a train of 1,600 tons?

Mr. GARDNER: Is it 8 cents a mile for the engineer and firemen. It is 7 cents a mile for the conductor and two brakemen.

Mr. DAWES: Is that apiece?

Mr. GARDNER: No, sir; that is entire. Then your coal consumption will probably run 250 pounds for every 1,000 pounds of freight moved one mile; that is, with average weather. In severe weather it will be more than that. Then you have your oil and your waste and your repairs, which I cannot give you from memory. Oil and waste are not in large amount of course, and repairs are average.

Com'r FIFER: Repairs to engines and cars?

Mr. GARDNER: Yes, sir.

Com'r PROUTY: Have you some estimate of what would be a fair rental for an engine per mile?

Mr. GARDNER: No, sir; I have not; We charge $25.00 a day for rental of a locomotive.

379 Commissioner PROUTY: Do you think that is a fair compensation?

Mr. GARDNER: On an average.

Com'r PROUTY: Do you have an estimate of what is a fair charge for the use of a car per mile?

Mr. GARDNER: No; but I assume you know the per diem charge is 20 cents between railroads. We all, think that is exceedingly low. We generally get out of our cars on that basis about half what it costs us to repair them.

Com'r PROUTY: Do you not regard that as fair compensation?

Mr. GARDNER: No.

Com'r PROUTY: Would it be fair compensation to simply furnish that car for the purpose of hauling a carload of grain from Omaha, taking it upon the assumption that it came from Omaha to Chicago loaded and went back empty? Would a mileage of .6 of a cent be compensation for that car?

Mr. GARDNER: No, sir; I think one cent a mile would be more equitable, or $10.00.

Mr. COWAN: In your annual report, on page 43, for 1903, your printed annual report, it states that the expenses which you have just spoken of are as follows: Repairs and supplies for engines and

tenders per mile run, for the year 1902, amounted to 4.82 cents, and for the year 1903, 4.15 cents. That included repairs and supplies for engines and tenders per mile run?

Mr. GARDNER: Yes, sir.

Com'r PROUTY: What do you mean by supplies?

Mr. GARDNER: That is material, Mr. Commissioner,—new driving wheels, etc.

Mr. COWAN: Engineers, firemen, wipers, etc., per mile, for 1902, was 7.69 cents.

380 Mr. GARDNER: Yes, sir.

Mr. COWAN: For the year 1903 it was 8.10 cents.

Mr. GARDNER: Yes, sir.

Mr. COWAN: The next item *if* cost of oil, wa*t*se and tallow, per mile—.26 cent for the year 1902, and for 1903 it was .30 cent.

Mr. GARDNER: Yes, sir.

Mr. COWAN: Cost of fuel, for 1902, was 8.32 cents per mile run, and for the year 1903 it was 9.27 cents—about a cent a mile increase. The total cost per mile run by engines—that is, the addition of those figures above stated—was 20.65 cents for the year 1902, and 21.82 cents for 1903. Now, I assume that had reference to the total mileage of engines whether carrying empties or loads.

Mr. GARDNER: That includes switch locomotives, gravel trains, passenger trains and freight trains. You will find another division of it there in the report, that divides up the mileage of the different services. It is on the same page.

Mr. COWAN: This will all be considered in evidence. I want to ask you a question in regard to that. The cost per mile for pulling a train so far as engine service is concerned would be 21.82 cents. Another item of cost, so far as labor is concerned, with the train would be a conductor and two brakemen. That is on an average, I presume.

Mr. GARDNER: That I used for showing items of cost for actual movement of the train.

Mr. COWAN: I do not mean that that is the to-al cost for performing the service, but all the other expenses are to be incurred whether the traffic moves or does not move.

Mr. GARDNER: Therefore the volume of traffic has much to do with the cost.

381 Mr. COWAN: So as the volume of traffic has increased, you have carried it at less per mile?

Mr. GARDNER: On the volume of the particular thing which did increase.

Mr. COWAN: Even on the whole.

Mr. GARDNER: I think that if you will take the percentage of grain carried on our road for the last three or four years you will find that report that a smaller percentage was grain last year than had been for any time previous for three or four years, and I think our cost for carrying grain the last couple of years increased, whilst other commodities decreased.

Mr. COWAN: Do you know whether or not the revenue per ton per mile has gradually decreased, Mr. Gardner?

Mr. GARDNER: Do I know it?

Mr. COWAN: Yes, sir.

Mr. GARDNER: Why, it increased a little last year.

Mr. COWAN: From .82 to .87 cents?

Mr. GARDNER: Yes, sir; .87 or .88.

Mr. COWAN: The volume of your traffic has increased from 19,000,000 tons, in round numbers, to 30,000,000 in 1903.

Mr. GARDNER: That is hardly a fair way to state that. You say how many tons we move one mile. The number of miles that each ton has been carried has been gradually reduced, and that is quite a factor in estimating the cost to carry it.

Com'r PROUTY: That would indicate, however, that more business was becoming local?

Mr. GARDNER: Yes, sir.

Com'r PROUTY: And you receive a better rate for local business than through business.

Mr. GARDNER: And it costs a higher price to handle it.

Mr. COWAN: The estimate furnished by the Commission's Auditor shows that in 1900 the average number of tons per train mile
382 was 254, then increased to 267, and this year reduced to 249, and the gross revenue per train mile has increased from $1.48 in 1899 to $1.67 in 1903, making it higher than any time back of 1903. What is that due to?

Mr. GARDNER: To the heavier loading of trains.

Mr. COWAN: And in that item are reflected the economies of handling the business?

Mr. GARDNER: The economies of operation as signified by the transportation charge.

Mr. COWAN: One question that Mr. Farrell suggests; What are the curvatures of your road the maximum?

Mr. GARDNER: It is about six degrees.

Mr. COWAN: So your road is well situated in that particular?

Mr. GARDNER: Yes, sir.

Com'r PROUTY: You say it costs much more to handle local than through business.

Mr. GARDNER: Yes, sir.

Com'r PROUTY: Have you ever made any estimate of handling local and through traffic, like this grain from the Missouri River to Chicago?

Mr. GARDNER: I have not specifically; but I think it is apparent. For instance, if you start a train of 30 cars out of Omaha and you do not have to stop it at all until it gets to Chicago it costs much less than if you have a train starting out with 30 loads which have to be peddled out along the line and the train compelled to stop at every station and switch cars. It costs much more.

Com'r PROUTY: You have never made any estimate so you can state approximately the difference in dollars and cents?

Mr. GARDNER: No; I have not.

383 Mr. COWAN: Is it not a fact that you pay your train crews by the mile on those trains? and it costs the same?

Mr. GARDNER: It costs the same for that?

Mr. COWAN: Whether you stop or not?

Mr. GARDNER: Yes, sir.

Mr. COWAN: There is no addition to cost to local traffic whether you stop or not so far as the crew is concerned?

Mr. GARDNER: No, sir. Of course you get back to that old story about the long and short haul.

Mr. COWAN: Of course everybody knows that it is somewhat cheaper to do the through business. Do you know whether a rate of freight on grain from points 200 miles west of the Missouri River to Chicago—say, a distance of 600 or 700 miles,—of 26½ or 28½, is more than or less than it ought to be?

Mr. GARDNER: Categorically replying, I do not.

Mr. COWAN: There is evidence here with respect to a rate of 25 cents from Norfolk, Nebraska, to Chicago, a distance of 600 and some odd miles.

Com'r PROUTY: 650 miles.

Mr. COWAN: 650 miles. Have you any means of stating what the rate ought to be in order to yield you a proper return upon your investment and operation of that line?

Mr. GARDNER: I am not competent to reply intelligently to that.

Mr. COWAN: Who could do that, Mr. Gardner? Would it be worth while to make an effort to find some man who could do that?

Mr. GARDNER: I think it would be quite difficult to find a man who would have the courage to state.

Com'r YEOMANS: To say he could do what no one else has been able to do?

384 Mr. GARDNER: Yes, sir.

Mr. DAWES: And do what the Commission has not found it possible to do.

Mr. COWAN: So in making freight rates, it is a matter of arbitrary judgment on various conditions, and not an estimate of the amount of revenue they are entitled to—costs of service, or any one, two, or three items?

Mr. GARDNER: I am frank to confess that I do not know what inspiration they act from.

Mr. COWAN: It is a matter of inspiration?

Mr. GARDNER: They are always too low in my opinion.

Mr. COWAN: What return do you believe a railroad ought to earn upon the cost of the road?

Mr. GARDNER: Well, possibly you misjudge me, because you are talking about that report, and I have every day current prices of things costing 20 per cent. more now than when that book was published.

Mr. COWAN: Cost of what?

Mr. GARDNER: Of operating items; increase of pay have been made which have not yet become public in reports, not shown in that report, and we have just settled with our station men and telegraphers on a ten per cent. increase. Coal cost us four and a half million dollars last year. It will probably cost us six million dollars this year on account of increase price of 35 to 40 cents a ton.

Mr. COWAN: The recent reduction in the grain rate was not brought about by reduction in operating expenses, then?

Mr. GARDNER: No, sir; some kindness of heart than overlooked the present conditions.

Mr. COWAN: So as to these increases and reductions, are they brought by the fact of increases and reductions in operating expenses, or by other circumstances and conditions?

385 Mr. GARDNER: Well, I think at different times, for different reasons. Of course we are very methodical in exhibiting to the traffic department the increased expenditures that we are obliged to make in connection with operating expenses. A year or eighteen months ago I showed them the costs of material and of this and that thing and but recently exhibited to them the costs since July. Well, I think a year or eighteen months ago they responded to it, and now they have gone just the other way. So I presume that operating expenses is only one of the many things taken into consideration.

Mr. COWAN: It is not a matter of fact that notwithstanding the increase in operating expenses for the years 1901 and 1902, that net earnings of the lines leading out of here to the Missouri River and serving that territory were almost uniformly increased?

Mr. GARDNER: You see that ours did not. We showed a deficit of $55,000.

Mr. COWAN: It shows that there was applied in 1902 and charged to operating expenses, not put in the previous year, $1,500,000. If that were taken out, there would not be a decrease in net earnings, but in fact a large increase?

Mr. GARDNER: You mean by changing the method of charging?

Mr. COWAN: Yes, sir; changing the accounts so as not to charge that up to operating expenses.

Mr. GARDNER: Of course the roads have all had an enlarged volume of tonnage, and that had much to do with that.

Mr. COWAN: I do not believe there is any other question I want to ask.

Mr. DAWES: You have been asked about your road gen-
386 erally. Now as to rates you have had reference to the road between Chicago and Council Bluffs.

Mr. GARDNER: Yes, sir; entirely so.

Mr. LYNDE: That is what you meant by your questions.

Mr. COWAN: Yes, sir. Judge Prouty started out by asking about that line and I continued it.

Mr. LYNDE: As to this increased expense, in the way of increased cost of supplies, material and wages, what has been the average increase, say, for 1901, and 1902 and up to the present time, including the last advance? How much—25 per cent. or more?

Mr. GARDNER: I should say they would run about 22 per cent. probably.

Mr. LYNDE: Right through the list.

Mr. GARDNER: That is material as well.

Mr. LYNDE: If the road were to handle only a single class of freight between two points the proposition as to what would be a reasonable freight rate would be a comparatively simple one?

Mr. GARDNER: Yes, sir.

Mr. LYNDE: But take the Northwestern, which handles a thousand different commodities between a thousand different points; it makes the situation a very complicated one, does it not?

Mr. GARDNER: It does indeed.

Mr. LYNDE: As I understand it, these annual reports are considered in evidence?

Mr. COWAN: Yes, sir; they will be. Now, you said that 22½ per cent. would represent the increase in something. I did not precisely understand.

Mr. GARDNER: Material and wages.

387 Mr. COWAN: Now, will you make up a statement, or have your Auditor make it up, and furnish it to the Commission, as to wages, so that we may get at exact data in regard to what wages you were paying after June 30, 1903. Make up a statement of the increase in wages to employees since then, what the increase amounted to. It was stated on the previous hearing, in the Texas rate inquiry here, that wages had increased considerably, 10 or 15 per cent., but when we came to figure out the total increase it only amounted to a small per cent. on the total number of employees.

Mr. GARDNER: That would be very possible. I don't know that ours shows more than that on the total number of employees. But 10 per cent. on a man getting $2.00 a day is 20 cents, and on a man getting $1.00 a day is ten cents, and it is quite a difference.

Mr. LYNDE: We make this suggestion that in the interrogatories submitted calling for this specific information the wording was such as to embrace eleven months of the old schedule and simply one month of the new schedule, and that does not include these recent advances.

Mr. COWAN: I am talking about the recent advances; the advances up to June 30, 1903, are in the reports of the Commission. The advances since that time are what I have reference to.

Mr. LYNDE: I call attention to the fact that you made request for advances covering a certain period, and that period embraced about eleven months of the old schedule and only about one month of the new schedule.

Mr. COWAN: That request, however, was made in June, and it was supposed that a hearing would be had in September at that time.

388 Mr. LYNDE: What we will do, if satisfactory, we will furnish a statement of all advances that have been made, not merely recently, but since 1901. That is a fair period.

Mr. COWAN: Or if they are reductions put them in also.

Mr. GARDNER: I want to understand that. Say material and wages.

Com'r YEOMANS: Put in everything you want to.

Mr. COWAN: Put in everything you want to about the price of articles.

Com'r PROUTY: Do you apprehend these increased prices will continue?

Mr. GARDNER: For labor?

Com'r PROUTY: Take material.

Mr. GARDNER: There has been very little reduction in iron and steel material, which goes largely into railroad operation, but my opinion is that there will be some reduction in price.

Com'r PROUTY: How about timber?

Mr. GARDNER: We are paying more for ties.

Com'r YEOMANS: How much do you pay for ties?

Mr. GARDNER: 60 to 65 cents for oak ties and 70 cents for cedar.

Com'r YEOMANS: Where do your ties come from?

Mr. GARDNER: Principally from Michigan.

Com'r PR-UTY: Where do you get bridge timber?

Mr. GARDNER: We are getting that in Oregon, in the last two or three years.

Com'r PROUTY: Do you apprehend that the advance in wages will be permanent?

Mr. GARDNER: No; I do not think they all will be.

Mr. COWAN: There are some items here in the account of the Northwestern road you might know about. It appears from
389 your annual report for the year 1902 there was repayments account of overcharge to shippers of two million dollars and over.

Mr. GARDNER: That is beyond me. I do not know anything about that.

Mr. COWAN: And other repayments of over a million dollars?

Mr. GARDNER: I do not know about that.

Mr. COWAN: Who would know about that?

Mr. GARDNER: I don't know.

Com'r YEOMANS: Nobody. We never found anybody who did.

Mr. COWAN: You do not know who would know?

Mr. GARDNER: No, sir.

Mr. COWAN: Do you know of any matter in the operation of a railroad that would call for the payment back of such an enormous amount of money?

Com'r PROUTY: That is a traffic question, and he does not know about that. The Auditor could tell you what those items are.

Mr. COWAN: That is all.

Witness excused.

390 *Certificate.*

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Consolidated Cases.

I, Solomon H. Bethea, Judge of the District Court of the United States, for the Northern District of Illinois, sitting as circuit judge and presiding at the trial of said entitled cause, do hereby certify that the foregoing is a complete record of the testimony, and exhibits offered and admitted in evidence, and of the proceedings had in the above entitled cause, contained in volumes No. 1 to 17 in-

clusive, and numbered from pages 1 to 2697 inclusive, and volume 18 as an appendix.

Signed and sealed this first day of June, 1906.

SOLOMON H. BETHEA, [SEAL.]
Trial Judge.

(Endorsed:) Filed June 1, 1906. Marshall E. Sampsell, Clerk.

391 NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION, *ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States of America, of the Seventh Judicial Circuit, in and for the Northern District of Illinois, do hereby certify the above and foregoing contained in one volume of Pleadings, pages 1 to 464 inclusive and in Volumes No. 1 to 17 inclusive and numbered from page 1 to 2697 inclusive and Volume 18, pages numbered from 1 to 403, being the certificate of evidence taken in said causes, to be a full, true and complete copy of the record and proceedings in the causes entitled Interstate Commerce Commission *vs.* Chicago Great Western Railway Company, *et al.* General Number 27,723 and Interstate Commerce Commission *vs.* Chicago Great Western Railway Company *et al.*, General Number 27,829, Consolidated Causes as the same remain of record and on file in the office of the clerk of said Court, and that the same constitute the return to the original citation issued herein and the several orders of extension to file the transcript of record made in said consolidated causes.

[Seal Circuit Court U. S., Northern Dist. Illinois. 1855.]

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 1st day of June, 1906.

MARSHALL E. SAMPSELL, *Clerk.*

392 UNITED STATES OF AMERICA, *ss:*

I hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February, A. D. 1906.

ED. BAXTER,
Solicitor and Counsel for The Burlington, Cedar Rapids & Northern Railway Co., The Chicago, St. Paul, Minneapolis & Omaha Railway Co., The Chicago & Alton Railway Company, The Chicago & Northwestern Railway Company, The Chicago, Burlington & Quincy Railroad Company, The Chicago, Milwaukee & St. Paul Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Hannibal & St. Joseph Railroad Company, The Illinois Central Railroad Company, The Iowa Central Railway Company, The Kansas City, St. Joseph & Council Bluffs R. R. Co., The Minneapolis & St. Louis Railroad Company, The Quincy, Omaha & Kansas City Railroad Company, erroneously sued as the Omaha, Kansas City & Eastern Railroad Company,
Defendants and Appellees.

393 UNITED STATES OF AMERICA, *ss:*

To The Chicago Great Western Railway Company; The Burlington, Cedar Rapids & Northern Railway Company; The Chicago, St. Paul, Minneapolis & Omaha Railway Company; The Chicago & Alton Railway Company; The Chicago & Northwestern Railway Company; The Chicago, Burlington & Quincy Railroad Company; The Chicago, Milwaukee & St. Paul Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Hannibal & St. Joseph Railroad Company; The Illinois Central Railroad Company; The Iowa Central Railway Company; The Kansas City, St. Joseph & Council Bluffs Railroad Company; The Minneapolis & St. Louis Railroad Company; The Missouri Pacific Railway Company; The Missouri, Kansas & Texas Railway Company; The Quincy, Omaha & Kansas City Railroad Company, erroneously sued as The Omaha, Kansas City & Eastern Railroad Company; The Wabash Railroad Company and The Wisconsin Central Railway Company, Original Defendants and Sioux City Stock Yards Company, St. Joseph Stock Yards Company; St. Paul Union Stock Yards Company, Railroad & Warehouse Commissioners of the State of Minnesota, T. M. Sinclair & Company, Limited; and the Union Stock Yards Company of Omaha, Intervenors, **Greeting:**

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an Order allowing an Appeal, filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois-Eastern Division, wherein, Interstate Commerce Commission is Appellant, and you are Appellees, to show cause, if any there be, why the Decree rendered against the said Appellant as in the said Petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Solomon H. Bethea, Judge this Fifteenth day of January, in the year of our Lord one thousand nine hundred and six.

S. H. BETHEA, *Judge.*

[Endorsed:] Nos. 27,723 & 27,829. Supreme Court of the United States. Interstate Commerce Commission, *vs.* Chicago Great Western Ry Co., *et al.* Citation of the Supreme Court of the United States.

394 UNITED STATES OF AMERICA, *ss:*

I hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

MILCHRIST & SCOTT,
Solicitors for Sioux City Stock Yards Company,
Defendant and Appellee.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Jan. 30, 1906. Marshall E. Sampsell, Clerk.

395 UNITED STATES OF AMERICA, *ss:*

I hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

CHAS. A. CLARK,
Solicitor for T. M. Sinclair & Co., Limited, Intervening Defendant and Appellee.

Dated Jan. 19, 1906.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Jan. 30, 1906. Marshall E. Sampsell, Clerk.

396 UNITED STATES OF AMERICA, *ss:*

I hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

FRANK T. RANSOM,
Solicitor for Union Stock Yards Company of Omaha (Limited), Defendant and Appellee.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Jan. 30, 1906. Marshall E. Sampsell, Clerk.

397 UNITED STATES OF AMERICA, *ss:*

We hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

JAMES HAGERMAN,
JOSEPH M. BRYSON,
Solicitors for Missouri, Kansas & Texas Railway Company, Defendant and Appellee.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Jan. 30, 1906. Marshall E. Sampsell, Clerk.

398 UNITED STATES OF AMERICA, *ss:*

I hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

STEPHEN S. BROWN,
Solicitor for St. Louis Stock Yards Company, Defendant and Appellee.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Jan. 30, 1906. Marshall E. Sampsell, Clerk.

399 UNITED STATES OF AMERICA, *ss:*

I hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

IRA B. MILLS,
Solicitor for Railroad and Warehouse Commission of the State of Minnesota, Intervener, Defendant and Appellee.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Jan. 30, 1906. Marshall E. Sampsell, Clerk.

400 UNITED STATES OF AMERICA, *ss:*

I hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

WELLS H. BLODGETT,
C. N. TRAVONS,
Solicitors for The Wabash Railroad Co., Defendant and Appellee.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Jan. 30, 1906. Marshall E. Sampsell, Clerk.

401 UNITED STATES OF AMERICA, *ss:*

I hereby accept service of the annexed citation, The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H.

Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

C. A. SEWELL & NICH,

Solicitor for Chicago Great Western Railway Company, St. Paul Union Stock Yards Company, Defendant and Appellee.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Feb. 5, 1906. Marshall E. Sampsell, Clerk.

[Stamped:] Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Feb. 5, 1906. Marshall E. Sampsell, Clerk.

402 UNITED STATES OF AMERICA, ss.

I hereby accept service of the annexed citation. The Interstate Commerce Commission, appellant, against the Chicago Great Western Railway Company *et al.*, appellees, signed by Judge Solomon H. Bethea, dated January 15th, 1906, and returnable to the Supreme Court of the United States on the 13th day of February A. D. 1906.

MARTIN L. CLARDY &
JAMES C. JEFFERY,

Solicitors for Missouri Pacific Railway Company, Defendant and Appellee.

403 Service accepted by letter signed on behalf of Col. Blodgett by his direction and myself for the Wabash Railroad Company.

(Signed) C. N. BRANNON

Dated January 22nd, 1906.

404 [Endorsed:] 27723 & 27829. Circuit Court of the United States, Northern District of Illinois. Interstate Commerce Commission *vs.* Ch'go Great Western Ry. Co. *et al.* Orig. Citation. Circuit Court of the United States, Northern District of Illinois, Eastern Division. Filed Jan. 30, 1906. Marshall E. Sampsell, clerk.

405 Supreme Court of the United States, October Term, 1906.

No. 352.

THE INTERSTATE COMMERCE COMMISSION,

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Statement by appellant under Clause 9 of Rule 10 of Rules of the Supreme Court of the parts of the record which appellant thinks

necessary for the consideration of the errors assigned as set out in the assignment of errors in the transcript of record, being all those parts of the record not hereinafter expressly designated as parts which may be omitted in the printing:

Omit in printing from volume of transcript of record entitled "Volume of Pleadings," the following:

1. Petition and other pleadings, orders and affidavits in case No. 27,829, extending from page 294 to page 334 of said volume, both inclusive, and from page 342 to page 380, both inclusive, and from page 412 to page 416, both inclusive.

406 2. Orders continuing the hearing from day to day from September 18 to October 14, 1905, on pages from 417 to 434, both inclusive.

Omit from "Volume 1," the following:

1. The report and opinion of the Commission and order of the Commission and certificate thereto by Edward A. Moseley, Secretary of the Commission, inserted between pages 63 and 64 of said volume.

(These are set forth in the "Volume of Pleadings" from page 6 to page 110, both inclusive.)

2. Opening statements of counsel beginning on page 6 and ending on page 32 of said volume 1.

Omit from "Volume 2," the following:

1. Tabulated statement showing number of head of live stock listed for taxation; also, number of head received at South St. Paul Stock Yards for the years 1898 to 1904, both inclusive. This statement is inserted in said volume between pages 103 and 104.

2. "Crosby's Exhibit No. 4," being certain live stock tariffs inserted in said volume between pages 130 and 131.

Omit from "Volume 3," the following:

1. All of "Gardiner Exhibit A", inserted between pages 329 and 330 of said volume entitled "Statement of Stockyards—Wisconsin Division," except the last page thereof immediately preceding page 330.

407 Omit from "Volume 4," the following:

1. The 45th Annual Report of the Chicago & Northwestern Ry. Co. for the year ending June 30, 1904, inserted between pages 392 and 393 of said volume, except pages 5, 6, 7, and 12 of said report and that part of page 13 beginning with the words, "Tons of steel rails, the greater portion of which," and ending with the words, "Aggregate 11,246 feet in length."

2. "Keeper's Exhibit No. 4," between pages 452 and 453 of said volume, being certain printed live stock tariffs of the Illinois Central R. R. Co., and a typewritten statement of "Rates on cattle and hogs C. L. from stations in Iowa on I. C. R. R. to Sioux City, Iowa."

3. "W. E. Keeper's Exhibit No. 3" between pages 444 and 445 of said volume, being a tabulated statement of three sheets.

Omit from "Volume 5," the following:

1. Rice's Exhibit No. 2 between pages 554 and 555 of said volume, except last two lines giving valuation of stockyards and annual cost of maintenance and operation.

2. Three pages of tabulated statement immediately preceding page

675 of said volume, said pages entitled, respectively, "Range of prices—cattle." "Range of prices—hogs." "Range of prices—sheep."

Omit from "Volume 6," the following:

498 1. "Timmore Exhibit No. 5," being all the matter consisting of tariffs and statement of rates, inserted in said volume between pages 751 and 752.

Omit from "Volume 7", the following:

1. All of Simpson's Exhibit No. 1 between pages 946 and 947 of said volume except the summary on page 1 of said exhibit.

Omit from "Volume 8", the following:

1. Flower Exhibit No. 3, between pages 1099 and 1100 of said volume, being map of Southern Minnesota counties, showing the receipts of South St. Paul from those counties for a period of five years (1900-1905, inclusive) of live stock and also in most cases showing the number of different kinds of live stock assessed for taxation in each county.

Omit from "Volume 9", the following:

1. Tomlinson's Exhibit No. 19 immediately following page 1189 of said volume, being 52nd annual report of the directors to 499 the stockholders of Illinois Central R. R. Co., for the year ended June 30, 1902, except page 1 of said report, that portion of top of page 2 beginning with the words "As compared with the preceding year," and ending with the words, "Surplus Dividend Fund has been augmented by, &c.," page 4, and tables 5, 6, 7 and 8 on pages 14 and 15.

2. Tomlinson's Exhibit No. 17 immediately following Tomlinson's Exhibit No. 19, *supra*, being the 53d Annual Report of the Directors to the Stockholders of the Illinois Central R. R. Co., for the year ended June 30, 1903.

3. Tomlinson's Exhibit No. 18 immediately following Tomlinson's Exhibit No. 17, *supra*, being 54th Annual Report of the Directors to the Stockholders of the Illinois Central R. R. Co., for the year ended June 30, 1904, except the heading on page 1 of said report beginning with the words "Illinois Central R. R. Co.," and ending with the words "The number of miles of railroad operated by the Illinois Central R. R. Co., on June 30, 1903, was 4,301.10," and that portion of said page beginning with the words "The average number of miles of railroad operated" to the end of said page, that portion of page 3 under titles, "Permanent Improvements," "Railroad and Equipment," and "Standards of Maintenance," and tables 5, 6, 7 and 8 on pages 14 and 15.

4. Dale Exhibit "X" between pages 1206 and 1207 of said volume, except page 1, heads of columns on page 2 and grand totals on last page.

5. Baird's Exhibit No. 1 between pages 1269 and 1270 of said volume, being rules and regulations of the Mississippi & Missouri and Chicago & Rock Island Railroads for the transportation of live stock.

6. Baird's Exhibit No. 2 immediately following page 1270 of said volume, being rules and regulations for the transportation of live stock.

410 7. Baird's Exhibit No. 3 immediately following Baird's Exhibit No. 2, *supra*, being rules and regulations for the transportation of live stock.

8. Baird's Exhibits Nos. 4, 5 and 6, between pages 1271 and 1272 of said volume, being rules and regulations for the transportation of live stock.

9. McCullough's Exhibit No. 6 immediately preceding page 1296 of said volume, being joint freight tariff on live stock of the Chicago & Northwestern Railway and other roads, effective June 20, 1905.

10. Map immediately following page 1300 of said volume, showing the lines of the Chicago & Northwestern Railway and the Chicago, St. Paul, Minneapolis and Omaha Railway.

11. McCullough's Exhibit No. 9, immediately following said map, being joint freight tariff on live stock of the Chicago & Northwestern and other Railways, effective June 20, 1905.

Omit from "Volume 10," the following:

1. All the freight tariffs, exhibits to testimony of Kenyon, immediately preceding page 1409 of said volume, beginning with freight tariff on live stock of the Chicago, Rock Island & Pacific Railway (lines east of the Missouri River) in connection with the Cleveland, Cincinnati, Chicago & St. Louis Railway, between Chicago,
411 Kankakee, Peoria, Illinois, &c., and stations on the Chicago, Rock Island & Pacific Railway in Iowa, Minnesota, South Dakota and Missouri, effective July 14, 1902, and ending with the tariff on live stock of the Chicago, Burlington & Quincy Ry. Co., between Omaha, South Omaha, &c., and stations in Wyoming (except Cheyenne line), Montana and South Dakota, taking effect October 24, 1904.

Omit from "Volume 11," the following:

1. The tabulated statements covering 16 pages attached to testimony of Crosby and preceding page 1502 of said volume except the general headings to wit, "The report of cars in train No. —," leaving "— at —," "arriving — at —," and the columns headed "Weight in tons," "Contents," "Final destination." The portions indicated for printing are marked in pencil X.

2. "Ripley Exhibit No. 1" following page 1613 of said volume, being 10th Annual Report of the Atchison, Topeka & Santa Fe Ry. Co., for the year ending June 30, 1905, except that portion of page 5 of said report, beginning with the words, "Office of the Atchison, Topeka & Santa Fe Railway System," and ending with the words, "The increase in the average number of miles operated compared with the preceding fiscal year was 125.81 miles," and that portion under the heading "Comparison of Operating Results" on pages 12, 13 and 14 of said report.

412 3. "Ripley Exhibit D" preceding page 1614 of said volume, being the 8th Annual Report of the Atchison, Topeka & Santa Fe Railway Company for the year ended June 30, 1903, except that portion of page 5 of said report, beginning with the words "Office of the Atchison, Topeka & Santa Fe Railway System" and ending with the words "Turned over to the Operating Department,"

and that portion of pages 14, 15 and 16 of said report under the heading "Comparison of Operating Results."

4. Ripley's exhibits marked "D the second and E" between pages 1621 and 1622 of said volume, being a large diagram showing comparative exhibit of average revenue, &c., and average tons per carload by commodities.

Omit from "Volume 14," the following:

1. The three printed tariffs between pages 2703 and 2704 of said volume, being (*a*) Joint Freight Tariff W. T. L. No. 202 of the Chicago & Alton Ry. Co., *et al.*, between Chicago, &c., and Sioux City, &c., effective October 1, 1905; (*b*) Joint Freight Tariff W. T. L. No. 181 of the Atchison, Topeka & Santa Fe Ry. Co., *et al.*, between Chicago, &c., and St. Paul, &c., effective January 1, 1904; (*c*) Joint
Freight Tariff W. T. L. No. 201 of the Atchison, Topeka &
413 Santa Fe Ry. Co., *et al.*, between Chicago, &c., and Kansas City, &c., effective September 5, 1905.

Omit from "Volume 15," the following:

1. Exhibit to Testimony of Charles W. Baker between pages 2204 and 2205 of said volume, showing Chicago's supremacy as the live stock market of the world.

2. Exhibit to testimony of Darius Miller, between pages 2265 and 2266 of said volume, being a printed book entitled "Tonnage Rating of Freight Engines, Galesburg Division, C. B. & Q. R. R."

3. Exhibits to testimony of Tomlinson Numbered 1, 2, 3, 4, 5, between pages 2344 and 2345 of said volume, being 39th Annual Live Stock Report of Union Stock Yards & Transit Company of Chicago, for year 1904; 34th Annual Report of Receipts and Shipments of Live Stock at Kansas City Stock Yards for the year 1904; 21st Annual Live Stock Report of Union Stock Yards, of Omaha, Neb., for year 1904; 18th Annual Report of the Sioux City Stock Yards Company for year 1904 and the St. Paul Union Stock Yards Company Live Stock Report for 1904, except that portion of the 39th Annual Live Stock Report of the Union Stock Yards & Transit Company of Chicago on pages from 47 to 58, both inclusive, of said
report, setting forth receipts and shipments by days for year
414 1904.

4. "Tomlinson's Exhibit No. 6 between pages 2346 and 2347 of said volume, being "The Cincinnati Price Current Statistical Annual for 1905," a "supplement to the Cincinnati Price Current."

Omit from "Volume 16," the following:

1. Maps attached to exhibit No. 9, Tomlinson, immediately preceding page 2409 of said volume.

Omit from "Volume 17," the following:

1. 10th Annual Report of the Chicago Great Western Railway Company for the year ended June 30, 1902, the first of three printed reports preceding page 2497 of said volume, except heading on page 5 of said report beginning with the words "Chicago Great Western Railway Company" and ending with the words "The Directors Submit the Following Report," and except "Table VIII—Statistics" on page 27 of said report.

2. Annual Report of the Chicago & Northwestern Ry. Co., for the 43d fiscal year, the second of the three annual reports preceding page 2497 of said volume, except pages 5 and 6, that portion of pages 13 and 14 beginning on page 13 with the words "For the Year ending May 31, 1902," and ending on page 14 with the words "aggregate 4329 feet in length," and pages 43, 46 and 48.

415 3. 22nd Annual Report of the Directors to the Stockholders of the Chicago, Rock Island & Pacific Ry. Co., preceding page 2497 of said volume except page 5 "Statement" on page 7 "Showing the details of earnings and percentage of operating expenses as compared with the previous fiscal year," that portion of pages 8 and 9, beginning with the words "Freight Earnings" near bottom of page 8 and ending on page 9 with the words "taxes show a decrease of $19,407.68 or 2.06 per cent.," page 25, being statement of traffic movement and earnings" and page 29 entitled "Summary."

4. Exhibits between pages 2630 and 2631 of said volume except "estimated weights of empty cars on printed slip and the columns headed "Contents," "Car mileage," and "Weight of car and contents in tons," in the 17 Conductor's Reports following said printed slip and the title of each of said reports enclosed in pencil mark on the backs thereof, and also the "Total tonnage" where shown and notations at bottom of each of said reports.

5. Tabulated statements of receipts of live stock by cars at Union Stock Yards Chicago immediately preceding page 2603 of said volume.

6th. 46th Annual Report of the Chicago & Northwestern Ry. Co., for the year ended June 30, 1905, the first of the printed annual reports preceding page 2637 of said volume, except pages 5, 6, 11 and 12 of said report.

7. Ninth Annual Report of the Atchison, Topeka & Santa Fe Railway Company for year ended June 30, 1904, the second of the printed annual reports, preceding page 2637 of said volume.

416 8. 49th Annual Report of the Board of Directors of the Chicago, Burlington & Quincy R. R. Co., to the stockholders for year ended June 30, 1903, the third of the printed annual reports preceding page 2637 of said volume, except pages 5, 7, 8, 19 and 20 of said report.

9. 50th Annual Report of the Board of Directors of the Chicago, Burlington & Quincy R. R. Co., to the stockholders, for the year ended June 30, 1904, immediately preceding page 2637 of said volume except pages 5, 6, 7, 8 and 16 of said report.

Omit from "Volume 18" the following:

1. Exhibits to testimony of Yapp before the Commission between pages 28 and 31 of said volume.

2. Two printed pamphlets between pages 50 and 175 of said volume each entitled "Laws relating to the Railroad & Warehouse Commission of the State of Minnesota."

3 38th Annual Report of the Chicago, Milwaukee & St. Paul Ry. Co., for year ended June 30, 1902, between pages 214 and 247 of said volume, except page 7 of said report, that portion of page 11

under head "Capital Stock," that portion of page 12 under head "Funded Debt," and pages 14, 15, 16, 17, 18, 30, 31.

S. H. COWAN,
Special Attorney.
L. A. SHAVER,
Solicitor for Appellant.

[Endorsed:] 352, 20317.

417 Supreme Court of the United States, No. 352. October Term, 1906.

THE INTERSTATE COMMERCE COMMISSION, Appellant,
vs.
THE CHICAGO GREAT WESTERN RY. CO. ET AL.

Personally appeared before me a Notary Public in and for the District of Columbia, L. A. Shaver, Esq., who being duly sworn, says on oath that on the 3d day of August, A. D., 1906, he mailed to Ed. Baxter, Esq., of Nashville, Tennessee, and to C. E. Severance, Esq., of St. Paul, Minnesota, attorneys for the defendants and intervenors in the above cause, at their respective addresses, copies of designation in said cause by appellant under Clause 9 of Rule 10 of Rules of the Supreme Court.

L. A. SHAVER,
Solicitor for Appellant.

Sworn to and subscribed before me this 3d day of August, 1906.

MARTIN S. DECKER,
[NOTARIAL SEAL.] *Notary Public.*

418 [Endorsed:] File No. 20317. Supreme Court U. S. October Term, 1906. Term No. 352. The Interstate Commerce Com'n, App't, *vs.* The Chicago Great Western Ry. Co. *et al.* Designation by appellant of parts of record to be printed with affidavit of service of same. Filed Aug. 3, 1906.

419 In the Supreme Court of the United States.

No. 352.

INTERSTATE COMMERCE COMMISSION
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Statement by the Appellee, The Union Stock Yards Company of Omaha, (Limited), Intervener, Designating Parts of the Record to be Printed in this Case in Addition to the Parts Designated by Counsel for the Appellants.

Counsel for the appellee, The Union Stock Yards Company of Omaha (Limited), Intervener, having seen a copy of the statement filed in this court by Counsel for appellant designating the "Parts of the record which the appellants think unnecessary for the consideration of errors assigned, and which may be omitted in printing the record," and Counsel for said appellee understanding from said statement that Counsel for the appellants by their said statement intend to and do indicate thereby that all of the record in the case shall be printed except such parts as are designated in said statement as being unnecessary * * * Counsel for the appellee, Union Stock Yards Company of Omaha (Limited), intervener, hereby designate the following additional parts of the record which they think necessary and material to be printed as part of the record:

420 All of the exhibits to Mr. Kenyon's testimony except the Railroad Freight Tariff sheets, said tariff sheets to be omitted and there described in appellants' designation of omissions from volume 10 of the Record.

FRANK T. RANSOM,
Sol. for Union Stock Yards Company of Omaha (Limited), Appellee.

421 [Endorsed:] No. 352. Supreme Court United States. Interstate Commerce Commission *vs.* Chicago Great Western Railway Company *et al.* Statement by appellee, Union Stock Yards Company of Omaha (Limited), Intervenor, designating parts of record to be printed in addition to parts designated by counsel for appellants.
352, 20317, Aug. 8, '06.

422 [Endorsed:] File No. 20,317. Supreme Court U. S. October Term, 1906. Term No. 352. Interstate Commerce Commission, app't, *vs.* Chicago Great Western Railway Co. *et al.* Designation by appellee, The Union Stock Yards Co. of Omaha, limited, intervenor, of additional parts of record necessary to be printed. Filed August 8, 1906.

423 Supreme Court of the United States, October Term, 1906.

No. 352.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Statement by the Burlington, Cedar Rapids & Northern Railway Company; the Chicago, St. Paul, Minneapolis & Omaha Railway Company; the Chicago & Alton Railway Company; the Chicago & Northwestern Railway Company; the Chicago, Burlington & Quincy Railroad Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago, Rock Island & Pacific Railway Company; the Hannibal & St. Joseph Railroad Company; the Illinois Central Railroad Company; the Iowa Central Railway Company; the Kansas City, St. Joseph & Council Bluffs Railroad Company; the Minneapolis & St. Louis Railroad Company; and the Quincy, Omaha & Kansas City Railroad Company, appellees in the above entitled cause, under Clause 9, Rule 10 of Rules of the Supreme Court, of the parts of the record which said appellees think it material should be printed, in addition to those parts heretofore designated by appellant as necessary to be printed.

1. W. E. Keepers' Exhibit No. 3, between pages 444 and 445 of Volume 4, being a tabulated statement of three sheets.

2. Ripley's Exhibits marked "D the second and E," between pages 1621 and 1622 of Volume 11, being a large diagram showing comparative exhibit of average revenue, &c., and average tons per carload by commodities.

424 3. Exhibit to Testimony of Charles W. Baker, between pages 2204 and 2205 of volume 15, showing Chicago's supremacy as the live-stock market.

ED. BAXTER,
Solicitor for The Burlington, Cedar Rapids & Northern Railway Co., The Chicago, St. Paul, Minneapolis & Omaha Ry. Co., The Chicago & Alton Railway Company, The Chicago & Northwestern Railway Company, The Chicago, Burlington & Quincy Railroad Co., The Chicago, Milwaukee & St. Paul Railway Co., The Chicago, Rock Island & Pacific Railway Co., The Hannibal & St. Joseph Railroad Co., The Illinois Central Railroad Co., The Iowa Central Railway Co., The Kansas City, St. Joseph & Council Bluffs R. R. Co., The Minneapolis & St. Louis Railroad Co., The Quincy, Omaha & Kansas City Railroad Co., erroneously sued as the Omaha, Kansas City & Western R. R. Co.

352, 20317, Sep. 4, 1906.

425 [Endorsed:] File No. 20,317. Supreme Court U. S., October Term, 1906. Term No. 352. The Interstate Commerce Commission, app't, *vs.* The Chicago Great Western Railway Co. *et al.* Designation by certain appellees of additional parts of record necessary to be printed. Filed Sept. 4", 1906.

Endorsed on cover: File No. 20,317. N. Illinois, C. C. U. S. Term No. 352. The Interstate Commerce Commission, appellant, *vs.* The Chicago Great Western Railway Company *et al.* Filed July 28, 1906. File No. 20,317.

IN THE SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1906.

The Interstate Commerce Commission, Appellant, v. The Chicago Great Western Railway Company, et al., Appellees.	No. 352.

REPLY BRIEF OF ARGUMENT FOR APPELLANT.

In answer to all of the argument presented by various briefs for the appellees herein, based upon the contention that the court's findings of fact overcome the findings of the Commission, we make the counter proposition:

[Note: References to pages of brief are to the brief filed by Mr. Shauer and Mr. Cowan, except as otherwise shown.]

I.

THE COURT'S CONCLUSIONS ARE NOT JUSTIFIED BY ITS OWN FINDINGS OF FACT, THE FINDINGS OF FACT BY THE COMMISSION, NOR THE EVIDENCE.

Our original brief sets out the findings of the Commission, which the court affirmed in this language: "Which findings of fact the court assumed in the beginning of this hearing and in his consideration of the case to be the real facts in the case, as required by the statute." (Opinion, record, 175, 4th column.)

At the conclusion of the opinion the court said: "Upon a consideration of all the evidence the court

holds that the prima facie case made by the findings of the Commission has been overcome by the evidence offered before the court."

Since the court made specific findings of fact as the basis of its decision, resort must be had to those findings and to the findings of the Commission to ascertain wherein the court found the *facts contrary* to the findings of the Commission, instead of assuming it to be so as appellees do; and to determine whether the court's findings, if in conflict with those of the Commission, are sustained by the evidence, instead of merely asserting it, as appellees have done.

(2) This is subject to the qualification that it is not conceded that the same effect shall be given to the findings of the court in this character of case as are given to findings of fact in actions at law. The findings of the Commission should carry greater weight and force than the report of a referee or master. They are not only prima facie evidence of the facts found, but, being the decision of a governmental agency, specially equipped to correctly administer an important law and charged with that duty, its decision carries with it that strong presumption which the law indulges in favor of decisions and findings of departments of the Government, that the same are to be deemed correct until the contrary is made clearly to appear.

Certainly it does not comport with the spirit of this important regulating statute through the means of a commission charged with the duty of obtaining special information that the Circuit Court, composed of one person, not required nor supposed to possess special information or judg-

ment in such matters, shall overrule the decision of the Commission except for some *error of law* unless it be clearly shown that the Commission was in error in its judgment.

The Commission's judgment, which is entitled to this great weight, is its judgment upon the facts, circumstances, and surroundings of the given case, and of necessity must reflect an enlightened judgment, *not dependent merely upon the evidence which was before the Commission, but which is in part the result of the special knowledge and information which the law makes it the duty of the Commission to obtain.*

In the absence of a clear showing to the contrary, the law will indulge the presumption that the Commission has properly performed its duty and has taken into consideration all the matters which should be considered and give them proper weight in arriving at its conclusion. That conclusion must always be the result of its expert judgment upon the matter under investigation, as a whole as well as upon the evidence obtained, in the prosecution of the investigation by the Commission. (See also our original brief, pp. 39–43.)

Therefore, before the Circuit Court should reach a conclusion that the order of the Commission is not a lawful order by reason of an error in *judgment as to the facts*, the court should be able to point specifically to such error of the Commission; if the Commission has erroneously found a given fact to exist which was material to the ultimate conclusion, and it is proven before the court that such finding is not in fact true, the court should be able to point to the evidence which proves it, and to make its specific finding, overruling the finding of

the Commission in the particulars named. The mere holding that the evidence overcomes the "prima facie" case, is not sufficient.

The court, as shown in our brief, pages 88 and 89, based its conclusion that no undue and nreasonable preference or prejudice existed as found by the Commission, upon the holding that the reduction of the published meat and product rates was the result of competition justifying the preference and advantage and the prejudice and disadvantage. This was contrary to the Commission's findings.

II.

COMPARISON OF THE FINDINGS OF FACT BY THE COMMISSION AND COURT.—SHOW THE SAME STATE OF THE CASE UPON THE FACTS REGARDED BY EITHER AS CONTROLLING.—THE DIFFERENCES WERE IN ULTIMATE CONCLUSIONS.

The findings of the Commission embrace pages 8 to 27 of our original brief, pages 32 to 47 of the record. The findings of the court and its opinion appear at page 176 of the record, and the findings of fact by the court appear in our brief, pages 27 to 31.

A comparison of the two shows no conflict whatsoever as to any of the essentials urged by either side, except as appears in the sixth finding of the court, to the effect that shipments, markets, and prices are not affected by the present rates. (Upon this subject see Cowan & Shaver, brief, pp. 62-66.)

1. The comparison shows that the court found "that the live-stock rates are reasonable in themselves" (brief, 27), and counsel in their briefs and arguments urge this as important, but we shall show that it is not.

One of the complaints in the original proceeding before the Commission was that the live stock rates to Chicago from Iowa, Missouri, Wisconsin, and Minnesota were unreasonable and in violation of section 1 of the act. (See original complaint, record 9, Exhibit A, Paragraph III.)

The Commission made no finding as to that, and the order is not based upon a violation of the first section. Therefore the question is not at issue. It was not given any application by the court and is as unimportant as it was before the Commission.

The Commission did find as follows: "Complainant also introduced considerable evidence tending to show that the rates exacted by defendants for transporting live stock to Chicago from points in the States of Iowa, Missouri, Wisconsin, and Minnesota are unreasonable per se, but the testimony upon that point is unsatisfactory and we do not feel justified in making a finding in relation thereto." (Brief, p. 22.)

It was immaterial, therefore, that the court should find the live stock rates to be reasonable in themselves or "reasonably low."

But if, as a condition precedent to the lawfulness of the order in this case commanding the carriers to cease and desist charging a higher rate for the live stock and the meat and products, it must be shown that the live stock rates are "in themselves" or "per se" unreasonably high the order was, upon its face, unlawful, as a matter of law rather than of fact.

In either case it was immaterial whether the court should find the live stock rates reasonable in themselves, for if the Commission must have done so to render its order lawful it failed in that par-

ticular, and its findings would, therefore, upon that theory, be insufficient to support the order.

But the facts no more justified the court than the Commission in finding these live stock rates reasonable. (See comparative rates, record, pp. 1597–1598–1588–1590–1–2; see estimated earnings and profits, 1630–31; see also our brief, 57 to 62.) Considering the volume and importance of the traffic, and that the other rates on live stock and product are lower in the same territory, the court was not justified in accepting mere opinion of traffic men that these rates were reasonably low. While the finding is unimportant, it is not supported.

Cost of Service and Relative Profits—No Conflict between Court and Commission.

The second finding (brief, 28) is "that the cost of carrying live stock is greater than that of carrying dressed meats and packing-house products," and much space is given to this point in appellees' briefs and arguments.

But that does not conflict with the findings of the Commission. The Commission found that the discrimination "is not justified by the *difference* to defendants in the cost of transportation, and is not otherwise justified." (Brief, 22.) It finds the *profits* greater in transporting live stock. If that were not so, the volume of traffic in live stock is infinitely greater, which entitles it to the lower basis of rates.

The Commission in its findings (brief, 14) thus states the matters urged before it in justification of the discrimination:

"The Chicago Great Western contends that the discrimination is justified, first, by difference to

the carriers in the cost of transportation, and, second, by competition created by the packers, as hereinbefore described. The other defendants rely for their justification upon the competition created by the Chicago Great Western Company in making said contract and publishing and enforcing rates in accordance with its provisions."

A review of the facts concerning the relative cost of carriage and the relative profits and the various relative items of expense incident to the business is found in the report and opinion of the Commission (our brief, 14–22). The Commission specifically finds that the discrimination is not justified by the *difference in the cost of transportation*. At page 15 it points out the probable average relative *profits* upon the calculation there presented.

Not one item of the Commission's findings upon the subject of the cost of transportation or profits is controverted by any finding of the court. Neither does the court find contrary to the ultimate finding of fact by the Commission, on page 22 of the brief, that the discrimination is *not* justified in the *difference* in the *cost* of transportation. The court does not claim that it was justified by difference in cost, nor did Mr. Baxter in argument.

In other words, the Commission came to the conclusion that the *difference* in the cost, whatever it might be to the different defendants, and under different circumstances and conditions of handling the traffic, which admittedly varied, did not justify the discrimination. The court not only did not find to the contrary, but it did in nowise hold to the contrary. The finding that it costs more does not conflict with the findings of the Commission; the court

does not find any item of cost and in nowise states the relative *profits* in the transaction.

In subdivision (b) of its opinion, the court said (Cost of Service): "This has not been an important factor in the opinion of the railroad companies in the past, nor their practice, but in this case all seemed to agree that the cost of service ought to be an important factor in determining the rate. Mr. Stickney was of the opinion that the cost of service arrived at intelligently by a body of experts would be the proper basis upon which to determine fairly to everbody the rate to be adopted, and this could be mathematically figured out all over the country. The other witnesses stated that this cost could not be obtained at all accurately, only approximately."

In section 2 of the opinion the court said: "Upon the question of the comparative cost of the service to the carriers in carrying dressed meat and packing-house products and live cattle and hogs a great deal of testimony was taken on both sides." The court then points out the character of the evidence and what the witnesses claimed. The court in its conclusions of law says: (2) "The cost of service to the carrier would he an ideal theory, but it is not practical. Such cost can be reached approximately, but not accurately enough to make this factor controlling."

But regardless of whether the cost can be ascertainable with approximate accuracy, it is commercially and practically impossible to base rates upon an equivalent of profit relatively per 100 pounds or per car or per dollar's worth, or by the distance.

It therefore appears that the court did not endeavor to ascertain the facts further than to hold

that it cost more to carry the live stock, and that the court agreed with the Commission that the discrimination is not justified by the *difference* in the cost of the service.

Therefore, the findings of the Commission are not overcome by the finding of the court in that particular.

Of course, we are assuming that the mere fact of making a decree does not have the effect to overturn every finding made by the Commission.

It is not the spirit of the Act to Regulate Commerce, nor is it the rule of equity, that the decree like the verdict of a jury or the findings of a court in actions of law, resolves all questions of fact against the party cast in the suit, where there is any evidence supporting it.

Risk of Carriage.

Upon this subject the Commission found, "Evidence concerning risk assumed by the carriers in transporting the different kinds of traffic was very conflicting, but the damages paid are such a small percentage of the revenue received that they are not a very important factor." (Brief, 17.) The risk is of course reflected in the damages paid.

The Commission made no finding as to whether the one or the other class pay the greater percentage of damage, but held that it was so small in either case that it was unimportant. The difference on the average per car or per dollars's worth is a negligible quantity.

The court found that "the evidence shows that the defendant railroad companies pay out a much larger amount in damages arising from carriage of

live stock than they do for losses arising from the carriage of dressed meat and packing-house products in proportion to the value of the products carried, and more in damages per car regardless of the value. This makes the risk for carriage greater for live stock. The result is that the value of the service is not such an important factor in this kind of a case as it is considered to be in ordinary cases." (Brief, 28.)

As to the foregoing finding of the court, we assert (1) that it does not conflict with the conclusion of the Commission upon the subject; and (2) the finding is exactly contrary to the evidence as to the defendants carrying the largest volume of the live-stock traffic. Mr. Gardner, the general manager of the C. & N. W. Railway, which handles 100,000 cars of live stock per year, testified (Record, p. 325) that the loss and damage to packing-house products amounted to about 85 cents per car, and again (Record, p. 383) inserts the estimate "Account damage and loss" 85 cents per car, in figuring the net earnings on fresh meat and packing-house products.

At the same page he inserts in his estimate of the live stock shipments "Cost account damage and loss and injury to stock men in charge, $1.15 per car," but this is too high, for at pages 367 and 368 he testified that Mr. Richards, the damage claim agent from whom he got the figures, kept the records, and by referring to Mr. Richards's evidence (Record, p. 1903) is found a statement of the detailed loss and damage to live stock for the years 1902 to July, 1905, which averages 78 cents per car on the C. & N. W. Railway, estimated on a basis of 75,000 carloads per year, but

the witness testified that the actual number of carloads was about 100,000 per year.

Mr. Gardner has testified at page 324, "I think the personal injuries would average $25,000 a year riding in cabooses. Our damage and loss is about a dollar a car."

Mr. Richards made a statement for the six months from June 30, 1904, to January 1, 1905, showing the accidents to persons riding on stock trains to be $2,500. (Record, p. 1900.) For the year 1903 the total account was extraordinarily large, but that was caused by a serious wreck at La Fox, which cost the company $49,850. By referring to page 1902 will be seen the amounts paid in settlement of cases of injuries to stockmen, and it shows that in the year 1903, 42 men were injured, damage $49,850. For the year 1904 11 men were injured, damage paid, $2,691, and for the year 1905, 13 men injured, damage, $2,077.

It therefore appears beyond dispute that, as to the Northwestern Railway, the average of the entire loss and damage for the period given was 78 cents per car of live stock, and for packing-house products and dressed meat 85 cents per car.

Mr. Crosby, for the Burlington, testified that for the year ending June 30, 1905, the total loss and damage to live stock and attendants in charge of live stock was $41,773, of which the damage to men in charge was $5,345. (Record, p. 238.) The number of cars handled was approximately 104,000 cars (record, p. 1504, Miller's evidence), and the loss and damage therefor would average less than 40 cents per car.

Mr. Cusey showed the exact amounts paid to S. & S. packing concern for damages to shipments

of their output at Kansas City for three years, 1902 to 1904, inclusive, on 14,129 cars meats and products, $34,047, or $2.41 per car. (Rec., 1545.) 2,489 live stock to Chicago or New York, $2,649.93, or $1.06 per car. (Rec., 1539). For detail see this witnesses evidence of exact facts (Record, pp. 1517 to 1545.)

[NOTE: At p. 1530, the loss and damage to live stock is erroneously stated at $26,049.93, should be $2,649.93, as shown on pp. 1527–1539.]

Fundamental Propositions as Cost of Service and Reasonableness in Discrimination Cases.

Nearly every traffic man was asked whether rates relative or otherwise were ever made upon the basis of producing an equivalent of earnings, gross or net, or an equivalent profit as compared to rates on any other commodity or as between other places.

The uniform answer was that such rates are not so made and it will be impossible to do it. (See Gower's evidence, Record, 769.)

Naturally this must be so. It remains unquestioned in this case and in the history of the subject.

Neither in law, in practice, nor in railway economics, is there any rule by which rates relative or otherwise are based upon the 100 pounds any more than upon the dollars' worth, nor to produce an equivalent profit.

This proposition, undoubtedly true, answers a

multitude of arguments of appellee's counsel, which are based upon opinions and the hypothesis that relative rates are determined by the cost of carriage and earnings per hundred pounds, especially Mr. Severance's Analysis of Testimony, pages 1 to 73. It likewise completely refutes the numerous *opinions* of railway representatives based upon the hypothesis that the profit to the railroad must determine the relation of the rates. The hypothesis being false, the opinions are worthless.

Courts when determining reasonableness of a schedule for all traffic consider the cost of service material, for it is essential, as a whole, in ascertaining the net earnings as a factor in the ascertainment of a fair return.

When testing the reasonableness of rates on a given commodity or as applicable only between two or more places, where the reasonableness of the rate in the given case does not involve the fair return upon all the companies' investment, the cost of service is only important to determine whether the particular business furnishes some remuneration. In such case its importance is far less than in a case involving the whole schedule.

When the question for determination is the relation of the rates as between two competing commodities carried to or from competing points—that is to say, the relative reasonableness, the cost of the service is of the minimum importance in all such cases and oftentimes the relative cost of service is of no importance and must be eliminated.

Mr. Baxter admits that must be so upon all competitive rates. Equally it must be so upon rates on competitive commodities.

The foregoing propositions are fundamental, for unless they apply the public interest and the interests of shippers and localities would be obliterated, and the following factors, always deemed material and often controlling, would be given no effect, viz:

(1) That the public be not unduly taxed so as to pay in the end more than a fair return upon a fair value of the property used in the public service.

(2) That those commodities which can best afford to bear it should pay the greater burden.

(3) That necessaries of life and large important products of the farm be given as low rates as possible to encourage production and benefit the consuming public.

(4) That no undue or unjust discrimination be practiced as between competing localities; as between competitive articles of commerce; nor as between persons engaged in the production or commerce of such articles.

If the foregoing propositions are correct, then in this case the question of undue preference or unreasonable prejudice or disadvantage can not be determined upon the equivalent profits in the transaction of transporting a carload of the live stock from Missouri River to Chicago compared with transporting a carload of the products of live

stock any more than from the total profits from the one business as compared with the other.

And it follows that the relative cost of the service and the relative profits would be of the least importance; for to be guided by those factors would often produce the discrimination.

Further, the difference in cost is so meager and doubtful that it was correctly held by the Commission that the discrimination could not on the account of that difference be justified, as we shall see and as presented in our original brief, pages 47 to 62.

Without particularizing appellee's points, this conclusion of the Commission is a practical answer to all of the argument of the appellee's counsel upon the subjects:

Reasonableness of the rates in themselves; Relative car loading; Relative train loading and tonnage; Weight of cars; Weight of bedding; Cost of cleaning; Return loading; Speed of train; Cost of car mileage; Terminal expenses; Repairs of cars; Loss and damage; Stock-yards expenses; Return transportation; Opinions of railway officials.

As we have shown in our original brief, pages 47 to 62, the relative profits per car upon the whole are greater in the case of the live stock than the product, in the ascertainment of which the foregoing items are considered. And it is manifest that if the profits to which the carriers are entitled are measured by the value of the commodities per hundred pounds, such profits are twice as great in proportion to the value of live stock as its product.

The live stock and its products being highly competitive as held by the Commission, the relative value of the products is the more important factor than the relative weight. The court admitted the value was twice as great, but refused to give it any weight.

From what is said it is manifest that the interest of the public is quite as important a factor in determining these relative rates as is the interest of the railroads; indeed, the interest of the railroads must often be ignored wholly or partially to secure a just relation of rates.

If the relative cost of service and the relative profits to the carrier per car or per unit of traffic based on the weight shall determine the relative rates, then the carriers' interest alone would be considered and the public interest and all other interests necessarily excluded.

This is exactly what the court held, for it was his conclusion that the carrier was under no obligation to maintain the former relation of the rates, because to do so it must reduce the live-stock rates to the level of the rates upon the product. That would lose to the carriers a certain amount of money, but not affect them in any other way. It was this erroneous view which led the court to overrule the conclusions of the Commission.

No Effective Competion Except Eastward out of Missouri River.

The court found that there was some competition to the Gulf. (Brief, 28–29.) While this does not conflict with the Commission, we give it space for the purpose of remarking that no one claimed that the eastbound rates in question were in any

way affected by the southbound or the westbound rates on dressed meat or packing-house products. It only moves in that direction for local consumption, at much higher rates. No dressed meat is sent via Gulf ports for export, and little other products.

Chicago Great Western Railway as Longer Line from Kansas City Unimportant.

The court finds that "The Chicago Great Western Railway Company was the longest road from Chicago to Missouri River points."

This does not conflict with the findings of the Commission, as it estimates the average distance as 500 miles. (Brief, p. 10.)

Mr. Stickney treats the distance from Chicago to Omaha as 500 miles. (Record, p. 622.) No one claimed any particular advantage or disadvantage by the use of the average distance found by the Commission. The argument here is the first of that claim as a factor in inducing lower rates on the product than live stock.

Chicago Great Western Railway First Reduced the Rate under Contract.

The court finds "This cutting of the rate by the Chicago Great Western Railway Company was not the origin of competition; that had existed legally since March, 1902, between defendant railroads, and also between them and the Atchison, Topeka and Santa Fe Railway Company." (Brief, p. 29.) It was the origin of reduced published rates.

Taken in connection with the statement just preceding that, "After said injunction was granted, the defendant railroads obeyed it, and until August of that year, the said traffic was carried

under competition between the defendant at the rate of 23½ cents from Missouri River points to Chicago, and 25 cents from St. Paul to Chicago, etc., as set out above." (Brief, p. 29.) This is an anomalous conclusion.

It is not disputed that all of the railroads except the Chicago Great Western reduced their rates to meet the rate established by the contract of August, 1902; and that, previously, the published rates had been observed. By what mental process could the court therfore conclude that the cutting of the rate was not the origin of competition? It admittedly was the cause of the reduction of the published rate, whatever may have been the motives and the actuating cause inducing the Chicago Great Western to make the contract and put in the rate.

While there may have been competition to get the business, it had not reached the point of varying from the published rate according to the court's finding; therefore, of what importance is it that there was competition for the business at the published rates? That the Chicago Great Western decided to get an advantage by the secret contract goes without saying, and that it was the moving cause of disturbing the existing relation of the rates is so plain that it is singular that the court apparently attempts by the finding quoted at the beginning of this paragraph to excuse the Great Western from the consequences of its act.

And it is appropriate to say further that the theory advanced by Mr. Baxter that by the Great Western contract a higher basis of real rates was established than had theretofore existed on dressed meat and packing-house products meets the charge

of unlawful discrimination is not well taken, because—

1. There was no fixed amount of rebate paid.
2. It is not shown to whom it was paid.
3. The public and trade in general should not be affected by the secret arrangement. (Mr. Baxter's brief, p. 37.)

Effect of the "Present Rates" on Prices, Markets, and Shipments.

The court, in its sixth finding (Brief, p. 30), said: "That the present rates have not materially affected any of the markets, prices, or shipments; that they are reasonably fair to Chicago and to the shippers; that the shipments of live stock from points between Chicago and the Missouri River and St. Paul are as great in proportion to the volume of business as before the present rates were made."

This subject is treated in our brief under the heading "Commercial Relation of Live Stock and Its Product," pages 62 to 69.

The Commission upon this subject found (Brief, p. 22): "That the facts shown (statistical data of receipts, establishment of markets, etc.) would tend to produce the effect claimed for them is evident, but in that connection it is impossible to determine to what extent each of the facts was effective." (See Crossly's evidence, Record, 261, to same effect.)

The Commission, as the context will show, here had reference to the evidence showing the relative receipts at the various markets in question, as tending to prove the discrimination as against Chicago in favor of other markets, and the evidence of the defendants showing the improvements in market conditions at the other markets, etc.

On the whole, the Commission found that "The discrimination against the transportation of live stock to Chicago from the shipping points in question brought about by defendants' action in establishing and putting in force upon the products of live stock rates of transportation lower than those contemporaneously exacted by defendants for the transportation of live stock between the same points injured the live stock market of Chicago and those interested therein." (Brief, p. 22.)

The Commission further found that it "therefore subjects the traffic in live stock and the Chicago live stock market and those interested there, including complainant, to undue and unreasonable prejudice and disadvantage and gives to the traffic in the products of live stock and shippers and localities interested in such traffic undue and unreasonable preference and advantage." (Brief, p. 22.)

Therefore, on these points the Commission and the court were at exact varience.

That the court reached its conclusions because of the failure of the Commission to give the weight to competition which the court thought proper, and not because of a different state of facts, is shown at pages 62 to 69 and pages 77 to 83 and Subdivision VII, pages 83 to 96, of our original brief.

It is not claimed that the court had any different evidence to support its sixth finding, above copied, than did the Commission; they simply reached different conclusions.

The receipts at the Missouri River markets from 1896 to 1904 (brief, p. 64) show an increase of

about 100 per cent for cattle, about 200 per cent for hogs, and about 45 per cent for sheep, from the East to the Missouri River. (See record, 1578, 1580, and 1581.)

Take the two periods 1895 to 1899, and 1900 to 1904, inclusive. There was an increase of the latter period over the former in receipts of live stock from all sources at the Chicago market of 28.6 per cent in cattle, 36.7 per cent in hogs, and 136.57 per cent in sheep. (Record, 1554.)

The increase was large for 1904 as against 1900 or 1901, 1902, and 1903, showing the largest increases in cattle.

There was a falling off in the number of hogs from Iowa to Chicago, 1901 to 1904, of practically 25 per cent, cattle being about the same for 1904 as was shown for 1901.

There was a large increase in the volume of business from points *east* of the Missouri River to the Missouri River markets during the corresponding period. (Record, 1577 to 1582. See also brief, p. 63–65.) It is important to note that the meat and products move eastbound. (Record, 259–60.)

Now, since the territory between the Missouri River and Chicago is constantly contributing less live stock, or at least not showing any increase to Chicago, and since the live-stock business is increasing in the State of Iowa, and since the Missouri River markets at St. Paul and the interior packing-houses in Iowa are making rapid increase in their output shipped eastbound, there must be some cause for it. The Commission quite correctly found that it was impossible to determine

to what extent each of the facts was effective, including, of course, the difference in the rates, but the effect is certain.

The Commission came to the conclusion that the relation of rates was sufficiently effective to constitute an unjust discrimination. The court thought not, because competition caused the lowering of the product rates.

The court held "that the present rates have not materially affected any of the markets, prices, or shipments."

There is no sufficient evidence in this record to justify the court in that conclusion, when the volume and direction of traffic is considered.

Mr. Mahoney, the chairman of the Western Trunk Line committee, which is an organization of the various railroads running west of Chicago (Record, 1391), prepared statements showing the tonnage and revenue of live stock, packing-house products, and dressed meat moving eastward from the Missouri River through the Mississippi gateways. (Original record, 2053A, Exhibit 1, 2053B, Exhibit 2, and 2053C, Exhibit 3. Printed record, 1392–1394.) These show that from 1902 to 1904 the shipments out of the lower Missouri River crossings, Kansas City, St. Joseph, etc., of dressed meat increased for 1904 over 1902 11 per cent; packing-house products, 17 per cent.

Out of Omaha district for the same period dressed meats increased 13 per cent; packing-house products 10 per cent. Out of St. Paul, shipments eastward of meat increased 117 per cent; packing-house products, 53 per cent.

As above shown, live-stock shipments into Chicago from the intervening district did not mate–

rially increase; but this statement of Mr. Mahoney shows that the shipments out of Missouri River points eastward through Mississippi River gateways, presumably to Chicago, principally, increased out of lower Missouri River crossings 34 per cent in the same period and out of Omaha 53 per cent.

It must be borne in mind that these shipments of live stock moving out of Omaha, Kansas City, and St. Joseph were not moving upon the 23½-cent rate, but on the balance of the through rate, as that traffic originates west and south of the Missouri River of generally 16¼ cents, often as low as 12 cents, from Missouri River to Chicago.

So therefore it is practically demonstrated that the east-bound movement of both dressed meat and packing-house products, and live stock which moves at the old balance of the rate, was proportionately greatly increased, while the live stock moving at the 23½-cent rate from interior points shows practically no increase and, in fact, a falling off.

It must be noted that the relative west-bound movement to Kansas City in the tables referred to in the record was affected by the establishment and building up of the St. Joseph market, dividing the Kansas City trade, which accounts for the fact of a falling off to some extent of the traffic west bound into Kansas City. The southwestern Missouri River points, including Kansas City and St. Joseph, should therefore be considered together.

It furthermore must be borne in mind that Chicago, because it is the great market which fixes the prices paid elsewhere, enjoys a patronage, notwithstanding the obstacles of a higher rate of freight. In other words, it partially overcomes the disad-

vantage, but that does not lessen the disadvantage to the shipper who pays it.

It is not a case, therefore, of different evidence before the court which led it to make its finding that shipments were not affected, etc., so much as reaching a different conclusion as to whether the discrimination was undue or unreasonable.

Furthermore, it must be observed that the court did not find that Commission was in error in holding that the *difference* in rates did produce an effect upon the shipment; it only held that it had not materially affected the markets, prices, and shipments; but the question is, Did it, on the whole, work a disadvantage in rates to the shippers which was unjust?

Furthermore, this finding of the court does not establish its ultimate conclusion that no undue preference or advantage was given; for the unjust disadvantage may exist, and yet the shipments might not be materially diverted, though the evidence does not warrant the claim of no diversion.

As pointed out in our brief, at pages 62 to 69, the lower rate subjects the shippers necessarily to an unreasonable prejudice and disadvantage.

Effect of Rates on Shipments—Evidence.

That the relative rates must affect the direction of the shipments is made manifest by the protests filed in the form of intervening petition by the several stock-yards companies at the Missouri River and at South St. Paul and the packers at the interior points. They must regard the relation of rates as giving them a preference or advantage, and that to change the same would produce an effect. It is as necessarily true that the change

from the previous basis must have produced an effect. To deny this is to deny the law of cause and effect, and that is in effect what the court did by its sixth finding. Of course the effect of other causes may offset in whole or in part this effect.

There is no sufficient evidence upon which the court could base that finding, unless it is mere unsupported opinion of interested parties. It can be but a reflection of a condition of mind, not the result of a due consideration of the evidence.

Mr. Eaton, the manager of the Sioux City stock yards, testified (record, p. 892–893):

"Q. State what the effect would be upon the interests of the Sioux City market if the rate on live stock to Chicago should be reduced to the present rate on packing-house products.

"A. The rate through all that country now, the difference between the rates to Sioux City and Chicago, is less than the packing-house rate from Chicago to Sioux City.

"If the rate from the territory in western Iowa is still further reduced to Chicago, it widens the difference, and it will take more stock to Chicago and less to Sioux City, or compel the purchasers at Sioux City to pay a higher rate proportionately in order to get the stuff to Sioux City."

Again, at page 897, when questioned by the court, the witness testified:

"Q. What effect would it have on your market if the packing-house rates were raised up to where they were before?

"A. That would make it cost the packer there that much more to ship his product east and it would make a great difference in the other rates.

"Q. Have you seen any difference since those rates were put where they are, in regard to the shipments to your market?

"A. We think we have seen some little difference, but not very much.

"Q. It would not make much difference if it was put back, would it?

"A. Except this thing, Judge, that during the time these rules have been in effect our market has been crippled because a packing house burned and we have only had half the capacity for slaughtering there, and now the burned house has been rebuilt and the market is coming back to the original position and is growing so we were not in a position to be able to make a good estimate as to the condition of this rate."

By Mr. COWAN:

"Q. What determines the price paid at Sioux City for live stock? Do you gauge the price, do the buyers, or is it the market price paid at any other place or places, and if so, where?

"A. As I understand it, there is no market in the West that the market opens until they hear reports from all over the country as to the receipts, and the Chicago market is the earliest market in the day, and we get the prices at Chicago and the receipts at all other markets. We get reports of the run of the stock not merely at Sioux City, but the runs at all markets have some factor in determining the price.

"Q. The market at Chicago is the principal one that is looked to for setting the pace?

"A. The market at Chicago is the largest market in the United States."

Mr. Eberhart, a pork packer from Austin, Minn., testified, at page 665, that his concern has to pay a bonus of about 5 cents per hundred pounds to induce shipments to his packing house at Austin.

And again, at page 669, he testified:

"Q. Now, do you pay the price based upon the price being paid anywhere else?

"A. Yes, sir.

"Q. On the price being paid where?

"A. Chicago, generally.

"Q. How do you get your information?

"A. We get it by the Postal Telegraph Company.

"Q. Do you send any postal cards or notices of what you are paying for hogs and how many you want?

"A. Yes; we send postal cards.

"Q. Then it is on the basis of these prices that you offer that shipments are made, practically?

"A. Yes, sir; very largely.

"Q. Where do you ship your products for sale?

"A. In carloads, mostly to the South and to Chicago."

And again, at page 670, as follows:

"A. I think that the present differential between the rate on live hogs and packing-house products makes it possible to show an increased business.

"Q. That would be the tendency of it, would it?

"A. Yes, sir."

Mr. Flower, general manager of the South St. Paul Stock Yards Company, testified at page 789:

"Q. General, you say that the prices you pay at St. Paul are in all cases not less, sometimes greater, than the price on the same class and kind of live stock as that paid in Chicago, minus the freight to Chicago?

"A. Yes; I think that is almost absolutely correct. There might have been, perhaps, some cases where it would vary a little.

"Q. How long has that been so?

"A. Well, it has been so during all the time since Swift & Co. have got thoroughly established on that market.

"Q. And how long has that been?

"A. Well, I should think that statement of fact is true for five years.

"Q. Is that a fact that is generally understood?

"A. It is the fact as understood by us people at South St. Paul."

And again at page 792:

"Q. If the rate from St. Paul to Chicago on live stock was reduced, then that would induce the shipper to ship more live stock in there because he could get a better price?

"A. If it was reduced to Chicago?

"Q. Yes.

"A. Well it would not induce him to come to our market. It would induce him to go to the Chicago market."

Mr. M. P. Buel, president of the Chicago Live Stock Exchange, testified, at pages 1266 and 1267:

"Q. Is the market at Fort Worth, Kansas City, and St. Louis determined in whole or in part upon the market in Chicago?

"A. I think so. Chicago is the controlling market, because of its largeness.

"Q. Chicago is much the largest and most important market in the country?

"A. Yes, sir, on live stock.

"Q. Do you know whether or not the receipts in the yards here of a morning and the price at which the cattle and other live stock is sold, are immediately telegraphed to those various markets.

"A. The receipts of live stock is always telegraphed early in the morning to the other markets, as to what it is in Chicago.

"Q. Do you know whether or not anybody telegraphs the prices to be paid?

"A. The big slaughtering houses. Those big concerns advise their buyers in the other markets, the conditions, and give them a general idea, as I understand it, as to what they are buying cattle for on these markets at that time."

Mr. Foster, a pork packer of Ottumwa, Iowa, testified, at pages 644 and 645, that he makes his

purchases largely by sending out mimeographed postal cards to hog raisers changing the rates offered from day to day. He testified in part as follows:

"Q. The circular states the grade and the price?
"A. Yes, sir.
"Q. The grade and price where?
"A. At Ottumwa.
"Q. If a man ships his hogs in and they fall within the goods of weight named in your circular, you pay him the price named in the circular?
"A. Yes, sir.
"Q. Do you pay the freight?
"A. We pay the freight, but deduct it from his bill.
"Q. It comes out of his pocket?
"A. It comes out of his pocket; yes, sir.
"Q. How do you come to change the price? You spoke of changing the price.
"A. We change the price by the changes in Chicago. The Chicago market governs our prices.
"Q. How do you get that information?
"A. By wire every morning.
"Q. And by wire every night?
"A. Well, the hog market is practically over by 10 or 11 o'clock in the forenoon.
"Q. You get your wire that day and send out your circulars if you make a change?
"A. Yes, sir.
"Q. From whom do you get your information in Chicago?
"A. Well, the telegraph companies—the Western Union has a live stock reporting bureau and so has the Postal Telegraph Company, and we get both markets.
"Q. So it comes from the reporting bureau of the telegraph companies?
"A. Yes, sir."

The witness explained, however, that for some special reasons, when it became necessary to in-

duce hogs of a particular class to move to his packing house, he was compelled to pay more than the Chicago price minus the freight rate. After explaining that, the witness testified, at page 646:

"Q. So your basis is the Chicago market plus your desire for hog?

"A. Very largely.

"Q. How would it make any difference with you, then, if the freight rate on hogs were reduced 3 cents a hundred pounds?

"A. Why, it would make that same difference. We would have that much more to pay for the hogs; we would have 3 cents more to pay for the hogs.

"Q. If you don't base your prices on the Chicago prices, I don't see how that would be so.

"A. Well, it is based on the Chicago prices."

And again the witness testified at pages 646–647:

"Your idea is, then, that in the price you pay for hogs you get the advantage of the difference between the rate of freight to Ottumwa and the rate of freight to Chicago?

"A. Yes, sir. The lower the freight on live hogs the better, of course, for the interior packer.

"A. I wish to correct that answer and say, the higher the rate on live hogs to Chicago the better for the packing house."

From the foregoing it is plain that the court is in error in finding that the relation of rates does not affect the markets, shipments, and prices, if the court really meant that. The only explanation which could be made, as it appears to us, is that what the court meant by the term "present rates" was making public a rate that had been secretly given at various periods.

The witness Wilson testified, at page 1034, that the price of hogs at Cedar Rapids was based upon

the Chicago market, which was repeated by the witness at page 1059.

The eighth finding to the effect that the welfare of the public, including shippers, consumers, and all localities and markets, does not seem to be materially affected by the present rate, is involved in the sixth finding and in the ultimate conclusion of the court that there was no violation of the third section of the act.

It thus appears from the foregoing review of the findings of the court, as compared with the findings of the Commission, that the court was not justified in its sixth finding for want of evidence on which to base it, and the evidence proved the contrary to that finding. The same necessarily follows as to the eighth finding.

It seems, therefore, when reduced to the ast analysis, that the conclusion of the court that the third section had not been violated is but the reflection of the opinion of the court made from the same real state of the case as that considered by the Commission.

As we have seen under Paragraph VII, pages 83 to 91, of our original brief, the conclusion was not justifiable.

The court states in its opinion in the statement of the case, paragraph 9, that "the testimony showed that the Santa Fe Railroad Company had cut its live stock rate to 12 cents for a short period after August, 1902, when the above rates in question went into effect, and that such lowering of the rates of that company did not increase its business to Chicago."

There may be some expressions of opinion on the

part of Mr. Peabody to that effect. It must be noted that Mr. Peabody does not claim to know everything, although he is a statistician. He was not called upon to produce the actual figures of the live stock shipped from points reached by the Santa Fe for the period during which the 12-cent rate was in effect, compared with the period of the previous year when those rates were not in effect; nor were the conditions which might effect the movement on the Santa Fe sufficiently gone into to prove what factors might control the movement.

Mr. Bird filed with the Interstate Commerce Commission a statement as a part of his evidence, which is in this record at page 2035, wherein is shown the actual shipments of live stock from Kansas City, Leavenworth, Atchison, and St. Joseph from August 15 to December 21, 1901, and for the same months in 1902. The 12-cent rate was in effect from August 15 to December 21, 1902.

These figures show an increase of the shipments via the A. T. & S. F. Railway during that period of practically 100 per cent.

There is no other evidence upon the subject, and the statement made by the court is utterly without foundation. There may have been no increase in cattle shipped, but the rate was on *live stock*.

Mr. Peabody did show at page 1369 that the shipments from August 1 to December 31, 1903, via the Santa Fe line, were pretty nearly equal to the shipments August 1 to December 31, 1902, but he did not show that 1902 shipments increased over those for 1901. He does show that 1904 shipments were very much less than 1902 for the same period. So that the comparisons for 1901 and 1904 show that 1902 shipments are very much greater, which

may be attributable to some extent to the rate adjustment. Certainly the court could not hold that it was not. Then the proposition is absurd, for as everybody knows, cheaper rates induce shipments, other conditions remaining the same.

Remarks Touching the Opinion of the Court.

The court seemed to be greatly impressed with the number of railroad witnesses who expressed the opinion that the rates charged were not more than reasonable. That was a mere opinion which one must necessarily expect and will find ever present from men who make the rates and feel under obligations, of course, to contend that they have not made them unreasonable. Traffic men almost universally defend their rates.

In subdivision 2 of the court's statement it was pointed out that much evidence was taken as to the cost of service, and it is stated that all of the witnesses for the railroads agreed upon the different items of expense in handling live stock. Space forbids the pointing out of the varied expenses and various figures given, but the fact is that no two of them agree, as an examination of the record will show, except in their uniform effort to magnify the expenses of the live-stock traffic.

The court further states that many of the witnesses for the defendants "made complete and accurate statements of the different items that they they thought ought to be considered in determining the cost of carriage." The fact is that no witness who made a statement giving figures to show the different items claimed that they were accurate. They were mere estimates, and it was

impossible for them to be accurate because no two witnesses made the same showing.

If the statement of the court was correct, that these witnesses made accurate statements, it is singular that the court should have said in paragraph (b), subdivision 4, that "The other witnesses (than Mr. Stickney) stated that the cost could not be obtained at all accurately, only approximately."

Again, the court states that there was an expense of from $800 to $1,400 for stock yards at every shipping place. The evidence in no sense warrants that. They are of that value in some shipping places. That is as far as the evidence goes.

(See Mr. Gardner's table, record, p. 339; also evidence, record, pp. 1039–1042, 1290 to 1293, where the yards of the Northwestern road are shown to be the best.)

The court repeatedly claims that shipments are not affected by the relative adjustment of these rates and that the live stock shipped out of Missouri River are all shipped by the proportional or balance of the through rate. Yet in section 5 of the statement the court says that the evidence tended to show that a large number of cattle were driven in from points east of the Missouri River to those markets. What becomes of those cattle? Undoubtedly they are not shipped eastward because they can not be shipped on those rates (23½ cents).

The court further stated in paragraph (a), section 4, of the statement that the witnesses all agreed that it had been the practice for years and was proper for the railroads to exact all the traffic would stand. The railway employees agreed to it, but no one else thought that it was proper.

The court then states in subdivision (e) that

they all agreed that competition was the greatest factor in determining the rate. So it is, but it may result in discriminations to him who can get the cheaper rate and against him who suffers from it, as has happened here.

In subdivision (f) the court states with respect to "shipments subject to competition, no skill or science was required in making rates; that rates were forced on carriers by their competitors, regardless of what they ought to be."

Such being so, they are not evidence of their justness. It is absurd to testify that they are reasonable when they were forced to make them.

The opinion is full of incongruities, but space forbids further reciting.

We therefore conclude that the numerous arguments, based upon the findings of the court as conflicting with those of the Commission, are unsound.

III.

RATES ON LIVE STOCK AND ITS PRODUCTS MUST BE COMMERCIALLY FAIR TO BE REASONABLE PER SE OR RELATIVELY, AND CAN NOT BE BASED ON THE COST OF TRANSPORTING OR PROFITS RELATIVELY PER 100 POUNDS, OR PER CAR.

Chicago is the better market, because it has the more buyers; it has the more buyers because the rate adjustment gives them an equal show with the packer to ship to consuming points to the East.

Kansas City and Omaha can never induce cattle to move there equally with Chicago from the Iowa corn belt, unless the rates on live stock give the buyer at Missouri River for shipment on the

hoof a commercial equality with the shipper of the meats from Missouri River and the shippers of the live stock from Chicago. Therefore, the very thing which the stock yards companies are asking for at the Missouri River points will keep Chicago in the lead, unless the relation of the rates eastbound from Chicago are likewise made to give a preference to the packers, and to subject live stock shipments to a like prejudice and disadvantage.

If 70 per cent of cattle in the 23½-cent zone goes to Chicago, which is not true of hogs, it is the competitive buying there of those shipping cattle on the hoof from Chicago. If buyers could do that at Missouri River, they would, but they can not because the rates are too high, except for cattle from west of the Missouri River. The relative adjustment of the rates on shipments from the 23½-cent zone is beyond doubt a disadvantage to the shippers, for it deprives them of competition to the extent of the difference in cost of shipping the animal compared to its product.

The decision of the Commission is in behalf of the *traffic and shippers of it*. It states in its opinion that rates relatively just should be established, and then let the traffic move as it will. (Record, p. 45.)

The Order of the Interstate Commerce Commission in this Case does not Require that the Rates upon Live Stock shall be the Same as upon Dressed Meat and Packing-House Products; they may be made Higher upon the Latter.

The order prohibits the rates being higher upon the live stock than upon the product of the live

stock. The rates being the same on both meats and so-called packing-house products, the Commission's order applies alike to both; indeed, they are treated as an output under the name "products."

At the argument the question was asked from the bench whether there would not remain a discrimination, preference, or advantage even if the rates were made the same. The answer to that must be in the affirmative, but the question as to whether or not such preference, advantage, or discrimination if the rates were the same would be *undue* or *unreasonable* is not a question involved in the case to enforce the order, as the Commission did not go further than to hold it *unjust*, at least to the extent of the *difference*.

Under the order of the Commission, of course the carriers could make the rates higher upon the meats and products than upon the live stock.

The Commission went no further than to order that the prejudice and disadvantage against the traffic in live cattle and hogs *by maintaining the higher rates* upon them, than upon the products of cattle and hogs, be removed.

The Commission did not attempt to place them upon a commercial parity, for to do so would have required an adjustment of the rates considerably higher per hundred pounds upon the prepared product than upon the live stock.

If the court should be of the opinon that a discrimination exists and that while the order of the Commission prevents it to the extent of the difference between the rates upon the live stock and the products of live stock, but that in order to remove the unlawful discrimination the rates

should be so adjusted as to place the live stock upon a commercial parity with its product when shipped to the Chicago market, then the court has the power under section 3 of the Elkins Act to reverse the decision of the lower court and to direct court by virtue of the Elkins Act to require a discontinuance of such discrimination by any "proper order, writ, or process," as provided by section 3 of said act.

The existence of the packing houses on Missouri River or at interior points does not depend on the present commercial relation of these rates, which is indisputably proven by the fact that they get their supplies of live stock mostly from west of the river, and when it reaches Missouri River it may move on to Chicago for an additional 16 cents per 100 pounds generally as a balance of the rate.

The Commission intimates an opinion that the product rates should be higher than the live-stock rates, and the testimony sustains this opinion.

The following extracts from the testimony of Mr. Peabody and Mr. Tomlinson reflect the opinions of a number of witnesses and the relative rate adjustment everywhere else except eastbound from these particular localities to Chicago, and show the proper relation.

Mr. Peabody testified:

"My conviction, based on a good many years' experience, is that the raw product in any case should be carried less than the finished product, and in a case like the dressed meat, which is a highly finished and perishable product, the rates should be at least 50 per cent higher than the rate on cattle. On packing-house products it should be perhaps 20 or 25 per cent higher. In other words, if I was to make the rates as made on the

basis of to-day, allowing cattle at 23½ cents, I should put the packing-house products at 28½ cents and the dressed meats at 33½ cents."

(James Peabody, R., 1351.)

Mr. Tomlinson testifies:

"Q. State what rates on live stock and its products would place the shipper of the live stock and the shipper of the product of live stock on a commercial equality in the markets of Chicago and the other points where they come in competition.

"A. As between cattle, for example, and the product of cattle known as finished beef, the product rate should be about 175 per cent of the cattle rate to place the shipper of cattle on an equality with the shipper of beef."

(Tomlinson, R., 1547.)

Mr. Tomlinson was a man of a lifetime experience as an expert in matters pertaining particularly to the rates and the movement of the traffic and the commerce of live stock and the fresh meats and packing-house products; likewise an expert upon railway transportation matters. He gave his testimony before the court in a clear and lucid manner, with a thoroughly intelligent presentation of facts, statistics, comparisons of statistical data, and calculations, tables of exhibits, and the like, so as to demonstrate the accuracy of his conclusion. It would serve no useful purpose to copy his evidence, neither can it be intelligently excerpted. We therefore refer the court to that evidence as thoroughly supporting and convincingly proving every fact found by the Commission and that its ultimate conclusions were correct. (Record, 1740–1765, 1873–1891.)

We assert it as an incontrovertible proposition that if the difference in cost of the transportation of the live stock and the dressed meats and packing-house products

does not justify a lower rate of freight upon the latter, then an opinion of a witness that the rates should be lower upon those commodities because of the difference in the cost of service, is worthless as evidence; and that the number of witnesses expressing such opinion upon that ground adds nothing to the value of such an opinion.

Mr. Severance's analysis of the testimony filed with his brief of argument herein deals principally with questions relating to the reasonableness of the rates and the proper relation of the rates almost wholly from the standpoint of the cost of the service relatively on the dressed-meat and packing-house products on the one part and the live animals upon the other, and the profits relatively per carload or per 100 pounds to the carrier.

Having shown, as we believe, that the proper relation of rates between competing commodities can not be determined upon that basis, it would unduly tax the patience of this court to review to any extent the evidence in opposition to that quoted in Mr. Severance's analysis.

But the statements of Mr. Stickney and a few others are so completely at variance with the actualities as to the cost of carrying live stock that we feel that, lest we should be considered as admitting the correctness of those statements, we should point to some of the evidence which refutes the same.

But before doing this we call attention to the statement of Mr. Baxter, page 44 of his brief, to the effect that the relative cost of transportation is only of consequence in so far as the theory of the relative adjustment of rates upon the basis of the cost of the service coincides with the adjustment, which, it is claimed, resulted from competition.

While the reduction in the packing-house product and dressed-meat rates to the point now charged results from competition, there was no competition which would prevent a like reduction in the live-stock rates. Hence, *the relation of the rates is not in fact the result of competition.* But the defense is placed upon that basis, as is the decision of the circuit court.

The opinions of the numerous witnesses for the railway companies that the rates should be higher upon the live stock than upon the packing-house products and dressed meats, wherever such opinion was expressed, it will be found were based entirely upon the relative cost of the service which such witnesses claimed to exist. In no case did a single witness express the opinion that there was any theory of rate making aside from the relative cost of service that would justify the making of rates relatively higher per hundred pounds on live animals than upon dressed meats and packing-house products, and no one except Mr. Stickney claimed that to be a correct theory, and he admitted it to be impractical.

Besides, the admitted practice of the carriers throughout the country to make the rates higher upon the dressed meats and packing-house products than on the live stock is the strongest expression of opinion possible in support of the proposition that it ought to be so.

Even considering the cost of the service as the material and controlling factor, witnesses, as railway officials having long experience in railway traffic matters, testified before the Commission, and their evidence was introduced before the court, to the effect that the rates should be higher upon

the dressed meat and packing-house products than upon the live stock because the cost is greater upon the former. In support of this statement we point to the testimony of Mr. W. B. Biddle, then freight traffic manager of the Atchison, Topeka and Santa Fe Railway Company and now the third vice-president in charge of traffic of the Chicago, Rock Island and Pacific Railway Company (Record, p. 1505); Mr. Darius Miller, then and now vice-president in charge of traffic of the Chicago, Burlington and Quincy Railroad Company; Mr. Delano, the general manager of the same company (record, p. 1703); and Mr. Boyd, the general freight agent of the Chicago, Rock Island and Pacific Railway Company (record, p. 1717); Mr. Johnson, (record, p. 1727.) The opposite opinions are presented to the court by other officials of the same roads.

Some of these witnesses, particularly Mr. Miller, went into the subject of the relative cost of service in a detailed calculation, which proves that the profits per carload resulting from the transportation of dressed meats and packing-house products as an average from Missouri River points to Chicago was far less than the profits in transporting the live cattle and hogs. We deem it unnecessary to copy that testimony here, but point to the record for a painstaking review of the actualities in that transportation. (Record, 1487, et seq.)

There was also introduced in evidence the testimony of Mr. Bird, the vice-president in charge of traffic of the Chicago, Milwaukee and St. Paul Railway, who testified before the Commission that theoretically the rates ought to be higher upon the dressed meats and packing-house products than

upon the live animals, though he claimed in this case that because of the competition which reduces the rates on dressed meats and packing-house products, and because of the relative cost of the service, being greater as he thought on the meat and products, and because the rates on both were too low to be reasonable, that that theory should not be given application in this case. (See record, p. 2001–2002.)

Mr. E. P. Ripley, the president of the Santa Fe Railway Company, and Mr. Peabody, the statistician of that company, both testified at the hearing before the court that both in theory and from the standpoint of the relative cost of the service that dressed meats and packing-house products should take a much higher rate per hundred pounds than live stock.

It has been pointed out in the appellees brief that both of these witnesses claimed that the rates upon the live stock were too low, but an examination of that testimony will disclose the fact that this contention was based upon the cost of the carriage and the profits to the carriers, which, as we have shown, can not be made the basis of relative reasonableness of rates on particular commodities, because those rates can not be made to produce any particular equivalent profit, although they should be so made so as to produce some remuneration above the mere cost of the haul, which is admitted.

An analysis of Mr. Peabody's figures, upon which Mr. Ripley testified by which he reaches the conclusion that the live-stock rates are too low, involves the error which does not apply to the relation of the rates, but destroys the value of his

computation upon the reasonableness of the live-stock rates, in this; he measures the live stock and meat rates by the *average cost for all business*, and he ascertains the cost of the service, not from the *actual cost of hauling live stock*, but by the *average cost per gross ton mile of moving all of the freight and the cars, loaded and empty, of the railway company;* and thus, by taking the gross ton miles and dividing that into the total operating expenses of the railroad, he arrives at the so-called cost per gross ton mile. Using that as a basis by which to multiply the gross ton miles of hauling live stock *and the return of the empty car* to the point of origin, he concludes that it costs so much per gross ton mile to haul every car of live stock. This basis is necessarily a mere theory, which is, at most, valuable only for purposes of theoretical comparisons, and to apply it as a prime factor in determining what *rates ought to be* would reduce the proposition of rate making wholly to a per ton mile basis and eliminate every practical element. Indeed, a gross ton mile basis, which no one has ever, at any time, contended for. As a theory of comparison his calculations are not correct, because, according to the testimony of a number of witnesses as to the weight of bedding in the cars, being 500 to 1,000 pounds, he estimates that entirely too high. He assumes too great a weight for the car and that the car which brings cattle from Kansas City to Chicago will return empty in all cases (whereas 20 per cent return loaded), and charges that against the freight paid upon the cattle, upon the theory that it costs as much according to the weight of the empty car to return it than it does to haul the same weight in a loaded

car. It may be conceded that this is true so far as the actual expense of coupling an engine onto a train of cars and hauling that train a given distance. The consumption of coal, the compensation paid to the train crews and enginemen, in such a supposed case would be practically the same thing in proportion to the weight. But it must of necessity be true that in the multitude of a railway company's business the haul of empty cars is so interspersed with the trains of freight moving in both directions that, for the most part, the empty cars are moved in trains which also carry freight or which it is necessary to move from one division to another, oftentimes for the purpose of hauling freight in the opposite direction. The train crews, the locomotives, and cabooses have to be moved at some regular intervals whether there is a full train load of freight to carry or not, and it therefore must result that only partial train loads can be had in many instances. This is proven to be true in the course of examination and cross-examination of a number of witnesses. But really it needs no proof aside from the fact that the statistical tables taken from the annual reports of the various railroad companies show that the average number of cars per train and the average tonnage hauled per train mile is so much below the capacity of the locomotives, and indeed so much below the average train loading in this live-stock traffic, that these statistics themselves prove incontestably that many trains must move light—that is to say, without a full load—in one direction in order that the crews and locomotives may return with freight from the other direction. Another thing is that the railroad companies must provide a suf-

ficient number of locomotives, cars, enginemen, and train crews to handle their business over given divisions moving in both directions and to a large extent must run their trains somewhat on schedule, and it will always happen that the application of system to the handling of the business will result in running trains light, and therefore the railroad company will be afforded the opportunity to return the empty cars in trains which otherwise will run light, and that without any appreciable difference in the cost to the railroad company for the movement of the empty cars. This would not be true if the empty cars had to be returned at a particular speed or at a particular time, as is the case with refrigerator cars, as shown by the testimony of Mr. Miller, Mr. Biddle, and others, and as found by the Commission, and not disputed by the court.

The great bulk of the live stock arrives at Chicago on Mondays and Wednesdays. Those shipments are made from Iowa points by loading on Saturdays and Sundays for the Monday market and on Monday or Tuesday for the Wednesday market. If we suppose the same cars to be continuously used in this service then the railway companies have, from the unloading on Monday, time to return those cars to Iowa points for the next Saturday or Sunday's loading and then from the unloading of Wednesdays to return their cars to the points of origin for a return loading on the following Monday or Tuesday. In other words, they have a week in which to use these cars over and over again if they in fact carry them back in the manner they claim for that purpose. Mr. Gardner claims an average of 50 miles per day for stock cars, refrigerators about the same, and box cars 30 miles per

day (record, 360). During that week it is manifest that many trains will move without a full load in that direction, and these stock cars can wait the opportu ity to be sent out in such trains as have not a full load. Undoubtedly this is done. As fully illustrating this, see the train consists and samples of conductors' reports. (Record, 1083, 1819, 1797 to 1814, and 905.)

Another thing is that many of the stock cars—the Commission holds 20 per cent—have a return loading, and that is supported by the testimony of a number of witnesses. The movement of live stock itself out of the stock yards is shown by the reports of the stock-yards companies on file with the original record, and as testified to by some of the witnesses shows a large return loading and outbound movement from the markets to the country places in the way of feeders bought and shipped out.

So this important factor of Mr. Peabody's figures is itself untrue, and are important as a comparison only, upon the *theory* of an empty return movement in both cases.

As we have shown in our brief, the earnings upon the rates on live stock in question per ton mile, per car mile, and per train mile exceed the average earnings of all freight per ton mile, per car mile, and per train mile as actually moved, as shown by train, consists of about 25 to 50 per cent.

Another element that is entirely overlooked by the witnesses for the railroad companies in the evidence, with respect to the reasonableness of the rates and the earnings, is that this live stock moves on a *long haul greater than the average of freight, moves in train loads to a large extent in a large and*

constant volume, and hence it is manifestly unfair to undertake to compare it to the average of freight which moves in part in less than carloads, and, when it moves in carloads, does not form train loads gathered up from a particular district, but involves a multitude of transactions to assemble a train load of the average of freight.

Therefore the repeated opinions of railway traffic men that the live-stock rates are too low are simply the time-serving expressions made to fit the particular case. This was very clearly illustrated by the cross-examination of many of these witnesses, who were asked if they could name any article upon which the rate of freight was too high, and none of them did so. The human nature side of it and the desire to make money for their companies leads to the expression of those opinions, which are well-nigh worthless.

IV.

THE DISSIMILARITY NOT HERE APPLICABLE TO SECTION 3.

That part of the argument of Mr. Baxter, Section XV, pages 44 to 48 of his brief, and his contention that the third section of the act is to have the same application where different descriptions of traffic is involved as where different places are involved is to be answered by the proposition that—

Where by reason of the relation of rates charged by a railroad upon two competing articles of traffic, like live stock and its product, one is given undue preference or advantage and the other is subjected to unreasonable prejudice or disadvantage, it is prohibited by the third section of the act, whether the competing commodities are shipped from the same station to the same destination or from different stations to different destinations; in

such a case it is not a condition of the third section that the shipment must be from the same station and for the same identical service before there can be a violation of the law. Identity of service and circumstances is applicable only to sections 2 and 4.

To illustrate, suppose a single flouring mill exists on a line of railroad, with no competing mill within 20 miles on either side and that there are stations every 5 or 10 miles from which wheat is shipped, and suppose that the railroad company should fix a rate of 5 cents per hundred pounds on flour less than on wheat from all the stations including the one at the mill; and suppose that the result would prevent the shipment of the wheat by giving to the shipper of the flour a 5 cents per hundred pounds advantage at the point of consumption, can it be said that such preference or prejudice, if it is undue or unreasonable, is not prohibited except as to shipments from the station where the mill is situated?

The case at bar goes even further than the supposed case presented, because it is conclusively shown as found by the Commission that the published rate from Missouri River is a basing rate for the rates in the zone 150 miles east of the Missouri River, while in the supposed case the rates are not based on the milling station. It would be quite immaterial whether there is from every station east of the Missouri River a published rate on dressed meat and packing-house products, from which stations no such product is shipped. Does the fact that there is no published rate from the stations east of the river, from which shipments of product are not made, affect the question as to the undue preference and advantage or unreasonable prejudice and

disadvantage arising from the rates at the river on product and from the intermediate stations on live stock?

Compulsion by Competition no Defense—The Relation of the Rates in Effect Agreed on.

Mr. Baxter quotes, at page 69 of his brief, from the decision of this court in the Nashville and Chattanooga case (181, U. S.) this language:

"A discrimination springing alone from a disparity in rates can not be held in legal effect to be the voluntary act of the defendant carriers, and as a consequence the provisions of the third section of the act forbidding the making or giving of undue or unreasonable preference or advantage will not *apply*."

The context shows that it had reference to a case where, in the first instance, the issue was as to a violation of the fourth section and where the third section was appealed to secondarily; that is to say, if the lesser charge for the longer than for the shorter haul was not a violation of the fourth section, it might be a violation of the third section.

This court merely held that such could not be the case, because the third section would not in such case *apply*. It was not held that where the third section *applies*, the fact that competition caused the making of the lower rate that produced the preference and prejudice would render it lawful, if under all the circumstances it was undue and unreasonable. In such case it is a question to be determined by the facts.

We can not conceive that the law which prohibits an undue preference and unreasonable prejudice and disadvantage will justify the carrier to con-

tinue that prejudice and disadvantage by the maintenance of the higher rate on the competing article, merely because it would be to the carrier's business advantage to do so. That would make the motive to make money a justification for violation of the law.

It may be as claimed that the carriers can not relieve against the undue preference and abolish the unreasonable prejudice and disadvantage, *except by a reduction of the live-stock rate;* and it may be that the competition for the dressed meat and packing-house products has brought down the rates on those articles. If so, and if in justice to the shipper of live stock, because of this disadvantage, the railways ought not to charge more upon live stock than on dressed meat and packing-house products, which can only be brought about by reducing the live-stock rates, is it not likewise one of the consequences of the competition that the railroad should be required to reduce the rates on live stock so as to avoid the discrimination against the shippers of it, if the carrier prefers to reduce the rates upon the products rather than do without that business? Any other solution of the case necessarily means that the packers who get the lower rates and the preference can justify it solely upon the ground that they get it; and it may be repeatedly done with no possible relief, because the doing of the thing justifies it.

The universal principle of the law that everyone must abide the consequences of his act certainly applies with full force to the Chicago Great Western Railway, as it was recognized by Mr. Stickney in his famous letter to his stockholders upon this subject, occurring in the record at pages 1911 to

1916 and liberally quoted from in the analysis of facts filed by Mr. Severance, solicitor of that railway.

It is further shown by that document that these railway companies met and discussed this whole question. He says, at page 1913, after reviewing the history of the matters leading up to the contract, including the rates and rebates, that—

"Under these conditions the railway companies met in their traffic association to determine upon the rates which they would publish in their tariffs and thereafter collect. The statement and proposition of the packers were known to them."

In view of this it is rather singular that the court, if we may be permitted to say so, went somewhat out of its way to find in its fifth finding "That the competition in question did not result from the agreement of the defendants, but was actual and genuine," whatever that finding may mean.

The important point is that the *relation of the rates were agreed upon, and therefore were not the result of that sort of competition*, which shall bear upon their lawfulness under the fifth section.

By reference to the record, page 966, it will be seen that the complainant offered to prove before the court that the relation of these rates and the tariffs in effect which were complained of, were in fact the result of a combination or agreement of the defendants through their traffic association.

Mr. H. R. McCullough, vice-president of the Chicago and Northwestern Railway, was interrogated upon this subject and the evidence rejected by the court, as shown in the following excerpt (Record, p. 966):

"Mr. COWAN. I want to know if it is not a fact that when you published and have since maintained, if you have maintained, the present schedules of rates on packing-house products and dressed meats, you in effect established an advance over what you were getting from the packers theretofore for the haul?

"Mr. LYNDE. I wish to object to that question.

"The COURT. The objection is overruled. Of course, the court has a right to know whether it advanced it in fact. The schedule rate does not amount to anything if it is not charged. I think it is important to the court to know whether they advanced the rate or cut it down.

"Mr. LYNDE. Is that the question, whether the rate was advanced or cut down?

"The COURT. The published rates cut no figure if they do not receive pay according to their schedule. Now, repeat the question and let him answer.

(Question read by the reporter—the question beginning, "I want to know if it is not a fact," etc.)

"A. Previous to the date of the Great Western contract—previous to the date their reduced tariff was issued from South Omaha, there was more or less misunderstanding and demoralization in the rates on dressed beef and packing-house products from South Omaha and over our road, without discrimination as between persons or localities—we did move some dressed beef and packing-house products destined for export, and sent to foreign countries at rates different from the rates shown in our printed tariff. What those rates were I, of course, can not say.

"The COURT. I think that answers it.

"Q. (Mr. COWAN.) Is it not true that the railway companies met in their traffic association to determine upon the rates which they would publish in their tariffs and thereafter collect?

"Mr. LYNDE. That is objected to as not redirect examination.

"The COURT. How is that material, Mr. Cowan?

"Mr. COWAN. It is material to show that instead of the rate being, if your honor please, forced upon all the railroads by the Great Western contract, that it was an agreed rate that they put in as settling a previously disturbed condition of rates when they had all been hauling for less than the amount of the Great Western contract.

"The COURT. Well, what difference would that make? The question here is: Is this a discrimination again—traffic or locations? The objection is sustained.

"Q. Mr. COWAN. With respect to the *live-stock* rates in the 23½-cent territory and from the Missouri River to Chicago, were the carriers transporting that previously at less than the published rate?

"A. When for export, I think, yes."

And again the witness showed that the rates on cattle were likewise being cut for the benefit of the packers, as shown on page 967:

"Q. Who was exporting?

"A. Well, that is a general statement of mine; of course, it is so far back that I could not exactly recollect.

"Q. The packers principally exported?

"A. My recollection is that during this demoralization in rates on dressed beef and packing-house products, especially for export, that there was some misunderstanding about rates on cattle, and there were some cattle moved, I think, at rates different from the printed tariffs. When that was done, or to what extent, of course, I can not tell.

"Q. That was only from the Missouri River?

"A. Only from the Missouri River.

"Q. That never applied from intermediate territory?

"A. I don't think it did; no, sir."

It appears from the foregoing that the situation was that certain packers who profit by a contract get an advantage from particular localities, mainly the places at which they have their packing houses, over the shipper of live stock whose rates are maintained by a combination of the carriers and based upon the Missouri River published tariff, where both live stock and its product must be shipped east for ultimate consumption, which the railroads seek to justify because they can not help it, except by likewise reducing the live-stock rate.

As the record shows, tens of thousands of cattle are driven into the Missouri River markets from the east thereof, which are necessarily subject to the disadvantage produced by this relation of the rates at Missouri River points, and that the same disadvantage is continued for a distance of 150 miles east of the Missouri River.

To say that it is not an undue preference and advantage to compel the live-stock shipper, as these carriers are doing, to pay the higher rate of freight to reach the points of consumption, and that it is just, fair, or reasonable because the live-stock shipper can not cope with this association of railways, or because he ships from a different station, is absurd. The burden of the higher freight necessarily continues with the live stock till butchered and sold, and the advantage continues with the meat.

If the third section of the act which prohibits the carriers from subjecting any particular description of traffic to an unreasonable prejudice or disadvantage does not reach this sort of case, then it is wholly inoperative. If Congress had intended the section to apply only to the same stations it would have said so.

Much has been said with respect to the reasonableness *per se* of these rates, and, as we have shown, it is not an issue.

If the case were one where the competition is such that should the carriers reduce the live-stock rates the product rates would likewise have to be reduced by some competition beyond their control, then they could not, perhaps, be required to reduce the live-stock rates below what is reasonable per se. But to hold that the doctrine of "duress from competition," as it may be termed, as it was applied in the cases cited (Chattanooga case, LaGrange case, and others), is applicable here, would entirely repeal sec. 3 of the act. It would be equivalent to saying to the carriers: "No matter how much you discriminate against any particular traffic, you can not be required to reduce a rate below what is reasonable. If you contract to maintain the discrimination it is valid." As shown by Mr. Shaver's brief and argument, this court has repeatedly announced that the lower rate must not result in undue preferences or subject traffic to unreasonable prejudice. That is the point for decision here.

Respectfully submitted.

L. A. SHAVER,
Solicitor for the Commission.
S. H. COWAN,
of Counsel.

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In the Supreme Court of the United States.

OCTOBER TERM, 1906.

THE INTERSTATE COMMERCE COMMISSION, appellant,
v.
THE CHICAGO GREAT WESTERN RAILWAY Company et al., appellees.
No. 352.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the appellant in the above-entitled cause, respectfully moves the court to advance the same on the docket for hearing during the present term, for the following reasons:

1. The appellant is a bureau or department of the Government, and the cause is a proceeding in equity under section 16 of the act to regulate commerce, approved February 4, 1887, as amended March 2, 1889, for the enforcement of an order of the appellant against the appellees.

13810—06

2. Appellee, the Chicago Great Western Railway Company, on August 8, 1902, and the other appellees within a short period thereafter, reduced the rates on the prepared products of live stock to Chicago from points west of Chicago, and particularly from St. Paul and the Missouri River points—Sioux City, Omaha, St. Joseph, and Kansas City—without making any corresponding reduction in the rates on the live stock. This changed the preexisting relation which had been for a long time maintained between the rates on the products and the rates on the live stock and the Commission found that the changed relation thus brought about was unlawful. The testimony shows that the result, if not the object, of the changed relation in the rates was to divert to the Missouri River markets shipments of live stock which would otherwise go to Chicago, and thus build up the river markets at the expense of Chicago. The damage thus being done to Chicago interests is irreparable because incapable of accurate measurement or ascertainment, and if the changed relation is, as found by the Commission, unlawful the order of the Commission forbidding it should be speedily enforced, so as to put a stop as soon as practicable to such irreparable damage.

3. The speedy determination of the lawfulness of the changed relation is a matter of public interest affecting the raisers of live stock, the packing houses and stock yards at all the points named above, consumers, and the public generally.

4. The act to regulate commerce, approved February 4, 1887, in section 16, requires the courts to hear and determine cases for the enforcement of orders of the appellant "speedily," and said section of said act as further amended June 29, 1906, provides that cases of this character shall have in this court "priority in hearing and determination over all other causes except criminal causes."

On account of the size of the transcript of the record in the case, it is suggested that if advanced the case may be assigned for hearing immediately after the February recess. This will be satisfactory to counsel on both sides.

HENRY M. HOYT,
Solicitor-General.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1906.

No. 352

THE INTERSTATE COMMERCE COMMISSION,
Appellant,
vs.
THE CHICAGO GREAT WESTERN RAILWAY COMPANY et al.,
Appellees,

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT ON THE QUESTION AS TO WHETHER THE SHIPPER OF LIVE-STOCK IS UNDULY PREJUDICED AND UNJUSTLY DISCRIMINATED AGAINST BY THE LOWER RATE ON DRESSED BEEF AND PACKING HOUSE PRODUCTS FROM MISSOURI RIVER POINTS TO CHICAGO THAN THE RATE ON LIVESTOCK; AND WHETHER THE WELFARE OF THE PUBLIC, INCLUDING SHIPPERS, CONSUMERS AND ALL LOCALITIES AND MARKETS, IS MATERIALLY AFFECTED BY THE PRESENT RATES.

The question to be considered in this argument is whether, on the facts shown by this record, the court should find that the shipper of livestock to the Chicago market or to the Missouri River and interior

markets is unduly prejudiced or unjustly discriminated against by the fact that the rate from Missouri River to Chicago on dressed beef and packing house products is less than the rate on livestock from Missouri River points and the intermediate territory to Chicago; and whether there exists any public necessity which demands the enforcement of the Commission's order, and whether its enforcement "is likely on the whole to promote the public advantage."

This question is suggested by the (so-called) concurring opinion of Mr. Chairman Knapp of the Interstate Commerce Commission in this case (see p. 47), where he says:

"While I agree with nearly everything said in the foregoing report and opinion, I feel bound to express my doubt whether the action of the Chicago Great Western did not, as regards the other carriers, introduce a competitive condition which creates or justifies an exception to the general rule. To my mind, the competition brought about by that action is not easily distinguishable in legal effect from the competition which the Supreme Court in various decisions has held a valid excuse for discriminations clamed to be unlawful. *Nor is it altogether clear to me that any order which the Commission has authority to make in this proceeding is likely on the whole to promote the public advantage.*"

While the Chairman of the Commission, therefore, concurred in the findings and conclusions of the Commission, yet, it is apparent that his concurrence was based solely upon the theoretical proposition that a rate adjustment under which a lower rate was charged for the product than for the raw material was "fundamentally wrong" and that to sanction such adjustment would, in his opinion, "establish a dangerous prece-

dent." As a practical question, however, it is apparent that the Chairman of the Commission doubted very seriously whether the order made by the Commission would promote the public welfare, and was also very strongly impressed with the belief that the action of the Chicago Great Western introduced a competitive condition, which, under the decisions of this court, created and justified an exception to the general rule. I shall address myself to the question suggested as to whether the order of the Commission was in fact for the best interests of the public and "likely on the whole to promote the public advantage"; and my contention will be that the record shows that in fact the interests which may be possibly adversely affected by the lower rate on the product than on the livestock are of such minor importance, as compared with the burden that will be put upon these railroads and the loss which they will be compelled to bear by a reduction in livestock rates, that in the general balance which the court will be required to strike in arriving at its judgment in this case (as was suggested by Judge Baxter in oral argument in the court below) they should be disregarded, and that in fact, viewed from a practical standpoint, the general public interests do not require that the order of the Commission be enforced.

On the oral argument in the court below, it was claimed by counsel for the Commission that the parties who were interested in the enforcement of the Commission's order were the shippers of livestock from east and west of the Missouri River, the packers at the Missouri River and intermediate points and at Chicago, the Chicago Stock Yards and the Livestock

Exchange; and that there existed competition which should be taken into consideration at Chicago, in the Eastern markets and elsewhere between the livestock shipper, on the one hand, and the slaughterer or packer on the Missouri River and at intermediate points, and between the live animal and the dressed beef and packing house products; and this same argument is repeated in appellant's brief in this court. (See p. 63 *et seq.*) It is this claim of interest on the part of the shipper in the enforcement of this order and of competition between the shipper of livestock from both west and east of the Missouri River, and the Missouri River and Iowa packers, and of competition between the live animal and dressed beef and its products, which will be the chief subject of consideration in this argument, for the reason that if the shipper is not in fact adversely affected by the lower rate on the product and if in fact there is no competition in the true meaning of that term between the shipper of livestock from the western territory and the packer on the Missouri River and at intermediate points, then it is apparent that the only interests that could possibly be adversely affected would be the local interests of the Chicago Stock Yards and the Livestock Exchange, and the possible effect upon them is shown to be so slight that the court would not be justified in making an order which would throw so heavy a burden and put so heavy a loss upon these railroads, and which would tend to injuriously affect the local interests in Iowa, at St. Paul and at the Missouri River markets. In other words, if the shipper of livestock is not in fact prejudiced by the lower rate on the product, and is eliminated from consideration, the remaining

interests, claimed to be affected, are of such minor importance, and the claim asserted on their behalf of being prejudiced is of such doubtful merit, that the enforcement of the Commission's order would not tend to promote the public advantage.

I.

THE LIVESTOCK RATES, WHICH ARE THE SUBJECT OF THE COMMISSION'S ORDER AND WHICH MUST BE REDUCED UNDER EXISTING CONDITIONS IN ORDER TO COMPLY WITH THAT ORDER, ARE CONCLUSIVELY SHOWN BY THE OVERWHELMING WEIGHT OF THE EVIDENCE TO BE NOT ONLY REASONABLY LOW BUT TOO LOW, AND, THEREFORE, SO FAR AS CONCERNS THE LIVESTOCK SHIPPER, THE COURT SHOULD NOT MAKE ANY ORDER WHICH WOULD REQUIRE THE REDUCTION OF THESE LIVESTOCK RATES BECAUSE OF THE LOWER RATE ON THE PRODUCT, UNLESS THE LIVESTOCK SHIPPER IS IN FACT UNDULY PREJUDICED OR UNJUSTLY DISCRIMINATED AGAINST BY THE LOWER RATE ON THE PRODUCT.

A fundamental proposition of this argument is that the livestock rates, which will be affected by an enforcement of the Commission's order, are in themselves reasonable, if not unreasonably low, and that this is shown conclusively by the evidence in this case; so that the shipper of livestock, who pays these rates, could not claim that the order of the Commission (which will, if enforced, compel a reduction in these livestock rates), should be enforced because of these rates being unreasonable, and the court can not, on the evidence before it, find these rates to be unreason-

able. Therefore, unless the shipper of livestock is in fact unduly prejudiced or unjustly discriminated against by the lower rate on the product, he should be eliminated from consideration in this case, even though a reduction in the livestock rates in question would be of material advantage to him. That advantage is one which he is not entitled to, if the livestock rates are in themselves reasonable; and, if so, the only question which the court should consider, with respect to the livestock shipper, is whether he suffers in fact any prejudice or disadvantage and sustains any actual injury because of the lower rate on the product.

The livestock rates which are directly affected by the order of the Commission are those rates from intermediate points in the western part of Iowa and Missouri, and from certain portions of southeastern and eastern Minnesota and the northwestern part of Wisconsin; and the inquiry here is limited to the livestock rates from these intermediate points. This arises from the fact that practically all the livestock which is carried easterly from the Missouri River is carried on the through rate from the point of origin west of the Missoui River, and there are practically no shipments made from the Missouri River to Chicago on the 23½ cent local rate, which is a basing rate applied at intermediate points east of the Missouri River. This is very clearly shown by the evidence, and was also found by the Commission, and they say as to it, on page 35:

"Since all or nearly all the livestock carried easterly from the Missouri River is shipped there in the first instance from other points, practically no shipments are made from the river to Chicago upon the local rates in force between those points, and such rates are, therefore, important, principally, because of their effect upon rates from the intermediate points."

This makes it unnecessary to consider rates from points west of the Missouri River to Chicago, and limits the inquiry to the reasonableness of the live-stock rates from intermediate points east of the Missouri River and east of St. Paul to Chicago. The evidence in this record that these rates are not only reasonably low, but, if anything, unreasonably low, is overwhelming and cannot be successfully challenged. This fact is established quite as much by the testimony of the witnesses offered by the complainant as by the testimony of the witnesses called by the respondents. It is significant, also, in this connection, that the Commission did not feel justified in finding these rates unreasonable, and say (p. 41) as to this:

"Complainant also introduced considerable evidence tending to show that the rates exacted by defendants for transporting livestock to Chicago from points in the States of Iowa, Missouri, Wisconsin and Minnesota are unreasonable *per se*, but the testimony upon that point is unsatisfactory, and we do not feel justified in making a finding in relation thereto."

This statement is very significant for the reason that the evidence introduced by the complainant before the Commission upon this point consisted of the testimony of Mr. Tomlinson with the same tables and comparisons of rates which he used on the hearing in the court below. The Commission did not feel warranted on that evidence in finding these rates to be unreasonable, and the court below expressly found that these rates were reasonable.

In view of the fact that the appellant has challenged this finding by its fourth assignment of errors (181), I will briefly state the evidence, on which this finding is based.

On the hearing before the Commission, the petitioner called as its witnesses the officials of certain railroads, Darius Miller, First Vice President of the C., B. & Q. Ry. Co., W. B. Biddle, then Traffic Manager of the Santa Fe Company, Burton Johnson, Traffic Manager of the Wisconsin Central Railway Company, and ..... Boyd, then Freight Traffic Agent of the C., R. I. & P. Ry. Co., and the complainant read in evidence their testimony before the Commission. Mr. Miller testified (1492) on the question as to whether the 23½ cent rate on livestock was reasonable or not, as follows:

"I think it is an exceedingly low rate. It is relatively lower than any other commodity we handle except packing house products."

See, also, clauses 14 and 15 of his additional statement made to the Commission in writing (1503), in which he says:

"I stated that our rates on livestock are relatively lower than our rates on any other commodity, except livestock products, and, if it is my privilege to do so, I wish to supplement that statement by saying that it is our desire to so adjust the livestock rates as to put them in proper relation to the rates which are charged for the transportation of other commodities, and, having accomplished this, we would establish the rates on the different kinds of livestock products in their proper relation to the rates on livestock, but if we are prevented from making a proper adjustment of these rates by the action of a competitor who established and guarantees, for a stated term, rates on the product of livestock, which rates are of themselves unreasonably low and out of proportion with the rates charged on other kinds of freight, we do not for that reason conceive it to be our duty to make abnormally low rates on livestock or other kinds of freight on which we may be charging relatively higher rates but which are of themselves just and reasonable."

Burton Johnson says (1734), that rates on livestock, as well as product, were lower "than a compensatory basis."

(NOTE.—Neither Boyd nor Biddle were examined on the question of the reasonableness of the livestock rates.)

To emphasize Mr. Miller's testimony on this point, counsel for appellant called Mr. Ripley, president of the Santa Fe, and Mr. Peabody of that company, and demonstrated to the best of their ability by these witnesses that both rates on livestock and on the product are not compensatory and are unreasonably low. Mr. Ripley says (1106, 1107), that the railroads "*lose* less on livestock than on packing house products;" and the statements which he produced and which were introduced in evidence by complainant (1104, 1105) demonstrate a loss on both livestock and products, the loss being, as he claims, greater on the latter than the former. If these statements are to be accepted for the purposes for which they were introduced by appellant (and appellant cannot well question them), they certainly demonstrate the proposition that the rates on livestock are not compensatory and are unreasonably low.

Mr. Peabody is even more emphatic on this point, his testimony being (1233), that livestock "falls a little short of paying even the operating cost;" that from Kansas City to Chicago it lacks $18.77 per car of paying the total transportation cost; and (1362, 1363), that the cattle rate and the product rates are too low and that the 23½c rate is below the total transportation cost.

(NOTE.—The statement prepared by Peabody and

introduced in evidence by complainants were made on the basis of a 20c rate; but Mr. Peabody here makes an estimate on the basis of 23½c, and reaches the result above stated.)

The defendants' witnesses, who testified to the reasonableness of these livestock rates, were traffic men of large experience and ability and competent, if any one, to pass judgment on this question. Their opinions were supported by comparative statements showing comparison of these livestock rates with rates on other commodities, and with other livestock rates and of the revenue derived from livestock with the revenue derived from other commodities. It would be beyond the scope of this argument to attempt to give in detail the substance of their testimony, and I will limit myself to a mere reference to the pages of the record on which the testimony of these witnesses bearing upon this question will be found.

Mr. Crosby, traffic manager, C., B. & Q. Ry. Co. (238): These rates are fair and reasonable, considering service performed and conditions of competition under which they are made; less than on other traffic for similar distances. See, also, 241-243, as to comparison with rates elsewhere and of revenue derived from livestock compared with revenue from other commodities.

W. E. Keepers, general freight agent, Ill. Cent. R. R. Co. (399): Rates unreasonably low and do not yield fair compensation for service. See, also, 400-406 as to comparison of revenue derived from livestock with that derived from other commodities.

J. H. Hiland, third vice president and traffic man-

ager of C., M. & St. P. Ry. Co. (506): Livestock rates do not bear just proportion in contribution to total revenue and are not unreasonably high.

J. N. Tittemore, freight traffic manager, M. & St. L. Ry. Co. (569): These rates are more than just to shipper and less than carrier should receive for the service (572); are the result of competition. See, also, 574, 577, as to comparison with rates on other commodities and of revenue derived from livestock compared with revenue derived from other commodities.

A. B. Stickney, president, Chicago Great Western Ry. Co. (623): Livestock rates are too low.

H. Gower, general freight agent, C., R. I. & P. Ry. Co. (720): These livestock rates are unreasonably low, and forced by competition. See, also, 724, 725.

(NOTE.—See, also, testimony of Mr. Anderson, Judge Baxter's secretary, as to comparison with cattle rates on southern roads, 914 *et seq.*)

H. R. McCullough, third vice president, C. & N. W. Ry. Co. (His entire testimony and the statements which he filed as exhibits, shows that these rates are too low, and have been forced by competition. Note, 951, 952.)

The only evidence introduced by complainant to show that these rates are unreasonable was the testimony of Mr. Tomlinson that, in his opinion, they are unreasonably high, because they are higher than the Illinois or Iowa distance tariffs, and, as he claims, on the average, higher than rates prevailing from Kansas points into Kansas City. Mr. Tomlinson produced certain comparisons of rates from Iowa points in this territory to Chicago on different roads, including the Chicago & North-Western Railway Company, with

rates for similar distances in Wisconsin and with rates fixed by the Iowa and Illinois Commissioner's distance tariffs, with rates in the Central Traffic Association territory and certain rates into Kansas City on the Rock Island and Union Pacific; but so far as his testimony is concerned and the statements of comparative rates submitted by him, it is sufficient to say that this constituted the testimony before the Commission on which they did not feel justified in finding that these livestock rates were unreasonably high. All of the witnesses agree that the Illinois and Iowa distance tariffs do not form fair bases of comparison, because they are too low, and Mr. Tomlinson testified before the Commission that he did not think the tariffs in the Central Freight Association territory could fairly be compared with tariffs in the territory in question. His comparison between Iowa rates and Wisconsin rates is admittedly unfair because the Wisconsin rates are based on mileage to Milwaukee and not to Chicago; and the statement of rates into Kansas City on the Rock Island and Union Pacific will show for itself that on an average those rates are higher than the Iowa rates. They certainly form no proper basis of comparison without some information being furnished as to the conditions that have led to the making of these rates.

In addition to Mr. Tomlinson, we have the opinions given by certain shippers that these rates are too high, as Ames (1284), who claims that they are unreasonably high when compared with rates on like products from like points, and are higher than Illinois or Nebraska rates; but with the exception of the Illinois

and Iowa distance tariffs his statement is not correct, and as to the Nebraska rates the tariffs themselves show to the contrary.

John McCarthy (1430) also claims that the 23½c rate is unreasonable "compared with other rates" or, as he adds, with rates on dressed product.

H. L. Wilson (1047), thinks this too high "compared with rate on similar freight from Chicago to the east," which, of course, furnishes no possible comparison in this western territory.

The evidence, as a whole, clearly demonstrates that the present livestock rates from intermediate points in Iowa east of the Missouri river to Chicago are not in themselves unreasonable, but are, if anything, too low; so that the finding of the Circuit Court that these livestock rates are reasonable is fully sustained.

As the shipper is not entitled to the advantage of a reduction in his livestock rates unless they are unreasonable, the fact that a reduction in these rates would be of advantage to him should not be considered, and the sole question as to the shipper on this record is whether he is unduly prejudiced and sustains an injury because the rate on the product is lower than the rate on livestock.

II.

THE SHIPPERS OF LIVESTOCK ARE NOT PREJUDICED OR INJURED BY THE RATE ON DRESSED BEEF AND PACKING HOUSE PRODUCTS FROM MISSOURI RIVER AND INTERMEDIATE POINTS TO CHICAGO. LIVESTOCK PRICES IN THE WESTERN MARKETS ARE CONTROLLED BY THE PRICES AT THE CHICAGO MARKET, AND THE PRODUCT RATE HAS NOT AFFECTED OR TENDED TO LOWER THE CHICAGO LIVESTOCK PRICES.

The only way in which the shippers of livestock can be prejudiced or injured by the product rate must be in the lowering of the prices for livestock in the Chicago and more western markets. If livestock prices have not been affected by the product rate, and if the shippers of livestock receive as good prices as before the reduction of the product rate from Missouri River points to Chicago, they have not been injured or prejudiced by the reduction of the product rate. The evidence in this record establishes the following facts, that necessarily involve the conclusion that the livestock shippers have not been prejudiced or injured by the product rate, namely:

(a) That Chicago is the best market for livestock in the country; it is the largest, broadest and most competitive market; and the prices at the Chicago market control the prices at which livestock will sell at the Missouri River and intermediate markets.

(b) That shippers of livestock get relatively the full Chicago prices at Missouri River and intermediate markets, if they prefer to sell there, so that they have

the advantage of the nearby market in addition to the Chicago market and the benefit of Chicago prices in the nearby market.

(c) That Chicago prices, which are the standard for prices at the Missouri River and intermediate markets, have not been lessened or affected by the lower rate on the product from Missouri River points to Chicago; so that prices for livestock at Missouri River and intermediate markets, which are based on the Chicago prices, have not been lessened thereby and whether the shipper sells at Chicago or at the nearby market, the price which he obtains for his livestock is not affected by the product rate.

(d) The shipper cannot be prejudiced by the product rate, if the prices which he gets for his stock have not been lessened because of the product rate. So long as he gets the Chicago prices or their full equivalent, if he sells in the nearby market, and so long as these prices have not been lessened by reason of the product rate he is not prejudiced or affected by it; and the fact that the packer at the Missouri River and intermediate points gets a lower rate on the product does not concern the shipper of livestock any more than he would be concerned in the rate on coal or other commodities.

As to the Chicago market and its control over the prices at Missouri River and intermediate markets.

That the Chicago market for livestock is the best market in this country and, as claimed by the witnesses, in the world, is conceded by all of the witnesses who were examined upon this point. (See testimony of Buell, 1271, 1272; Ames, 1346; McCarthy, 1430; Tomlinson, 1877-1880.)

The reasons for Chicago's predominance as a livestock market, as stated by the witnesses, are that it is the largest market; that it is the most competitive and independent market; that there will be found in this market a large number of independent buyers for export and eastern consumption; and that the demand for cattle for export and eastern markets makes the Chicago market independent and competitive and prevents a monopoly in this market. The witnesses claim that the prices at the Chicago market are governed by the supply and demand at that market, and that the very large independent demand at that market, represented by the buyers for shipment to eastern markets or abroad, makes it a highly competitive market.

See testimony of Tomlinson, 1567, where he states as his opinion that the price at Chicago is fixed by the "natural law of supply and demand," and states his doubts of the possibility of a monopoly in the Chicago market because the prices there are "largely dependent on the export demand," and defines the different classes of independent buyers in the Chicago market. See, also, testimony of Baker, Secretary of the Livestock Exchange, who produced a list of the buyers in the Chicago market, and whose testimony accords fully with that of Mr. Tomlinson. (1443 *et seq.*)

All of the witnesses agree that the prices of livestock on the Chicago market practically control the prices of livestock at Missouri River and intermediate markets, and it would seem that this is a self-evident proposition, for the reason that the shippers can at all times ship their livestock directly to the Chicago market and are not compelled in any way to sell at the Missouri River

or intermediate markets. The result of this necessarily is that unless the shippers can get relatively as much for their livestock in the nearby market as they can by shipping to Chicago they will not sell in or ship to the nearby market, but will ship directly to Chicago. This forces the buyer at Missouri River or at intermediate points to pay relatively the Chicago prices, if he desires to buy. The difference between the Chicago prices and the prices at Missouri River and intermediate markets is probably not absolutely uniform at all times, because there is a constant variation resulting from the demand, on the one hand, and the supply, on the other, at these various markets; but, speaking generally, and covering a considerable period of time, there can be no question but that the Chicago prices control and fix the prices in these other markets by establishing a minimum price, which the buyer in other markets must pay in order to get the livestock. The evidence, however, shows that the buyer in these other markets, as a rule, has to pay something more than this minimum; so that the shippers of livestock not only get the benefit of Chicago prices in the nearby market, but get relatively more for their livestock there than by shipping to Chicago.

The witness Buell, President of the Livestock Exchange, says (1345) that the prices in Chicago control prices in other markets; (1266) that the market at Fort Worth, Kansas City, St. Louis and at other points is determined by the Chicago market and that the latter is controlling. He claims, it is true, that the product rate forces the shipper to sell at the Missouri River market, and says again that when cattle are shipped

on to Chicago from Kansas City the shipper frequently does not get enough additional price over the price he could get at Kansas City to pay the freight charges, the shrinkage and incidental expenses; and, therefore, is discouraged from shipping to Chicago (1267); but this can only mean that the buyer at Kansas City pays something more relatively than the Chicago prices, so that it is to the advantage of the shipper to sell at the Missouri River market, as he gets more there relatively than by shipping on to Chicago. He illustrated this very well in the case of his 5,000 head of cattle which he shipped to Kansas City and St. Louis, because, as he testified (1271), the net result was better at those points than if the cattle came to Chicago, when he added to the prices which he obtained in those markets the difference in the freight rate and the incidental expenses in bringing the cattle to Chicago.

The testimony of Mr. Baker, Secretary of the Livestock Exchange (1445, 1446), is that a shipper to Kansas City, for example, will sell his livestock in that market because he could not ship on to Chicago and receive as much as he could by selling at Kansas City, though he admits (1454) that the Chicago prices practically control prices at Kansas City, and (1453) that there is no difficulty from day to day in determining at the Missouri River, from the quotations on the Chicago market, as to the prices in that market. The substance, therefore, of his testimony is that it is to the advantage of the shipper to sell in the nearby market, because he gets relatively more for his livestock than he would by shipping it to Chicago, which

can only be interpreted in connection with the remainder of his testimony as meaning that the buyer at Kansas City will pay something more than the minimum fixed by the Chicago price.

Mr. Ames admits (1321) that the shipper can sell or ship to whichever market is to his advantage.

The testimony of the witnesses Wilson, 1058, 1059; Crosby, 247, 248; Koch, 619, 620, and Foster, 645, 647, is also to the effect that the Chicago price controls prices in the Missouri River and intermediate markets, and that in order to induce livestock to come to the intermediate markets they pay relatively more than the Chicago prices. This is well illustrated, also, by the testimony of the witness Eberhart, connected with the packing establishment at Austin, Minn., as to the prices paid at that point, and the premium which they have to pay to induce the shipment of hogs to their plant. (665, 669.)

Mr. Tomlinson, whose testimony presents the contention of the complainant in the strongest light, says (1567), that there is no uniform difference in prices between Chicago and the Missouri River markets; that the prices average considerably more in Chicago than at these other markets, dependent upon the supply and demand; but that there is no absolute fixed difference between Chicago prices and the prices at these other markets. He states (1584) that the nearness of the market causes stock to move to the Missouri River, and that that is the natural movement of stock from west of the Missouri River; but he claims that the freight rate adjustment is such that the shipper is almost compelled to stop at the Missouri River and sell to the

packer there. He repeats this last statement (1617), and there emphasizes the claim that the adjustment of rates puts the shipper at the mercy of the packer on the Missouri River and at intermediate points, but, in so doing, he makes the very important admission that the packer can afford, because of the rate on his product, to pay the shipper more at the Missouri River and at the intermediate points than the shipper can get at Chicago by shipping his livestock to Chicago.

On cross-examination, however, it is made to appear very clearly by his admissions, that the Chicago prices control the prices at these other markets (1877); that the shipper has the choice between the markets and will sell at Chicago, or at the Missouri River markets, according to whether it will be to his advantage to select the one or the other; that the shipper is not confined in any way to the Missouri River markets, but on the contrary has the benefit of having these markets in addition to the Chicago market, and can always ship to the one or the other, as he thinks for his advantage; and that generally speaking the shipper can get a better price relatively at the Missouri River market, as the packer will give up a portion of what Mr. Tomlinson calls "his advantage" in order to induce the shipper to sell to him at that market. See cross-examination, 1874 to 1881.

The effect of the whole evidence on this point is just the reverse of the contention of the complainant that the shipper of livestock is unduly prejudiced by reason of the lower rate on the product from Missouri River points to Chicago, and that in so far as the product

rate tends to stimulate and develop the Missouri River and intermediate market (if that be the case) it has worked to the distinct advantage of the shipper, in affording him additional markets instead of making him dependent solely upon the Chicago market, in which the prices are practically controlled by the Chicago prices and in which he can generally get relatively a little better price than the Chicago price.

As to the range of prices for livestock on the Chicago market:

There is certainly no evidence in this record that tends in any way to show that the prices for livestock on the Chicago market have been affected in any way by the product rate. On the contrary, the proof is positive and direct that the Chicago prices are fixed by the natural law of supply and demand at Chicago and very largely influenced, if not controlled, by the demand of independent buyers for export and for eastern markets.

So far as concerns the supply of livestock on the Chicago market, Mr. Tomlinson's figures (1559) show that during the last five years the receipts at Chicago have increased 20% in cattle, but have decreased 4% in hogs; and the report of the Union Stock Yards Company for 1904, which is in evidence (but not printed), shows (see p. 45) that the cattle receipts for 1903 and 1904 exceeded the receipts for any previous years subsequent to 1892, which was, according to Mr. Tomlinson, the banner year on the Chicago market. The receipts of hogs have decreased slightly during the last 10 years, but that is readily accounted for by the fact that the natural tendency, as admitted by Mr. Tom-

linson, is for the development of the packing industry near the source of supply, and by the further fact that hogs are more liable to suffer in shipment than cattle; so that they will naturally go to the Missouri River packing houses rather than to Chicago.

As to the demand on the Chicago market for cattle and hogs, it appears from the statement of shipments of stock from Chicago in the report of the Union Stock Yards Company (p. 46), that the shipments of cattle in 1903 and 1904 exceeded all prior years, and that the shipments of hogs for those two years were about the same in amount as they have been since 1897. The shipments must indicate the demand, as these shipments are made mainly to the east, and this report, therefore, would fairly reflect the demand for cattle and hogs in the Chicago market from year to year. No witness asserts that there has been any falling off in the demand on the Chicago market, but on the contrary each witness makes the claim for the Chicago market that there exists on that market a strong competition because of the strong demand of buyers for shipment.

This same report of the Union Stock yards Company gives (p. 59) the range of prices for cattle from 1894 to 1904, and (p. 60) the range of prices for hogs during the same period. These tables certainly do not tend to show that the prices either for cattle or hogs have declined on the Chicago market.

A very significant statement in this report will be found on page 5 and 6, where it says:

"At no time in the history of the business has there been a better prospect of a steady demand for finished

beef cattle of good breeding and quality. The export demand is strong at the close of the heaviest year's shipments since 1890. The demand for shipment to eastern cities has been very active, and such shipments the largest on record. The total shipments of cattle from this market during the year numbered 1,326,322, or over 40 per cent. of the receipts, a total which has not been equaled since the refrigeration era was fairly established. There is now a higher degree of healthy competition among the buying interests on the Chicago cattle market than on any market in recent years, and offerings suited to the demands of the market find ready sale at remunerative prices. It is the unsuitable and ill-prepared consignments that disappoint sellers and buyers alike, for the latter has to meet the demands of his customers, and often experiences as much difficulty in finding an outlet for the product of unsuitable purchases as had the cattle salesman to find a buyer for the live animals."

In the light of the evidence in this record and of all available data on this subject, it is submitted that there is no proof which would tend, in any way, to show that the product rate from Missouri river points to Chicago has in any way affected the livestock prices on the Chicago market. Therefore, it is clear that the product rate has not prejudiced or injured the livestock shipper or producer.

As to the claim made by Mr. Tomlinson and other witnesses for the complainant that the livestock shipper is prejudiced because he is put at disadvantage with and at the mercy of the packer, and forced to sell at the Missouri River market.

Mr. Tomlinson says (1584) that the "freight rate adjustment is such that the shipper is almost compelled to stop at the Missouri river and sell to the packer

there." (See, also, 1617, where he emphasizes this claim and puts the concrete case of Cedar Rapids.)

And, on 1618, he insists that the shipper is "restricted" to the "market nearest him," and, on 1620, that these rates tend to "localize and monopolize the slaughtering business," or, as he again states it, 1622, "to monopolize the business of dealing in livestock to the packers at that point."

These claims are not consistent with the facts, which the witness admits, and which cannot be controverted. The claim that by reason of the product rate the shipper is at the mercy of the Missouri river or intermediate packer, and is forced to sell at the Missouri river or intermediate points, cannot be reconciled with his admissions on cross-examination, that the higher prices at Chicago control prices at the other markets (1877); that the shipper will sell at Kansas City or Omaha, if he can get relatively a better price than at Chicago; and that unless he can get at least as good a price relatively at the Missouri river markets as at Chicago, he will sell there (1880, 1881).

Mr. Tomlinson, in fact, admits (1878, 1879), that the shipper will generally get relatively a better price at the Missouri river market than at Chicago, and intimates this in his claim that the packer to induce him to sell at the Missouri river or at Cedar Rapids (in his illustration) will give up "enough of his advantage" in rates to do so (1617), which can only mean that he will pay more than the Chicago price relatively.

When it is considered, that throughout this intermediate territory the livestock business is of great importance, is prosperous and is increasing from year to

year, and that the Chicago markets are open to all shippers, and the Chicago prices are daily before them, so that, as Mr. Tomlinson admits (1877, 1878), the shippers can and do select their market, and ship to Chicago or to the near-by market, as they consider for their advantage, the claim that the product rate puts them at the mercy of the Missouri river packer is preposterous. Nothing could better illustrate this than the statement of the actual shipments made from all stations on the North Western road for 150 miles east of the Missouri river to South Omaha, Sioux City and Chicago from July 1, 1904, to July 1, 1905, which shows that during this period there were shipped from this 23½ cent zone to Chicago 6117 cars of cattle and 4109 cars of hogs, a total of 10,286 cars, and to South Omaha a total (both cattle and hogs) of 1893 cars, and to Sioux City a total of 1,710 cars (983).

Moreover the evidence shows, that the same shipper will ship part of his cattle to the one market and part to the other, evidently selecting his market with reference to the grade of his cattle, and shipping them where he thinks he can get the best results. And of the shippers who testified as witnesses, most of them ship exclusively to Chicago. Where then is the evidence, that warrants Mr. Tomlinson's claim that the shipper is at the mercy of the Missouri river packer, and forced to sell his stock at the Missouri river, or is "restricted" to the Missouri river markets?

Mr. Buell furnished a concrete example of the fallacy of the contention, by admitting that he sold his 5,000 head at Kansas City and St. Louis, because he could get relatively more for them at those markets

than by coming to Chicago, and the net result was better (1271); and this was true in his case, where he could have shipped on this proportionate rate, as his cattle originated west of the Missouri river. He did not sell there at a sacrifice, but because he could get more for his cattle.

Baker claims (1445, 1446), that the shipper to Kansas City sells there, because he could not ship on to Chicago and receive as much as he could by selling at Kansas City (which amounts to the admission of Buell, that the net result of selling at Kansas City was better than of shipping to Chicago); but in the same breath he asserts that the reason why the shipper could not ship on to Chicago was the difference between the rate on the product and the rate on the livestock. But as long as the shipper can get more relatively for his cattle at Kansas City than at Chicago, he is not going to ship to the latter point; and the product rate has nothing to do with it.

Some of the witnesses speak of the packer as having an "advantage" over the shipper of livestock because of the product rate. Buell, for instance, says (1264), that the difference in the freight rate is an advantage in favor of the slaughterer at Kansas City, and when asked by the court as to why this is not fair, his answer was (1265) that "it looks clear to me that it gives the packer an advantage over the man who wants to ship the livestock."

If this means, that the shipper gets less for his livestock, the statement is not in harmony with his own admissions. The witness probably meant, that the packer by getting a lower rate had an opportunity to make a

larger profit; but this if true, does not prove or tend to prove, that his profit is taken from the shipper, and it can not be the case, as long as the shipper gets the full benefit of the Chicago prices in the near by market, and selects his own market, and as long as the Chicago prices are unaffected by the product rate. The advantage, if any, is over the Chicago packer.

Ryan's opinion was (1909) that the packer could *buy* better in Iowa than they do in Chicago, and that this gave him an undue advantage; but here, too, the Iowa packer must pay the Chicago prices, if he wants to buy. The Iowa shipper is, certainly, not foolish enough to sell his stock for any less, when he can select this market and ship to Chicago or elsewhere, as is to his best advantage. Ryan's comparison seems also to be rather between the Iowa and the Chicago packer than between the packer and the shipper.

These claims of undue advantage of the packer and the livestock shipper will not bear close scrutiny and are not sound.

Advantages to the Shipper of Near-by Markets.

It cannot require any argument to establish the proposition, that it is of material advantage to the livestock producer and shipper to have more than one market and to be able to market his stock at the near-by market rather than ship to the distant market at Chicago, provided he can get relatively as good a price. This is conceded by all of the witnesses, who were asked as to it. (Buell, 1345; Crosby, 247; Calkins, 535, 536.)

And in this connection, the testimony of Mr. Tomlin-

son as to the natural movement of the western livestock and the natural development of the near-by market is important. He says (1584), that the nearness of a market will cause stock to move to it; and that the natural movement of stock from the southwest is to Kansas City and St. Louis, and from Montana to Omaha; that the slaughtering at the point of origin has a natural advantage, which gives rise to the development of slaughtering and packing plants near source of production (1874); and that the natural movement of livestock from the west is to the western markets rather than to Chicago. (1882.) This natural advantage and natural movement of the livestock to the near market accounts fully for the growth and increase of the Missouri river and intermediate markets, and explains the fact that Chicago's receipts of cattle from Texas and the southwest have been declining for the past ten or twelve years (as Buell stated), and that these cattle go to Kansas City. It also accounts for the movement of hogs to St. Joseph and the other western packing centers. It is evidence of the growth and development of the western country and a natural result thereof. The point to be here emphasized is that this development and growth is essential to the general welfare of the country and especially to the shippers and producers of livestock on the one hand, and the consumer on the other.

III.

THE CLAIM OF COMPETITION BETWEEN THE LIVE ANIMAL AND THE PRODUCT AND BETWEEN THE PRODUCERS AND SHIPPERS OF LIVESTOCK AND THE MISSOURI RIVER PACKERS.

If the foregoing argument suffices to demonstrate that the shipper of livestock is not prejudiced or injured by the product rate, and that the prices, which he gets for his stock, are not lessened, and that the Missouri river and intermediate markets in addition to the Chicago market are a benefit and advantage to him, it also completely answers the claim in the present case that because of competition between the shipper and the packer and between the live animal and the product the rate on the product should not be less then on livestock. If the shipper is not in fact prejudiced or injured by the product rate and his prices for his livestock are not thereby lessened, it is not material so far as he is concerned whether this claim of competition is or not well founded.

But the term itself is misleading in this connection, for the reason that the great bulk of the product from the Missouri river and intermediate points is shipped to the Eastern markets or abroad, so that there is no competition in fact in the Chicago market between the live animal and the products. As Mr. Cowan said in his oral argument in the court below, all of the dressed beef from the Missouri river houses goes east; and the evidence shows that 80 per cent. or more of the packing house products are either shipped abroad or to the

eastern markets; so that there can be no claim of any such competition at Chicago. The evidence also shows that on livestock originating west of the Missouri river destined east of the Illinois and Indiana state line, the rate from the Missouri river is the same as the rate on the product and dressed beef. It also appears from Mr. Tomlinson's testimony (1777, 1778) that if the 23½ cent rate to Chicago on cattle and hogs is combined with the rates on cattle and hogs from Chicago to New York, the combined rates will be lower than the sum of the 18½ cent rate on the product and dressed beef and the rates on the product and dressed beef from Chicago to New York. If then there is competition at the consuming markets in the east (New York and Boston for example) between the live animal and the product, the rate from this territory in question on the live animal to the consuming market is not greater than the rate on the product.

But there is no competition in the market between the live animal and the product, and the term is misapplied when used in this connection. The competition under normal conditions would be between the packers, who ship their product to these different markets, and the sharper that competition should be, the better for the producer and shipper of livestock. Conditions are not normal in that particular for the reason that the Missouri river and the Chicago packers are substantially the same persons.

As to the local interests in Chicago, the Chicago Stock Yards and the Live Stock Exchange, it would seem that the statement of receipts and shipments on

the Chicago market, which shows that both the receipts and shipments are increasing, and that the Chicago market is not on the decline (See U. Stock Yards Report 1904, p. 46, 47), is a sufficient answer to any claim of prejudice or injury on their part. Their complaint seems to be, not that Chicago as a livestock market is waning, but that the Missouri river markets are growing more rapidly, which is accounted for by the growth and development of the territory tributary to them.

The case at bar must necessarily be determined from a practical standpoint and with reference to the peculiar conditions that are shown by the evidence to surround the packing business. It should not be decided on the purely theoretical basis of the proper relation between rates on the raw material and rates on the finished product; but the court will be compelled to "balance" the various interests that will be affected by an enforcement of the order of the Commission and to decide whether, in fact, there is any practical necessity for the enforcement of this order which will warrant the court in compelling these railroads to suffer the very heavy losses that will result from the reduction of these livestock rates, and whether the enforcement of this order "is likely on the whole to promote the public advantage." If the livestock shippers and producers are not in fact prejudiced by the product rate, so that their interests do not demand the enforcement of this order, it will be found that the remaining interests that claim to be prejudiced by this rate are of minor importance as compared with the general public interest in the development and maintenance of these western markets and with the interest of the con-

sumer in everything that tends to cheapen the price of the products, so that they may properly be disregarded.

Respectfully submitted,

S. A. LYNDE,
Counsel for Chicago & North-Western Railway Company.

Office Supreme Court, U. S.
FILED.
APR 11 1907
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

No. [redacted]-73.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,
vs. No. 27723.
CHICAGO GREAT WESTERN RAILWAY CO., et al.,
Appellees.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,
vs. No. 27329.
CHICAGO GREAT WESTERN RAILWAY CO., et al.,
Appellees.

Argument of ED. BAXTER,

Solicitor for Appellees as of Record.

Foster, Webb & Parkes, Nashville, Tenn.

PAGE

Appellees' Rates upon Live Cattle and Hogs are as Low as the Rates Charged by Other Railroads in Other Parts of the United States for Similar Distances 55

The Second Section of the Act to Regulate Commerce has no Application to this Case 56

The Third Section of the Act to Regulate Commerce Prohibits Only Such Preferences as are Unjust or Unreasonable 59

The Cases Decided by this Court in which the Third Section was involved 62

We do not Contend that the Mere Fact of Competition Relieves the Carrier from the Restraints of the Third and Fourth Sections 74

The Contention of Appellants' Counsel that the Chicago Great Western Company had No Right to Inaugurate Competition by Making the Contract of August 8, 1902 76

The Contention that the Chicago Great Western Company had No Right to Rely upon the Mere Possibility of Competition by the Other Lines 82

The Contention that the Competition Prior to the Injunction was Illegal, and therefore Cannot be Relied upon by Appellees 83

The Contention that the Chicago Great Western Company Should not be Allowed to Take Advantage of its Own Wrong 84

The Commission Erred in Holding that the Chicago Great Western Company unduly Discriminated against the Livestock Traffic 85

The Commission Erred in Holding that the Prejudice against Chicago is undue 87

The Fact that Appellees could, if They chose to do so, Make the Competition on Livestock as Severe as the Competition on the Product is not Material 88

Appellees do not Contend that a Railroad may use its Franchise to Build up Some Markets and Destroy Others 88

A Carrier may Promote its own interest provided it does not Create an undue Preference 91

The Object of the Chicago Great Western Company in Reducing the Rate on Livestock Products was not to build up the Missouri River Markets 96

PAGE

The Question as to Who Originates a Reduction in Rates is not Material 102

The Practice of Making Rates on Livestock the same as, or lower than, the Rates on the Products of Livestock, is by no means Universal 104

The Practice of Making Rates on Raw Material the same as, or lower than, the Rates on Manufactured Products, is by no means Universal 106

The Principle that Rates on Raw Material should not Exceed those on Manufactured Products cannot be Enforced except where there is no Competition 109

The Cost of Transportation cannot be used as a Factor in Making Rates 112

The Value of the Service is an important Factor in Making Rates 117

If the Law Requires that Rates shall be based either on "Cost of Service" or "Value of Service," the Order of the Commission is Illegal 119

The Court has no power to Modify the Order of the Commission 122

The Law does not require that Rates should be made with reference to the Interests of any Particular Market or Markets 123

In Determining the Question of Undue Preference, the interests of Chicago are not alone to be considered 124

The Chicago Great Western Contract does not violate the Anti-Trust Law 129

The Rate on Livestock from the Missouri River when consigned to Chicago proper is no higher than the Rate on the Products 131

The Commission has no power to make Relative Rates 132

The Missouri River Packer has no undue advantage of the Shipper of Livestock 138

The Fact that Chicago Receives a Greater Proportion of the Livestock than is Received by the Missouri River Markets is Evidence that the Rate Adjustment is Fair to Chicago 140

The Fact that Rates are unreasonably low is not conclusive that there is no profit in them 141

PAGE

The Present Rate Adjustment was not made with a view of promoting any set of markets or interests.....143

The Commission did not give due weight to the competition relied upon in this case 143

The "Social Circle Case" has, in effect, been overruled.....145

The Order of the Commission is not Conclusive upon this Court.....147

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	Cited in Brief
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16 Ann. Rep., I. C. C.	25, 26, 35
17 Ann. Rep., I. C. C.	25, 35
Board of Trade v. C. & A. R. Co., 3 I. C. Rep.	48
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Budd v. London & Northwestern Ry. Co., 4 Eng. Ry. & Can. Traf. Cas.	95
Calloway v. L. & N. R. R. Co., 7 I. C. Rep.	144
Commercial Club of Omaha v. Chicago & N. R. Co., 7 I. C. Rep.	61
C. N. O. & T. P. Ry. v. I. C. C., 162 U. S.	132, 145
Cotting v. Kansas City Stock Yards Co., 183 U. S.	56
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E. T. V. & G. Ry. Co. v. I. C. C., 99 Fed. Rep.	149
E. T. V. & G. Ry. Co v. I. C. C., 181 U. S.	49, 54, 67, 69 70, 74, 75, 86 89, 90, 91, 102 110, 121, 140 142.
Evershed v. London & Northwestern Ry. Co., 2 Q. B. D.	93, 95, 96
Harding v. C. St. P. M. & O. R. Co., 1 I. C. Rep.	53
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I. C. C. v. Alabama Midland Ry., 69 Fed Rep.	61
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I. C. C. v. B. & O. R. R., 145 U. S.	60
I. C. C. v. C. N. O. & T. P. Ry., 167 U. S.	132, 134, 135 136, 137
I. C. C. v. D. L. & W. R. Co., 64 Fed. Rep.	123

	CITED IN BRIEF
I. C. C. v. L. S. & M. S. Ry. Co., 134 Fed. Rep.	107, 123
I. C. C. v. L. & N. R. R. Co., 73 Fed. Rep.	123
I. C. C. v. L. & N. R. R. Co., 102 Fed. Rep.	147
I. C. C. v. L. & N. R. R. Co., 118 Fed. Rep.	147
I. C. C. v. L. & N. R. R. Co., 190 U. S.	54, 70, 71, 83 88, 121, 144 147
I. C. C. v. Southern Ry. Co., 117 Fed. Rep. (Affirmed 122 Fed. Rep.)	56
I. C. C. v. Southern Pacific Co., 123 Fed. Rep.	149
I. C. C. v. W. & A. R. R., 93 Fed. Rep.	121, 122
In Re. L. & N. R. R., 1 I. C. Rep.	113
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L. & N. R. R. v. Behlmer, 175 U. S.	66, 67, 146
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Statistics of Railways, 1893	114
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T. & P. Ry. v. I. C. C., 162 U. S.	27, 62, 63, 93 96, 124, 125
24 U. S. Stat. at Large	49, 57, 95
U. S. Revised Statutes, Sec. 1	60
Wight v. U. S., 167 U. S.	57

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

No. 352.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,
vs. No. 27723.
CHICAGO GREAT WESTERN RAILWAY CO., et al.,
Appellees.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,
vs. No. 27829.
CHICAGO GREAT WESTERN RAILWAY CO., et al.,
Appellees.

Argument of ED. BAXTER,
Solicitor for Appellees as of Record.

STATEMENT OF THE CASE.

I.

PRELIMINARY STATEMENT.

A preliminary statement may serve to facilitate an understanding of the matters herein involved.

Case No. 27723 is a suit brought by the Interstate Commerce Commission to enforce an order made by it on January 7, 1905.

The traffic referred to in said order is the traffic in live cattle and live hogs, and the traffic in the dressed or prepared products thereof; and the order is directed to the relation of rates which should exist as between the live animal and the dressed product.

Kansas City, Mo., may be regarded as typical of the Missouri River slaughtering markets. Cattle and hogs are produced at points both east and west of Kansas City. From the territory of production *west* of Kansas City, cattle or hogs may be shipped into Kansas City, either to be slaughtered there; or, to try the market and move subsequently to Chicago, if the Kansas City market be unsatisfactory; or, they may be shipped direct from the point of production through Kansas City to Chicago. From the territory of production immediately *east* of Kansas City, cattle or hogs may be shipped for slaughter either to Chicago or to Kansas City, according to market conditions.

References will be found in the Report and Opinion of the Commission and in the testimony to the territory both east and west of the Missouri River, though the complaint of the Chicago Livestock Exchange before the Commission made specific reference only to the territory east of the Missouri River.

As the situation with respect to the territory east of the Missouri River is somewhat different from that west of the Missouri River, and as the territory east is that to which the complaint specifically refers, it would needlessly involve this preliminary statement to do more than explain the conditions in the territory east of the river; which, it may be stated, aside from any technical reading of the complaint, is the only territory so affected by the existing rate adjustment as to be of real consequence in the present case.

The principal factor which determines whether the cattle or hogs produced east of the Missouri River will be sold in Kansas City or in Chicago is, of course, the price offered. The prices of livestock in the different markets are affected by such a variety of causes that there is no fixed or stable relation between said prices. It may therefore at one time be to the interest of the producer of cattle or hogs in the territory immediately east of Kansas City to sell in the Kansas City market, and at another time to sell in the Chicago market, dependent upon the general market conditions.

A constant factor, however, in determining the ability of the Kansas City packer to bid for the livestock produced in the territory immediately east of Kansas City in competition with the Chicago packer is the fact that he can deliver the dressed product of such livestock in Chicago at a less total of freight charges on the live animal from point of production into Kansas City and on the product of the animal from Kansas City to Chicago, than the freight charges which would accrue for the transportation of the live animal direct from the point of production to Chicago, if it were bought by the Chicago packer. In this result, the fact that the weight of the product, which is shipped from Kansas City to Chicago, is materially less than the gross weight of the live animal, if shipped direct from the point of production to Chicago, plays an important part.

Although it is admitted by the Commission in its Report and Opinion that there are practically no shipments of livestock made locally from the Missouri River markets to Chicago, yet the most salient feature of the complaint before the Commission and of the Commission's order is the *relation of rates* on the livestock and the product *between the Missouri River markets and Chicago;* and upon the question of the movement from

intermediate points to Kansas City and Chicago respectively, it has this bearing.

The rate upon live cattle and hogs as well as upon the product thereof between Kansas City, for instance, and Chicago was formerly 23½ cents per hundred pounds. The rates now are: On live cattle and hogs from Kansas City to Chicago 23½ cents; on the product thereof 20 cents.

The product rate of 20 cents from the Missouri River to Chicago is of course an important factor in determining what will be the *total cost* of shipping the live animal from the point of production (east of Kansas City) into Kansas City, and shipping the product from Kansas City to Chicago, as against shipping the live animals direct from the point of production (east of Kansas City) to Chicago.

It is contended by appellant that the rates of 23½ cents on the livestock and 20 cents on the product, in effect between the Missouri River and Chicago, do not represent the proper relation; and it was held by the Commission that such relation is not proper. Under the order of the Commission, it would be proper to make the rates between the Missouri River and Chicago on the livestock, and the product, equal. If the livestock rate is to remain at 23½ cents between the Missouri River and Chicago, it would of course be necessary to raise the product rate to 23½ cents for the purpose of conforming to the order of the Commission. If the product rate were raised 3½ cents for the purpose of conforming to the order of the Commission as to what are proper relative rates between the Missouri River and Chicago, its incidental effect would be to increase the total cost of shipping the live animal from a point of production

east of Kansas City into Kansas City, and shipping the product from Kansas City to Chicago, as against shipping the live animals direct from the same point of production east of Kansas City to Chicago. The bearing therefore which the question of proper relative rates between the Missouri River and Chicago has upon the movement from intermediate stations to the Missouri River markets, and Chicago, respectively is an incidental bearing.

The complaint of the Chicago Livestock Exchange in this case before the Commission was that by reason of the fact that the rates per hundred pounds upon the dressed or prepared products of cattle and hogs were lower than the rates per hundred pounds upon the live animals, from said Missouri River points, and South St. Paul on the west, to Chicago on the east, the receipts of cattle and hogs at Chicago for slaughter had diminished, and that the effect of said relative adjustment had been to transfer a portion of Chicago's trade to her rivals. The contention of the complainant before the Commission was that as between the live animals and the products thereof, the rates should be so adjusted relatively as to effectually prevent such diversion of trade from Chicago.

In order to place the traffic in live animals, and the traffic in the products thereof, passing between the Missouri River and Chicago, upon an exact equality, so that it would be no more profitable to slaughter at the Missouri River than at Chicago, it would be necessary to take into consideration the fact that the weight of the product of the animal is always materially less than the gross weight of the animal from which the product is taken; and therefore to fix the rate per hundred pounds upon the products somewhat higher than the rate per hundred pounds upon the live animal between the Missouri River and

Chicago. It was claimed by the chief witness for the complainant before the Commission, and by the same witness in the Circuit Court, that the rate per hundred pounds upon the products between the Missouri River and Chicago should properly be 175 per cent of the rate per hundred pounds upon the animal.

While under the terms of the order of the Commission, appellees are not forbidden to make a relative adjustment between the Missouri River and Chicago, whereby the rate upon the product shall be 175 per cent of the rate on the live animals, they are nevertheless permitted to charge equal rates per hundred pounds upon the live animal and the product thereof, and the order of the Commission therefore falls short of accomplishing that for which the complainant before the Commission contended.

II.

The Decree Appealed from.

The bill in the first of the above-entitled causes (No. 27723) was filed on the 29th day of April, 1905, in the Circuit Court of the United States for the Northern Division of the Northern District of Illinois, to enforce an order made by the Interstate Commerce Commission on the 7th day of January, 1905, in the matter of the Chicago Live Stock Exchange v. The Chicago Great Western Railway Company et al.

Said order of the Commission declared that the present relation of rates maintained and enforced by appellees whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago in the State of Illi-

nois, from points on the Missouri River (Sioux City in the State of Iowa to Kansas City, in the State of Missouri inclusive), and from South St. Paul in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago, constitutes wrongful prejudice and discrimination, in violation of the provisions of the Act to Regulate Commerce; and said appellees were, by said order, notified and required to cease and desist, on or before the 15th day of February, 1905, from maintaining or enforcing the said alleged unlawful relation of rates, and from further continuing said alleged unlawful prejudice and discrimination.

Ex. "Q" to O. Bill, Trans., pp. 48, 49.

The bill in the second of the above entitled causes (No. 27829) was filed on the 17th day of July, 1905, in the same court, under what is known as the Elkins Act, approved February 19, 1903, and entitled "An Act to further regulate commerce with foreign nations and among the States."

In said last mentioned bill, it was averred that the appellees in charging and receiving the said higher rates on live cattle and live hogs than on the dressed or prepared products thereof were committing an unlawful discrimination against said live cattle and live hogs, the shippers thereof, and the traffic therein, in favor of said dressed or prepared products, the shippers thereof and the traffic therein.

The first bill was answered by the appellees; and to the second bill, appellees pleaded the pendency of the first bill. Said plea being overruled by the Court, appellees answered the second bill.

The two bills were consolidated by order of the Court, and were heard together.

Several volumes of testimony were taken before the Commission; and nearly 3,000 pages of additional testimony were taken in the Circuit Court.

On November 20, 1905, Hon. Solomon H. Bethea, District Judge, rendered his decision, which will be found inserted in the transcript between pages 176 and 177 and it was on the same date decreed by the Court that the petitions of the Interstate Commerce Commission in both of said causes be dismissed with costs.

Trans., pp. 178, 179.

From said decree, the Interstate Commerce Commission appealed to this Court.

In a designation filed in this Court by Hon. S. H. Cowan, special attorney for appellant, and Hon. L. A. Shaver, solicitor for appellant, it was directed that there be omitted in printing the petition and other pleadings, orders and affidavits in case bearing "No. 27829" in the court below, in which case the bill was filed under the Elkins Act.

Trans., pp. 2072-2078.

III.

The Petition Filed Before the Commission in Case No. 27723.

The petition before the Commission, which was filed by the Chicago Livestock Exchange, an association of livestock commission men, raisers, owners, shippers and slaughterers, averred in substance:

1. That the rates charged, collected or received by the appellees for the transportation of livestock, in carloads, from points in Iowa, Missouri, Minnesota and Wisconsin to the city of Chicago are in and of themselves, and relatively, as compared with rates charged by appellees on the product of livestock, unjust and unreasonable, in violation of Section 1 of the Act to Regulate Commerce.

2. That the raisers of livestock in the States of Iowa, Missouri, Wisconsin and Minnesota are subjected to an undue and unreasonable prejudice or disadvantage by reason of the rates charged, collected or received by appellees for the transportation of the product of livestock from Kansas City, South St. Joseph, South Omaha, Sioux City and South St. Paul to Chicago and points east thereof in violation of Section 3 of the Act to Regulate Commerce.

3. That the rates charged, collected or received by appellees for the transportation of the product of livestock from Kansas City, South St. Joseph, South Omaha, Sioux City and South St. Paul to Chicago and points east thereof, and that the rates charged, collected or received by appellees for the trans-

portation of livestock from said markets and intermediate points in Iowa, Missouri, Wisconsin and Minnesota to Chicago, subject the city of Chicago and the Chicago Livestock Exchange to an undue and unreasonable prejudice or disadvantage and are unlawful, in violation of Section 3 of the Act to Regulate Commerce.

Said petition prayed that the defendants (appellees) be required to answer the charges therein, and that after due hearing and investigation, an order be made commanding the defendants (appellees) to cease and desist from said alleged violations of the Act to Regulate Commerce and for such other and further orders as the Commission might deem necessary in the premises.

Trans., pp. 9, 10.

IV.

Answers to the Petition Filed Before the Commission in Case No. 27723.

Separate answers were filed to said petition before the Commission by each of appellees, except the Omaha & Kansas City Railroad Company, erroneously sued as The Omaha, Kansas City & Eastern Railroad Company; and the Chicago & Northwestern Railway Company, which latter company was not served with notice of the suit before the Commission.

Trans., pp. 11-27.

Said separate answers denied that the rates upon livestock in carloads, which were the subject of complaint, were unjust or unreasonable, either in and of themselves or relatively.

They further denied that the raisers of livestock in the States of Iowa, Missouri, Wisconsin or Minnesota were subjected to undue or unreasonable prejudice or disadvantage by reason of the rates charged, collected or received for the transportation of the product of livestock.

They further denied that the rates charged, collected or received for the transportation of either the product of livestock or the livestock itself subjected the city of Chicago or the Chicago Live Stock Exchange to undue or unreasonable prejudice or disadvantage.

Trans., pp. 11-27.

V.

Intervening Petitions Filed Before the Commission.

Intervening petitions were filed before the Commission by The Railroad & Warehouse Commissioners of the State of Minnesota; The St. Paul Union Stock Yards Company, of St. Paul, Minn.; The South St. Joseph Livestock Exchange; The Union Stock Yards Company, of Omaha, Neb.; The Sioux City Stock Yards Company, and the Sioux City Livestock Exchange, of Sioux City, Iowa.

Trans., pp. 159-177.

Said intervening petitions denied that the adjustments of rates complained of, so far as they applied to livestock, as between Chicago on the one hand, and the localities represented by the interveners respectively on the other, subjected complainant, the locality of Chicago, or producers of livestock in the States of Iowa, Missouri, Wisconsin or Minnesota to undue or unreasonable prejudice or disadvantage.

Trans., pp. 159-177.

VI.

The Hearing Before the Interstate Commerce Commission.

The case was heard before the Commission upon petition, answers, intervening petitions and testimony, and on January 7, 1905, the Commission filed its report and opinion.

Trans., p. 28.

VII.

The Order Made by the Interstate Commerce Commission.

On January 7, 1905, the Commission issued an order in accordance with its report and opinion of the same date.

Said order after reciting that the relation of rates maintained and enforced by appellees "whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago, in the State of Illinois, from points on the Missouri River, Sioux City in the State of Iowa, to Kansas City, in the State of Missouri inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago, constitutes wrongful prejudice and discrimination," required appellees to cease and desist, on or before the 15th day of February, 1905, from maintaining or enforcing said unlawful relation of rates, and from further continuing said unlawful prejudice and discrimination.

Trans., pp. 48, 49.

Appellees being advised that said order was not a lawful order declined to obey it.

VIII.

Proceedings in the Circuit Court.

The Interstate Commerce Commission filed a petition in the Circuit Court of the United States for the Northern Division of the Northern District of Illinois, at Chicago, to enforce its order made in the case of The Chicago Livestock Exchange v. The Chicago Great Western Railway Company et al.

Appellees answered the same denying the matters of equity therein alleged.

Appellant, the Interstate Commerce Commission, as hereinbefore shown in Section II filed a second bill under the Elkins Act, which, by order of the Court, was consolidated with the bill filed by the Commission to enforce its order.

Additional testimony was taken in the Circuit Court by each party.

The testimony taken before the Commission was admitted in evidence, and portions of it read to the Court, and all of it considered by the Court.

As stated above, in Section II, the Circuit Court rendered a decree that the petitions of the Interstate Commerce Commission in said causes be dismissed, and from that decree, appellant prayed and obtained an appeal to this Court.

IX.

The Rates which are Involved in this Controversy.

The rates which are involved in this controversy are set forth in tabulated form in the opinion of the Circuit Court and in the testimony as follows:

Statement Showing Rates on Cattle, Hogs, Packing-House Products and Fresh Meats, Carloads, from Missouri River and Other Points to Chicago, Ill. (Rates in Cents Per Hundred Pounds.)

To Chicago, Ill. From	Cattle	Hogs	Packing House Products	Fresh Meats
Kansas City, Mo.				
St. Joseph, Mo.	23.5	23.5	20	20
Atchison, Kans.	b 20	b 20		
Leavenworth, Kans.	c 18.5	c 18.5	a 18.5	a 18.5
Council Bluffs, Iowa.	23.5	23.5	20	20
Omaha, Neb.			a 18.5	a 18.5
South Omaha, Neb.				
Nebraska City, Neb.				
Sioux City, Iowa.	25	23.5	20	20
			a 18.5	a 18.5
St. Paul, Minn. or South St. Paul, Minn.	25	27	15.7	17
	—	b 17.5	a 14.6	a 15.7
Ottumwa, Iowa.	22	21	16	
Des Moines, Iowa.	22	23.5	18.5	
Marshalltown, Iowa.	22	21	16	
Cedar Rapids, Iowa.	21	18.5	13.5	

(a) Destined to points east of Illinois-Indiana State line.

(b) Applies on shipments originating beyond.

(c) When originating beyond and destined beyond the Illinois Indiana State line

Trans., pp. 177, 237, 398, 505.

Kansas City may be taken as illustrative of the group in which it occurs in said table, for the purpose of explaining the application of the various rates and proportional rates set forth.

"A 'proportional rate' is not fixed as a part of any particular through rate, but is used as a standing proportion of through rates to any number of points beyond the point to which it is given."

7 I. C. Rep., 347, N. Y. N. H. & R. Co. v. Platt.

In the following diagram, "A" represents a point west of Kansas City, where cattle and hogs are produced. "B" represents a point of consumption, east of the Illinois-Indiana State line, to which the dressed products of cattle and hogs may be shipped from either Kansas City or Chicago, or to which live cattle and hogs may be shipped direct from "A."

A	Kansas City	Chicago	B
•	•	•	•

If live cattle or hogs be shipped from Kansas City, as a point of origin, to Chicago, as a point of destination, the rate is 23½ cents per hundred pounds.

If packing-house products or fresh meats be shipped from Kansas City, as a point of origin, to Chicago as a point of destination, the rate is 20 cents per hundred pounds.

The excess of 3½ cents per hundred pounds in the rate on the live animal over the rate per hundred pounds on the product thereof is condemned by the order of the Commission, which requires that the rate upon the animal should not be higher than the rate upon the dressed or prepared product.

If live cattle or hogs be shipped from "A" through Kansas City to Chicago for slaughter, such cattle or hogs pay from "A'" to Kansas City the local rate in effect between "A" and

Kansas City, and from Kansas City to Chicago a proportional rate of 20 cents, which rate of 20 cents is 3½ cents less than the rate which would accrue upon cattle or hogs between Kansas City and Chicago, if they actually originated at Kansas City, instead of at a point west thereof.

The proportional rate of 20 cents, which accrues on cattle or hogs from Kansas City to Chicago in the case supposed, is exactly equal to the local rate of 20 cents upon packing-house products and fresh meats from Kansas City to Chicago. Inasmuch as the order of the Commission permits equality of rates upon the live animals and the product, the proportional rate of 20 cents on the animals as compared with the 20 cent rate on the product conforms to the order of the Commission.

The local rate of 23½ cents on shipments of cattle and hogs originating at Kansas City and destined to Chicago and the proportional rate of 20 cents, which accrues on shipments of cattle and hogs between Kansas City and Chicago, on shipments originating west of Kansas City, are, however, 5 cents and 1½ cents respectively, higher than the proportional rate of 18½ cents on packing-house products and fresh meats, which accrues between Kansas City and Chicago on shipments originating at Kansas City and shipped through Chicago to "B."

As regards said proportional rate of 18.5 cents per hundred on packing-house products and fresh meats, said local rate of 23½ cents and said proportional rate of 20 cents on cattle and hogs do not conform to the order of the Commission.

If cattle or hogs be shipped from "A" on through bill of lading through Kansas City and through Chicago to "B," they

pay the local rate from "A" to Kansas City, plus a proportional rate of 18.5 cents from Kansas City to Chicago, plus the rate from Chicago to "B."

Comparing this proportional rate of 18.5 cents on cattle and hogs with the rates shown in said table on packing-house products and fresh meats, we find that it is less than the local rate of 20 cents on the product, which applies where the product originates at Kansas City and is destined to stop at Chicago, and it is not higher than the proportional rate of 18.5 cents on packing-house products and fresh meats, which accrues between Kansas City and Chicago, on a shipment originating at Kansas City and destined to "B." Inasmuch therefore as the proportional rate of 18.5 cents on cattle and hogs is not higher than either the 20 cent rate on packing-house products and fresh meats, which applies locally between Kansas City and Chicago, or the 18.5 cents proportional rate on packing-house products and fresh meats which applies on shipments destined beyond Chicago, said proportional rate of 18.5 cents on cattle and hogs is in strict conformity with the order of the Commission.

It follows therefore that so far as the Kansas City group of points is concerned, the rates which are not in conformity with the order of the Commission are:

1. The local rate of 23.5 cents applicable on cattle and hogs originating locally at Kansas City and shipped to Chicago; its excess over the local rate of 20 cents on packing-house products and fresh meats between Kansas City and Chicago being 3½ cents, and its excess over the proportional rate of 18.5 cents on packing-house products and fresh meats being 5 cents.

2. The proportional rate of 20 cents on cattle and hogs ac-

cruing between Kansas City and Chicago on shipments of cattle and hogs originating west of Kansas City and destined to Chicago, which is 1½ cents higher than the proportional rate of 18.5 cents accruing between Kansas City and Chicago on shipments of packing-house products and fresh meats, which originate at Kansas City and are destined to "B."

Omaha may be taken as illustrative of the group in which it occurs in said table for the purpose of explaining the application of the various rates set forth.

In the following diagram, "A" represents a point west of Omaha where cattle and hogs are produced. "B" represents a point of consumption east of the Illinois-Indiana State line, to which the dressed products of cattle and hogs may be shipped from either Omaha or Chicago.

A	Omaha	Chicago	B

If live cattle or hogs be shipped from Omaha as a point of origin to Chicago as a point of destination, the rate is 23½ cents per hundred pounds.

If packing-house products or fresh meats be shipped from Omaha as a point of origin to Chicago as a point of destination, the rate is 20 cents per hundred pounds.

The excess of 3½ cents per hundred pounds in the rate on the live animal over the rate per hundred pounds on the product thereof is condemned by the order of the Commission, which requires that the rate upon the animal should not be higher than the rate upon the dressed or prepared product.

There is a proportional rate of 18½ cents on packing-house products and fresh meats, which accrues between Omaha and Chicago, on shipments originating at Omaha and shipped through Chicago to "B."

The local rate of 23½ cents per hundred on shipments of cattle and hogs, originating at Omaha and destined to Chicago is 5 cents higher than said proportional rate of 18½ cents; and therefore said local rate of 23½ cents as compared with said proportional rate of 18½ cents is not in conformity with the order of the Commission, which requires that the rate upon the live animal shall not be higher than upon the dressed or prepared product.

There is not in the case of Omaha, as there is in the case of Kansas City, a proportional rate of 20 cents on cattle and hogs from Omaha to Chicago, applicable on shipments originating at "A;" such shipments originating at "A" and passing through Omaha to Chicago, being required to pay the regular local rate of 23½ cents hereinabove referred to from Omaha to Chicago.

Nor is there in the case of Omaha a proportional rate of 18.5 cents on cattle and hogs, which would apply between Omaha and Chicago on a through shipment of cattle and hogs from "A" to "B."

It follows therefore that so far as the Omaha group is concerned, the only rate which is not in conformity with the order of the Commission is the local rate of 23½ cents on cattle and hogs from Omaha to Chicago, its excess over the local rate on packing-house products and fresh meats between Omaha and

Chicago being 3½ cents, and its excess over the proportional rate of 18½ cents on packing-house products and fresh meats being 5 cents.

By reference to the remainder of the points in the table hereinabove set forth, it will be seen that:

The local rates from Sioux City to Chicago on cattle and hogs exceed the local rates and the proportional rates applicable between Sioux City and Chicago on packing-house products and fresh meats.

The local rates on cattle and hogs and the proportional rate on hogs from St. Paul and South St. Paul to Chicago exceed the local and proportional rates on packing-house products and fresh meats from St. Paul and South St. Paul to Chicago.

The local rates on cattle and hogs from Ottumwa, Des Moines, Marshalltown and Cedar Rapids to Chicago exceed the local rates on packing-house products from said places to Chicago.

None of said latter rates are therefore in conformity with the order of the Commission that the rate upon the live animal shall not be higher than the rate upon the product thereof.

X.

The Contract Made by the Chicago Great Western Railway Company with the Packers Doing Business at Missouri River Points.

To this point, statements as to the rates on cattle, hogs, packing-house products and fresh meats have been directed to show what the existing rates are, and wherein they fail to conform to the terms of the order of the Interstate Commerce Commission. Nothing has been said as to the causes which led to the adoption of the relative adjustment which is the subject of complaint.

The Chicago Great Western Railway entered into a contract, which took effect on August 8, 1902, with all packers doing business at the Missouri River, whereby certain rates on packing-house products and fresh meats were guaranteed for a period of seven years; and it was the disturbance of the previously existing relative adjustment of rates on live cattle and hogs as compared with the rates on the products thereof, resulting from said contract rates, that precipitated the present litigation.

The rates established by the Chicago Great Western Railway Company were necessarily met by its competitors at points reached by the Chicago Great Western Railway; and also by its competitors at packing-house points other than those reached by the Chicago Great Western Railway; but which were in competition with the packing-house points reached by the Chicago & Great Western Railway.

Rep. & O Ex. P. to O. Bill, Trans., p. 32.

The Commission, in its Report and Opinion, Trans., p. 34, thus succinctly states the facts with respect to the Chicago Great Western contract:

"On August 8, 1902, pursuant to a contract entered into between the Chicago Great Western Company on the one hand and all packers doing business at the Missouri River points on the other, that company established and put in force from Kansas City and St. Joseph on the products of livestock a rate of 20 cents on traffic destined to Chicago and a rate of 18½ cents on traffic destined to points east of the Indiana-Illinois State line. The contract provided that these rates should remain in force seven years, in consideration whereof the packers agreed to deliver to the Chicago Great Western a certain percentage of their traffic in the products, or, upon failure to do so, pay it each month, by way of liquidated damages, an agreed amount for each car short. The action of the Chicago Great Western was followed by other interested carriers and corresponding rates were put in force from the other Missouri River points."

Rep. & O. Ex. P. to O. Bill, Trans., p. 34.

And further:

"The President of the Chicago Great Western stated that his company entered into the contract for the purpose of securing more of the traffic in the livestock products than it had previously been able to obtain."

Rep. & O., Ex. P. to O. Bill, Trans., p. 45.

The Commission in its Report and Opinion goes into the history of the rates in controversy, and the following tabulation of rates from Kansas City, St. Joseph, Atchison and Leavenworth to Chicago, based upon said report and opinion, shows

the history of the rates up to and including August 8, 1902, the date when the Chicago Great Western contract took effect:

	Cattle	Hogs	P'k'g-house Products	Fresh Meats
December 1, 1894, to August 8, 1902.....	23½	23½	23½	23½
Aug. 8, 1902 (guaranteed by C. G. W. Ry. for 7 yrs.)			20	20
January 1, 1902, to August 8, 1902			(a) 18½	(a) 18½
Aug. 8, 1902 (guaranteed by C. G. W. Ry. for 7 yrs.)			(a) 18½	(a) 18½
April 14, 1902, to August 8, 1902	(b) 18½	(b) 18½		

(a) Proportional rate applicable on traffic destined to points east of Indiana-Illinois State line.

(b) Proportional rate applicable on traffic either originating at points west of Missouri River, or destined to points east of the Illinois-Indiana State line.

Rep. & O., Ex. P. to O. Bill, Trans., p. 33.

It will be noted from the first extract from the Report and Opinion of the Commission above quoted, that the entire effect of the Chicago Great Western contract was to change the local rate of 23½ cents on packing-house products and fresh meats, which was in effect prior to August 8, 1902, from Kansas City, etc., to Chicago, to 20 cents, and guarantee said rate for seven years; and to adopt the proportional rate of 18½ cents on packing-house products and fresh meats which was already in effect prior to August 8, 1902, and guarantee same for seven years.

The local rate of 23½ cents on cattle and hogs and the proportional rate of 18½ cents on cattle and hogs remained undisturbed.

The following tabulation of rates from Council Bluffs, Omaha, South Omaha and Nebraska City, based upon the Report and Opinion of the Commission, shows the history of the rates up to and including August 8, 1902, the date when the Chicago Great Western contract took effect:

	Cattle	Hogs	P'k'g-house Products	Fresh Meats
December 1, 1894, to August 8, 1902.....	23½	23½	23½	23½
Aug. 8, 1902 (guaranteed by C. G. W. Ry. for 7 yrs.)			2	20
January 1, 1902, to August 8, 1902			(a) 18½	(a) 18½
Aug. 8, 1902 (guaranteed by C. G. W. Ry. for 7 yrs.)			(a) 18½	(a) 18½

(a) Proportional rate applicable on traffic destined to points east of Indiana-Illinois State line.

It will be noted from the first extract from the Report and Opinion of the Commission above quoted that the entire effect of the Chicago Great Western contract was to change the local rate of 23½ cents on packing-house products and fresh meats, which was in effect prior to August 8, 1902, from Omaha, etc., to Chicago, to 20 cents, and guarantee said rate for seven years; and to adopt the proportional rate of 18½ cents on packing-house products and fresh meats which was already in effect prior to August 8, 1902, and guarantee same for seven years.

The local rate of 23½ cents on cattle and hogs from Omaha, etc., to Chicago remained undisturbed.

The reductions in the rates made by the Chicago Great Western Railway Company, on August 8, 1902, on packing-house products and fresh meats, from said Missouri River points to Chicago, had their effect upon the rates on packing-house products and fresh meats, from Sioux City, St. Paul, Ottumwa, Des Moines, Marshalltown and Cedar Rapids, and resulted as to said latter points either in creating disparities not previously existing, or in increasing already existing disparities between the rates on the live animals and the products thereof, the rates from those points upon the products being in all cases now lower than upon the live animals.

Trans., p. 33.

XI.

The Contract Made by the Chicago Great Western Railway Company—Continued.

As the result of investigations undertaken by the Interstate Commerce Commission in December, 1901, and January, 1902, it was shown that rates upon packing-house products "were in a most demoralized condition;" and on March 24-25, 1902, restraining orders or temporary injunctions were granted by Judge Grosscup to compel the appellees, in the case at bar, to maintain their published rates.

16 Ann. Rep., I. C. C., 1902, p. 7.

17 Ann. Rep., I. C. C., 1903, p. 65.

The *published* rates in effect from Missouri River points to Chicago on March 24-25, 1902, which appellees were enjoined to maintain were as follows:

Cattle	Hogs	P'k'g-house Prod.	Dressed Meats
23½	23½	23½ local	23½ local
		(a) 18½ pro.	(a) 18½ pro.

(a) Proportional rate applicable on traffic destined to points east of Indiana-Illinois State line.

Rep. & O., Trans., p. 33.

The Commission in its sixteenth annual report, referring to the restraining orders or temporary injunctions granted by Judge Grosscup, said:

"It is asserted, and the Commission believes, that these railways have obeyed the injunction in the main, if not altogether; that published rates have been exacted upon their line, and very generally by other lines in competition with them."

16 Ann. Rep., I. C. C., p. 9.

Because the published rates were being maintained when the Chicago Great Western contract was made, it is claimed on behalf of appellant that there was no *competition in rates* at the time the rate upon the product between the Missouri River and Chicago was reduced by the Chicago Great Western Railway. The discrimination complained of in this case was held by the Commission to be the result of the voluntary and wrongful act of the Chicago Great Western Railway, and therefore unjust.

While it is admitted by appellees that between March 24-25, 1902, and the effective date of the Chicago Great Western contract, August 8, 1902, there was no cutting of rates, it is not admitted by appellees that there was no *competition which affected rates.*

In the case of Tex. & Pac. Ry. v. I. C. C., 162 U. S., pp. 233, 234, this Court held, among other things, that in passing upon questions arising under the third section, "competition that affects rates should be considered."

And the contention of appellees in this case is that notwithstanding published rates were maintained during the period from March 24-25, 1902—the date of the issuance of the restraining orders and temporary injunctions—down to August 8, 1902, the effective date of the Chicago Great Western contract, there existed a material and substantial competition between the rival carriers for the business of the Missouri River packers, which so "affected rates" that on August 8, 1902, the Chicago Great Western Railway was forced to reduce the published rates on packing-house products in order to secure its share of that traffic.

The contention of appellees is that said reduction in the published rates, made effective on August 8, 1902, by the Chicago Great Western Railway Company, was the *result* of the competition *then existing;* that said reduction was neither a wrongful nor voluntary act on the part of the Chicago Great Western Railway, and was therefore not unjust; but was forced upon said company by the fact that its competitors were, under the then existing rates, securing more than their proportion of the competitive traffic; and if the Chicago Great Western Railway had not made said reduction, it would have been forced to abandon a portion of its share of the competitive traffic to its rivals.

XII.

The Competition on the Products is More Severe than the Competition on the Live Cattle and Hogs Between the Missouri River and Chicago.

In its Report and Opinion in the case at bar, the Commission said:

"It often happens that the interests of carriers serving the same territory are in conflict, and under such circumstances, one carrier will sometimes make a rate on a particular kind of traffic that will result in considerable injury to persons and localities interested in another kind of traffic, and also to competing carriers, and, apparently, this is what has happened in the present case.

"Livestock and its products are in sharp competition with each other in the different markets, and some of the defendants are more interested in the former than in the latter, and vice versa. Those whose lines reach Chicago and also run through livestock districts in States west, northwest and southwest of the Missouri River desire the long haul they will obtain if the livestock be shipped to Chicago, while those whose lines terminate at the river, wish the livestock to be slaughtered there, because this will give them an opportunity to participate in hauling the products. And this conflict of interest appears to be largely responsible for the adjustment of rates complained of."

Rep. & O., Trans., pp. 31, 32.

In the opposite diagram, No. 1, there are shown the lines of the appellees which reach Chicago and also run through the

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livestock districts in States west, northwest and southwest of the Missouri River. They naturally desire the long haul which they will obtain if the livestock, instead of stopping at the Missouri River to be slaughtered is carried on to Chicago, viz.:

1. C. & N. W. Ry.
2. C. B. & Q. Ry.
3. C. M. & St. P. Ry.
4. C. R. I. & P. Ry.

In the opposite diagram, No. 2, there are shown the lines of the appellees which reach Chicago, but which terminate at the Missouri River, and therefore do not run through the livestock districts located west, northwest and southwest of that river. They naturally desire that livestock originating west, northwest and southwest of the Missouri River, instead of being carried on to Chicago, shall be slaughtered at said river, so that they may have an opportunity to compete for the carriage of the products, viz.:

1. C. G. W. Ry.
2. C. & A. Ry.
3. I. C. R. R.
4. Wabash R. R.

The lines of appellees which run through the livestock districts west, northwest and southwest of the Missouri River also extend from said river to Chicago, and if they cannot obtain the long haul on the livestock to Chicago, they desire to participate in the carriage of the products from the Missouri River to Chicago; and consequently all of the following railways com-

pete for the carriage of the products between the Missouri River and Chicago; as shown in the opposite diagram No. 3.

1. C. R. I. & P. Ry.
2. C. M. & St. P. Ry.
3. C. B. & Q. Ry.
4. C. & N. W. Ry.
5. C. G. W. Ry.
6. C. & A. Ry.
7. I. C. R. R.
8. Wabash R. R.

As there are twice as many railways competing for the carriage of the products between the Missouri River and Chicago as are competing for the carriage of the livestock west, northwest and southwest of said river, it is natural that the competition for the carriage of the products should be much more severe than the competition for the carriage of the livestock.

Furthermore as the owners of livestock are far more numerous and not so closely organized as the packers, they have been unable to induce the railways to enter into as severe competition on the livestock as the packers have been able to bring about for the carriage of the products; and consequently the rates on the livestock have not been reduced as low as those on the products.

How severe this competition for the products has been in the past is shown by the following extract from the Report and Opinion of the Commission with reference to the conditions which prevailed in 1890 and prior thereto, viz.:

"Aside from the rates in question, carriers generally make rates on livestock somewhat, and in many cases considerably lower than on the products. This was formerly true concerning rates made by carriers operating between the Missouri River and Chicago; but soon after the large packers erected packing-houses at different points on the Missouri River, changes began to take place. The tonnage controlled by the packers was comparatively large, and this fact enabled them to obtain secret concessions from individual carriers. These concessions, being discovered by other interested carriers, were followed by open reductions in the published rates applied on the products. As corresponding reductions were not made in the livestock rates the relation formerly existing between livestock and its products became changed. The rate on packing-house products from Missouri River points to Chicago was finally made 5 cents per 100 pounds less than on live hogs."

Rep. & O., Trans., pp. 31, 32.

On the trial of this cause in the Circuit Court, there was introduced in evidence a letter written by Mr. A. B. Stickney, President of the Chicago Great Western Railway, to his stockholders, of date August 4, 1902. This letter was an explanation by Mr. Stickney, as President of the Chicago Great Western Railway, of the conditions under which he entered into the contracts with the Missouri River packers guaranteeing certain rates between the Missouri River and Chicago upon packing-house products and dressed meats for a period of seven years. How nearly the conditions, as President Stickney saw them, coincided with the conditions as described by the Commission in the extract quoted above, is shown by the following statements contained in said letter, viz.:

"As soon as the injunction (of March, 1902), was granted

by the Court, it was evident to both parties that the old method of making rates must be permanently abandoned—that thereafter lawful rates must be established by printing, filing and publishing the rates which would thereafter be actually collected. But no one seemed to know what uniform rates, under the circumstances, could be collected. No one but the packers themselves knew or could ascertain the average rate they had actually paid during the years in which secret rates had been made in the manner which has been described. The packers went through their records and reported that, although they had sometimes paid more and sometimes less, the average rate which they had actually paid during more than 15 years between the Missouri River and Chicago was a fraction less than 16 cents per hundred weight."

"The railway companies felt that the average rate had been too low, and the packers expressed a willingness to pay a rate 15 per cent higher, provided it could be made uniform and stable. An advance of 15 per cent on the 16 cent rate is 2.4 cents per hundred weight, a considerable percentage of the packers' net profits, and would make the rate which the packers offered 18.4 cents."

Trans., p. 1913.

. . . . . .

"The Chicago Great Western Railway Company was not in favor of the 23 cent rate (Note —. This refers to the rate on packing-house products and dressed meats which was in effect prior to August 8, 1902, and should read '23½ cent rate' instead of '23 cent rate') because the railway companies do not need so large an advance, the packers would not consent to it, and based on 15 years of experience, it was convinced that, if

attempted, it would induce constant cutting of rates by the lawful method of publishing tariffs, instead of the previous unlawful method of secret rebates, which, in the end, would probably result in even lower rates than the 16 cent rates which have heretofore obtained."

Trans., pp. 1914, 1915.

. . . . . .

"The rates which the Chicago Great Western Company has agreed to put into effect on its line are 20 cents from the Missouri River to Chicago, which is 25 per cent higher than the average of the last 15 years, and 18½ cents on such products passing through Chicago, which is 15 per cent higher than the average for the last 15 years. The bulk of the business carries the 20 cent rate, because the bulk of the products of the Missouri River points is shipped to Chicago for further manipulation and to be routed to suit the various markets of consumption to which they are reshipped."

Trans., p. 1915.

As will be hereinafter shown, Kansas City and St. Joseph were the only two of the Missouri River markets which were reached by the Chicago Great Western Railway on August 8, 1902, when the contract between that company and the packers was made; and between Kansas City and St. Joseph on the one hand, and Chicago on the other, the Chicago Great Western Railway labored under the physical disadvantage of having a longer line than any of its competitors, and of being materially longer than the shortest line.

Furthermore its present line to Omaha was then under construction, and as stated in President Stickney's letter (Trans.,

p. 1916), the contracts which he made, guaranteed a large volume of gross revenue for said Omaha extension, when completed.

The competition between all of the competing lines between the Missouri River and Chicago for the traffic in packing-house products and dressed meats was therefore severe, and of all said competing lines, the disadvantages of the Chicago Great Western were greatest. Its action can only be said to be "voluntary" in the sense that as between taking active steps to secure its proportion of the business, and supinely allowing all of the business to go to its rivals, it elected to secure its proportion.

But as hereinbefore stated, the contention of appellees is that said reduction, made effective on August 8, 1902, by the Chicago Great Western Railway Company, was the *result* of the competition *then existing;* that said reduction was neither voluntary nor wrongful on the part of the Chicago Great Western Railway Company, and therefore did not create unjust discrimination; but was forced upon said company by the fact that its competitors were, under the then existing rates, securing more than their proportion of the competitive traffic; and if the Chicago Great Western had not made said reduction, it would have been forced to abandon a portion of its share of the competitive traffic to its rivals.

To this point, the facts have been set forth solely with a view of predicating upon them the argument which is to follow, namely, that even if the effect of the Chicago Great Western contract was to disturb the relation of rates existing immediately previous to August 8, 1902, on the live animals and the products, to the advantage of Missouri River cities and to the det-

riment of Chicago, said company was justified in its action because of the compelling competition then existing, and is not, therefore, in legal contemplation, guilty of unjust discrimination against the traffic in livestock.

This statement of facts would, however, be incomplete, were not attention directed to an erroneous assumption indulged by the Commission.

In its Report and Opinion, Trans., p. 32, the Commission states that soon after the packing-houses on the Missouri River were erected, concessions began to be made in the rates on packing-house products, and that the rate on packing-house products from the Missouri River to Chicago was finally made 5 cents per hundred pounds less than the rate on live hogs, and that this relation continued until January 1, 1891.

Trans., p. 32.

As the result of investigations undertaken by the Interstate Commerce Commission in December, 1901, and January, 1902, it was shown that the rates upon packing-house products "were in a most demoralized condition," and on March 24, 25, 1902, restraining orders or temporary injunctions were granted by Judge Grosscup to compel the appellees to maintain their published rates.

16 Ann. Rep., I. C. C., 1902, p. 7.

17 Ann. Rep., I. C. C., 1903, p. 65.

In the letter written by President Stickney to his stockholders, Trans., p. 1913, it is stated:

"No one but the packers themselves knew or could ascertain the average rate they had actually paid during the years in

which secret rates had been made in the manner which has been described. The packers went through their records and reported that, although they had sometimes paid more and sometimes less, the average rate which they had actually paid during more than 15 years between the Missouri River and Chicago was a fraction less than 16 cents per hundred weight."

Trans., p. 1913.

Notwithstanding the Commission knew that prior to 1891, the rates on the product were 5 cents less than the rate on the live hogs; notwithstanding the rates in 1901 and 1902 were so demoralized that injunctions had to be resorted to; and notwithstanding the average rate which was actually paid by the packers during more than 15 years, between the Missouri River and Chicago, was a fraction less than 16 cents per hundred weight, the Commission in its Report and Opinion erroneously assumes that Mr. Stickney by his contract effective August 8, 1902, inaugurated a radical departure from previous conditions, and that such departure placed Chicago at a disadvantage which she had never before experienced. In this connection, the Commission says:

"The large interests affected, the immense amount of money invested, the many livestock markets and packing centers *that have been built up and maintained under the former relation of rates, and the injury that will result if the change in that relation is permitted to continue*, amply warrant the conclusion that the discrimination in question is not justified by the desire of the Chicago Great Western Company to benefit its stockholders by increasing its business."

Rep. & C., Trans., p. 46.

If it be true that the average rate paid for more than 15

years between the Missouri River and Chicago on packing-house products was a fraction less than 16 cents per hundred weight, as reported by the packers, that must have been the rate on which the Missouri River markets were built up, instead of the disregarded published rates which were almost 50 per cent higher. The question therefore arises, how did Mr. Stickney hurt Chicago by establishing a local rate of 20 cents and a proportional rate of 18½ cents on packing-house products for a period of seven years between the Missouri River and Chicago, both of which rates are higher than 16 cents? The answer is that if Mr. Stickney altered Chicago's permanent situation at all with respect to the Missouri River markets, he altered it to Chicago's advantage, in that he established upon the products rates which were higher than previous rates, and which it was practicable to maintain, while the 23½ cent rate observed in obedience to restraining orders would have obliterated the packing-house business at the Missouri River and could not therefore have been maintained as the published rate for any considerable time. As said by Mr. Stickney in the letter to his stockholders:

"With such a narrow margin of profit (i. e., 1½ per cent), it is easy to see that freight rates are an important factor in the packing-house business. It is estimated that the annual freight bills amount to three times the annual profits. Hence, any increase in the rates which have been established for years, to which the whole business has been adjusted, is a serious matter, and when the increase is as much as 50 per cent at one jump (i. e., from a fraction less than 16 cents to the 23½ cent published rate), *it obliterates the entire margin of profits* for the time being, and until business is readjusted, which certainly cannot be done in a day or short time."

Trans., pp. 1911, 1912.

While therefore Mr. Stickney entered into his contract with the packers at a time when the rates of 23½ cents on both livestock and the product were being maintained by all lines between the Missouri River and Chicago, the practical effect of his action was to perpetuate in the form of a seven-year contract the approximate result of more than 15 years of severely competitive conditions on the part of all the carriers between the Missouri River and Chicago; and, as before stated, he was compelled to compete in this irrevocable manner for the purpose of securing his share of the business; being at the physical disadvantage of having the longest line between Kansas City and St. Joseph on the one hand and Chicago on the other, and under the disadvantage at Omaha of being a newly constructed line with no established patronage.

The present relation of rates on livestock and the product is therefore justified not only upon the ground relied upon by appellees that so far as the Chicago Great Western Railway is concerned, it was forced by compelling competition to lower the published rate between the Missouri River and Chicago upon the products of livestock for the purpose of securing its share of the traffic; but upon the further ground that the actual published rates upon the product which the Chicago Great Western Railway established, approximate the result of fifteen years of that material and substantial competition between rail carriers subject to the act, which it has been held by this Court may be taken into consideration in passing upon questions arising under the third section.

Counsel for appellant contended in the Circuit Court, with no authority in support of his argument, that the competition which existed prior to March 24-25, 1902 (the date when the injunctions were issued), inasmuch as it consisted of secretly and illegally cutting rates, could not be relied upon by appellees.

It is not conceded that a railroad company cannot rely upon actually existing competition when it is such as to affect rates, merely because it may have been conducted by secretly and illegally cutting rates. It is needless, however, to discuss the proposition, because appellees rest their defense upon the competition which existed between March 24-25, 1902, when the injunctions were granted and August 8, 1902, when the Chicago Great Western contract took effect; and during that period there is no pretense that the competition was in any respect illegal.

XIII.

The Disadvantages Under which the Chicago Great Western Railway Labored as a Competitor for Traffic Between the Missouri River and Chicago.

As stated in Chapter XII. Kansas City and St. Joseph were the only two of the Missouri River markets which were reached by the Chicago Great Western Railway at the time the contract between that company and the packers was made; and between Kansas City and St. Joseph on the one hand, and Chicago on the other, the Chicago Great Western Railway labored under the physical disadvantage of having a longer line than any of its competitors, and of being materially longer than the shortest line.

Furthermore its present line to Omaha was then under construction, and as stated in President Stickney's letter (Trans., p. 1916), the contracts which he made guaranteed a large volume of gross revenue for said Omaha extension when completed.

Reference was also made by President Stickney in his letter to the then proposed extension of the Chicago Great Western to Sioux City and the large volume of gross revenue which would be secured for said Sioux City extension when completed (Trans., p. 1916). However the plan of extending the lines of the Chicago Great Western Railway to Sioux City was not carried into execution.

The opposite diagram No. 4, shows graphically the disadvantage of the Chicago Great Western Railway, as a competitor for the traffic between Kansas City and St. Joseph on the one hand, and Chicago on the other.

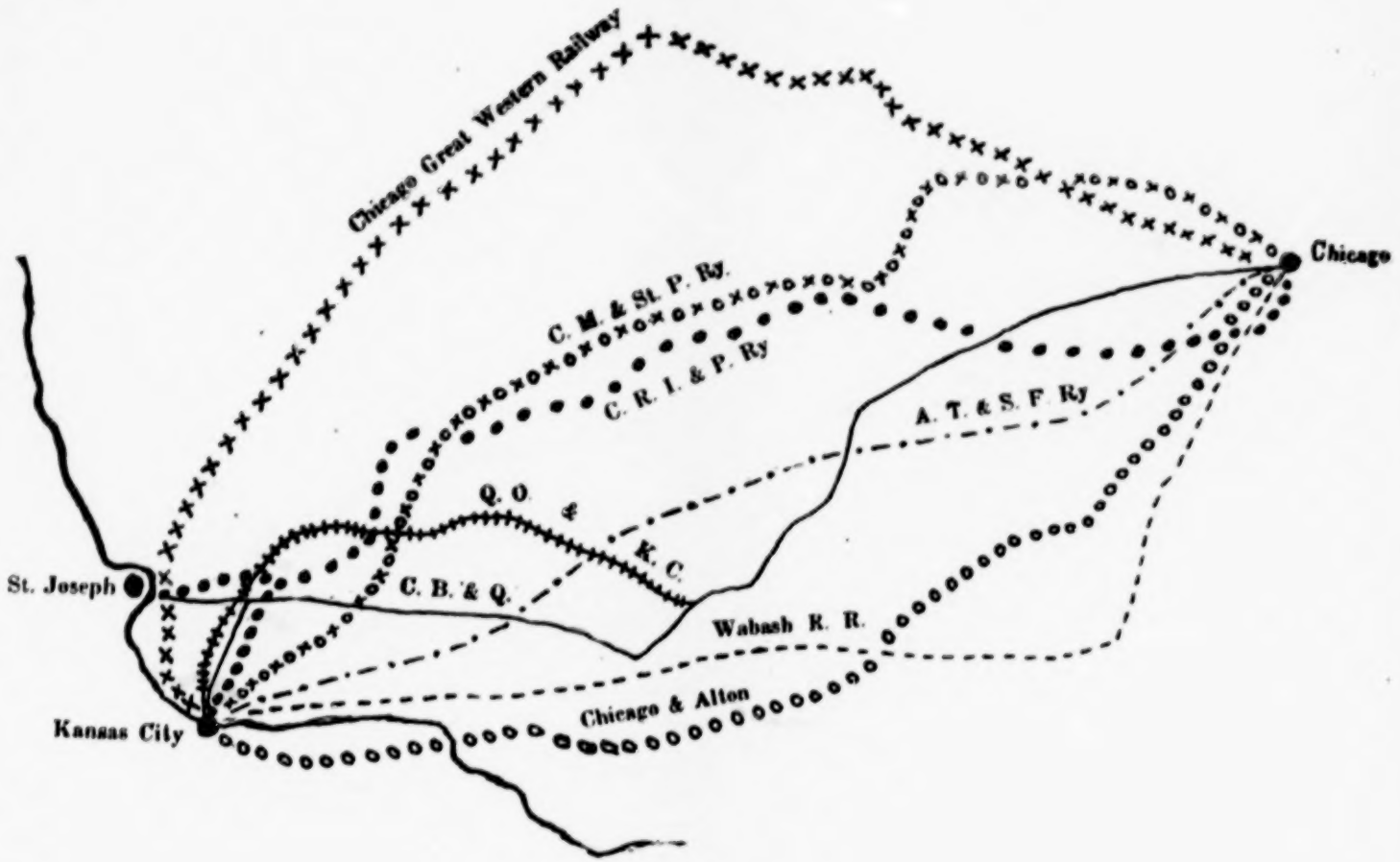
The following table sets forth the various lines competing between Kansas City and Chicago in order of their length, viz.:

A. T. & S. F. Ry	458 miles.
C. B. & Q. R. R.	488 miles.
Chicago & Alton R. R.	488 miles.
C. M. & St. P. Ry	498 miles.
Wabash R. R.	512 miles.
Q. O. & K. C. R. R.	513 miles.
C. R. I. & P. Ry	517 miles.
Chicago Great Western Railway	597 miles.

Official Guide of the Railways and Steam Navigation Lines of the United States, Porto Rico, Canada, Mexico and Cuba, September, 1906, pp. 113, 622, 641, 699, 713, 759, 760, 774, 788, 792.

It will be noted that the disadvantage of the Chicago Great Western Railway, as compared with the A. T. & S. F. Ry., which has the shortest line, is 139 miles; and that its disadvantage as compared with the longest of its competitors, the C. R. I. & P. Ry., is 80 miles.

DIAGRAM NO. 4.


Chicago Great Western Railway
C. M. & St. P. Ry.
C. R. I. & P. Ry
A. T. & S. F. Ry
Chicago
Q. O. & K. C.
St. Joseph
C. B. & Q.
Wabash R. R.
Chicago & Alton
Kansas City

The following table sets forth the various lines competing between St. Joseph and Chicago, in order of their length:

C. B. & Q. R. R.....470 miles.
A. T. & S. F. Ry.....489 miles.
C. R. I. & P. Ry.....498 miles.
Chicago Great Western Railway.....529 miles.

Official Guide of the Railways and Steam Navigation Lines of the United States, Porto Rico, Canada, Mexico and Cuba, September, 1906, pp. 713, 759, 774, 792.

It will be noted that the disadvantage of the Chicago Great Western Railway, as compared with the C. B. & Q. R. R., which has the shortest line, is 59 miles; and that its disadvantage as compared with the longest of its competitors, the C. R. I. & P. Ry., is 31 miles.

As to the traffic from Omaha to Chicago, the Chicago Great Western Railway when completed labored under no disadvantage with respect to distance that could be considered material; but as hereinbefore stated, it labored under the perhaps more serious disadvantage of being a new line with the necessity upon it of establishing a patronage.

XIV.

The Question of "Cost of Carriage" in its Bearing Upon the Relative Rates which Should be Established Upon Livestock and the Products Thereof.

The many references in the Report and Opinion of the Commission and the amount of testimony in the record on behalf of both appellant and appellees as to the relative cost of car-

riage of livestock and the products thereof are apt to create a passing impression that the question of the "cost of carriage" may have been considered the *determining factor* in arriving at the proper relative rate adjustment; whereas, it was but one of the elements considered, and it is not considered controlling by either the Commission or the railroads.

The question of the relative cost of carriage of livestock and its products was one of the issues raised by the complainant before the Interstate Commerce Commission, and though some evidence was adduced before the Commission to show that the cost of carrying livestock was greater than the cost of carrying the product, the Commission was not convinced by it, and in effect found that the cost of carrying the product was greater than the cost of carrying the livestock.

In the Circuit Court, appellees introduced further testimony to the effect that the cost of carrying the livestock was greater than the cost of carrying the product, and the Circuit Court found as a fact that this was true.

Trans., p. 177.

In the early part of its Report and Opinion in this case, the Commission, referring to a previous case involving relative rates on cattle and hogs and their products, said:

"The subject matter of the complaint in the Squire & Co. case supra was the rates exacted by the defendants for transporting cattle and hogs and their products from Chicago to Boston and other eastern points. After stating that livestock and its products were bought and sold in competition with each other in the markets and relating the circumstances surround-

ing their transportation, the Commission held that the different rates should be based upon *cost of carriage*, but as the record did not contain data from which such cost could be ascertained no order was made."

Trans., p. 32.

But in the present case, the Commission modified its holding in the Squire case to the extent that in reaching its conclusion, it did not rely *entirely* upon the "cost of carriage," but considered it as one of the elements entering into a determination as to what the relative adjustment of rates should be. In its Report and Opinion in this case, the Commission said:

"Although we think cost of transportation is a *very important element*, we do not consider it a controlling element in this case."

Trans., p. 44.

If it be true, as in effect found by the Commission, that the cost of transporting the product is greater than the cost of transporting the livestock, then the result of the application of the single factor of "cost of transportation," or "cost of carriage," as a test would be adverse to the present adjustment, whereby the rate on the product is made lower than the rate upon the live animal.

Appellees have shown by a preponderance of the evidence taken in the Circuit Court, and that Court has found that the cost of transporting the product is less than the cost of transporting the livestock.

Therefore tested by the single factor of the "cost of trans-

portation," or "cost of carriage," the present adjustment is proper, under the finding of the Circuit Court.

When we consider, however, that the main defense of appellees is that the present lower rates upon the products than upon the livestock are justified because of compelling competition, and that the defense could rest upon that ground alone; and when we further consider that competition might, under some circumstances, have resulted in equal rates on the animals and the products, while under other circumstances it might have resulted in lower rates upon the animals than upon the products, it is apparent that the fact that the theoretical rate-making would have produced a result substantially similar to that which competition for the carriage of the products has actually produced in this case, becomes a coincidence; and being a coincidence in their favor, appellees are entitled to avail and have availed themselves of the benefit of it.

To this extent only the "cost of transportation," or "cost of carriage," is of consequence from the standpoint of the appellees, in sustaining the present relative adjustment.

XV.

The Rates on Livestock to Chicago from Points Intermediate Between the Missouri River and Chicago.

The fifth paragraph of the complaint of the Chicago Livestock Exchange before the Commission in substance alleged that the rates charged for the transportation of the *product of livestock* from Kansas City, South St Joseph, South Omaha, Sioux City and South St. Paul to Chicago and points east thereof, and that the

rates charged for the transportation of *livestock* from said markets and *intermediate points* in Iowa, Missouri, Wisconsin and Minnesota to Chicago subjected the city of Chicago and the complainant to undue and unreasonable prejudice and disadvantage.

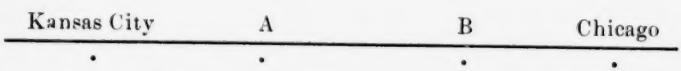
Ex. "A" to O. Bill, Trans., p. 10.

As regards shipments originating at any one of the Missouri River markets, such as Kansas City, it will be noted from the above that the alleged undue and unreasonable prejudice and disadvantage is predicated of the rate on the *product of livestock* from Kansas City to Chicago, as compared with the rate on the *livestock* from Kansas City to Chicago; that in each case the rate applies from Kansas City to Chicago, and that the rates compared therefore apply between the same points. Hence it is proper in considering the rates from the Missouri River to Chicago on the live animal and the product thereof to speak of them as "relative rates," since that is the term generally used where the matter under consideration is the relation of rates between different but kindred kinds of traffic between the same points of origin and destination.

The majority of "intermediate points" lying between the Missouri River and Chicago are local stations *at which no packing-houses are located;* and from which, consequently, no shipments of packing-house products are made. From such "intermediate stations" at which there are no packing-houses, there are no rates to which this litigation relates except the rates upon the live animals, and therefore no question of "relative rates" from such intermediate stations to Chicago arises.

The situation as to the rates from "intermediate stations" may be thus illustrated:

Diagram No. 5.



(Rate on product, 20 cts. per 100 lbs., Kansas City to Chicago.)

We will suppose "B" to be an "intermediate local station" near Chicago and that the rate upon the live animal from "B" to Chicago is so low that it is much less than the local rate on the live animal from "B" to Kansas City, plus the rate of 20 cents on the dressed product of the animal from Kansas City to Chicago. It is quite evident that in the case supposed it would be to the interest of shippers at "B" to have their shipments move to Chicago direct for slaughter, and not to Kansas City for slaughter and subsequent shipment of the product from Kansas City to Chicago. The existence of the 20-cent rate on the dressed products from Kansas City to Chicago therefore creates no prejudice whatever against Chicago, so far as shipments of animals from "B" to Chicago are concerned. We may therefore eliminate from consideration "B" and all similarly situated stations.

We will suppose "A" to be an "intermediate local station" more distant from Chicago, and that the rate upon the live animal direct from "A" to Chicago is sufficiently high to make it cheaper for the shipper at "A" to ship the live animal at the local rate in effect from "A" to Kansas City, and then ship the product of the animal from Kansas City to Chicago upon the rate of 20 cents per hundred pounds. In this instance a prejudice would exist against Chicago by reason of the 20-cent rate on the product; and the sole question is whether such prejudice is, in legal contemplation, undue or unreasonable. There are certain local stations on the lines of the various appellees immediately east of the Missouri River situated similarly to "A," and with these we may be said to be concerned.

It is proper to here explain that even the former rate of 23½ cents on the product, which existed prior to the Chicago Great Western contract, made it more advantageous to ship from near-by local stations east of the Missouri River, such as "A," into Kansas City and other Missouri River markets for slaughter; and that, speaking generally, with reference to the majority of such stations, the effect of the establishment of the rate of 20 cents was to increase the amount, in cents, of an advantage already existing. In other words, there existed under the previous rate of 23½ cents on the product from the Missouri River to Chicago an *absolute advantage* in shipping from the majority of such near-by stations into the Missouri River market for slaughter; and there is no showing made in the record, on behalf of appellant, as to whether the mere increasing of the advantage which was already absolute had any effect upon the movement from such near-by intermediate stations to the Missouri River markets and Chicago respectively.

Of course, at "intermediate points," *where packing-houses are located*, the question of "relative rates" upon the animals and the products thereof from such intermediate points to Chicago arises in the same manner that it arises at points located on the Missouri River, for the principles hereinbefore explained govern at such "intermediate points" quite as much as at the Missouri River. Such points, however, are few in number, nor is their business of magnitude.

Reference is made in the sixth paragraph of the complaint before the Commission to the decision of the Commission in the case of Board of Trade of the City of Chicago v. Chicago & Alton Railroad Co. et al., with regard to "*relative rates* on live hogs and hog product from Missouri River points and *intermediate points* in Iowa and Missouri to Chicago," from which it might be

inferred that the Commission had rendered a decision with respect to "relative rates" from "intermediate points" in general. Trans., p. 10.

It will be seen, however, by reference to said decision, 3 I C. Rep., p. 237, that the "intermediate points" involved in that case were packing-house points, from which points rates to Chicago were published both on the live animals and on the product; and that therefore the term "relative rates" was properly used with respect to such "intermediate points."

Aside therefore from the question of the reasonableness of the rates from "intermediate points" under the first section, the only question involved in this case as to "intermediate points," *at which there are no packing-houses*, is whether, taking into consideration the rates from such "intermediate points" upon the live animals shipped direct to Chicago, the rate of 20 cents on the product from the Missouri River to Chicago, in so far as it may have the effect of diverting the shipment of the animal for slaughter from Chicago to the Missouri River markets, creates an undue prejudice or disadvantage against Chicago, under Section 3 of the Act to Regulate Commerce.

The defense of the appellees is that the rates upon livestock from such "intermediate points" to Chicago are reasonable charges for the service performed; that the rate of 20 cents on the product from the Missouri River to Chicago is forced by competition; that it pays something more than the cost of the movement of the product traffic, and therefore does not entail a loss upon the carrier which must be recouped on other traffic.

ARGUMENT.

XVI.

The Rates in Controversy Are Not Violative of the First Section of the Act to Regulate Commerce.

Appellees concede that the rates upon live cattle and hogs are higher than the rates upon the dressed or prepared products of cattle and hogs; but they deny that the rates upon live cattle and hogs are unreasonably high in and of themselves; on the contrary they aver that those rates, as well as the rates upon the dressed or prepared products of cattle and hogs, are unreasonably low.

The first section of the Act to Regulate Commerce enacts that all charges, etc., "shall be reasonable and just."

24 U. S. Stat. at Large, p. 279.

The words "reasonable and just" as used in the first section, necessarily mean rates that are reasonable and just *per se*, or *in and of themselves;* as contradistinguished from the rates which are referred to in Sections 2, 3, and 4 of the act.

The phrase "just and reasonable *in and of themselves*" is used by this Court in its opinion in the case of E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S., pp. 18, 19.

With reference to the first section of the act, the Commission, in its report and opinion, said:

"Complainant also introduced considerable evidence tending to show that the rates exacted by defendant for transporting live-

stock to Chicago from points in the States of Iowa, Missouri. Wisconsin and Minnesota are unreasonable *per se*, but the testimony upon that point is unsatisfactory and we do not feel justified in making a finding in relation thereto."

See Rep. & O., Ex. P to O. Bill, Trans., p. 41.

A few shippers of livestock testified in the Circuit Court that, the rates upon live cattle and hogs are, in their opinion, unreasonably high; but none of the railroad officers who were examined either before the Commission, or in the Circuit Court, testified that said rates are unreasonably high in and of themselves.

There was some testimony given by certain railroad officers which tended to show that the existing rates upon live cattle and hogs are too high *as compared with the rates upon the dressed or prepared products of cattle and hogs;* but that testimony, in fact amounted to little more than a theory as to what would be the proper relation of rates, if the cost of transportation were the sole factor in the determination of the question and other factors were left out of view. Even as a theory, however, the Circuit Court was of opinion that the conclusions reached by those witnesses were incorrectly predicated. Upon this point, the Circuit Court said:

"On the part of the Commission, Edward P. Ripley and his statistician, James Peabody, made comparative statements of the net results from the carriage of these different commodities, upon basis of average cost of all business, per gross ton mile, which is concurred in by the witness Tomlinson, who made further statements, which figures show that it is more expensive to the company to carry fresh meats and packing-house products than livestock; *but they did not consider all the burdens peculiar to livestock.*"

Trans., p. 177.

None of the witnesses testified that the rates upon live cattle and hogs, considered independently of the rates upon the dressed or prepared products of cattle and hogs, are unreasonably high.

The testimony upon this point in the Circuit Court, with respect to the rates on cattle and hogs from Missouri River points to Chicago, was, in substance, as follows:

The rates are reasonable in view of the service performed and the conditions under which they are made.
Crosby, Trans., p. 238.

They are the result of competition between carriers.
Crosby, Trans., p. 238.

They are the result of competition between markets.
Crosby, Trans., p. 238.
Hiland, Trans., p. 506.

The rates in controversy on cattle and hogs are too low.
Keepers, Trans., p. 399.
Tittemore, Trans., p. 569.
Gower, Trans., p. 720.

And but for competition would be higher than they are.
Keepers, Trans., p. 399.
Tittemore, Trans., p. 572.
Gower, Trans., p. 720.

With respect to the reasonableness of the rates on cattle and hogs from "intermediate points" to Chicago, the testimony in the Circuit Court was, in substance, as follows:

The rates upon cattle and hogs from intermediate points be-

tween the Missouri River and Chicago to Chicago are fixed by competition.

Keepers, Trans., p. 415.
McCullough, Trans., p. 953.

The local traffic is competitive owing to the proximity of competing lines of railway.

Tittemore, Trans., p. 579.

The distance from any local station in Iowa to the nearest competitive point does not exceed 15 or 20 miles.

Keepers, Trans., p. 415.

There has been no complaint from shippers of cattle in Iowa or elsewhere west of Chicago as to the reasonableness of rates or the relation between the rates on live stock and the product.

Keepers, Trans., p. 408.

There are thousands of people shipping livestock over the C. & N. W. Railway, without a complaint on a single car as to rates.

McCullough, Trans , p. 956.

The present rates on cattle and hogs from points in Iowa to Chicago are in some instances not equal to 50 per cent of the rates which were charged within the past 35 or 40 years.

Baird, Exhibits Nos. 1, 2 and 3, Trans., pp. 898, 899.
Calkins, Trans., p. 902.

The rates on livestock do not bear a just proportion in the contribution to the total revenue derived from the transportation of freight.

Hiland, Trans., p. 506.
Crosby, Trans., p. 243.

And Messrs. Ripley and Peabody, who testified generally as to the rates on behalf of appellant, stated that the rates upon live cattle and hogs do not pay their proportion of the total operating cost, even though interest and taxes be excluded from such cost.

Ripley, Trans., pp. 1104, 1105, 1106.
Exhibits "A," "B" and "C."
Peabody, Trans., pp. 1222, 1223.

XVII.

Under the First Section of the Act, the Burden of Proof Rests Upon the Appellant.

In the case of Harding v. C. St. P. M. & O. R. Co., 1 I. C. Rep., p. 375, and in the case of Brewer & Hanleiter v. L. & N. R. R. Co., 7 I. C. Rep., p. 234, the Commission held that on a petition charging the exaction of *unreasonable* rates, the burden of proof is on the petitioner to sustain the charges by evidence which shows with reasonable certainty that they are in substance true.

The Commi-sion in its Report and Opinion in the case at bar in effect found that the Chicago Live Stock Exchange had failed to show in that tribunal that the rates upon live cattle and hogs are unreasonable *per se;* and I submit that the testimony taken before the Commission and in the Circuit Court, so far from showing that said rates are unreasonably high, shows that they are, in fact, unreasonably low.

XVIII.

The Order of the Commission Concedes, in Effect, that the Rates Upon Live Cattle and Hogs are Reasonably Low in and of Themselves.

The order of the Commission prohibits appellees from charging higher rates upon live cattle and hogs than the rates which they may contemporaneously charge upon the dressed or prepared products of cattle and hogs.

Appellant concedes that if the appellees can increase the rates upon the dressed or prepared products of cattle and hogs so as to make them as high as the present rates upon live cattle and hogs, the appellees may lawfully continue to charge the present rates upon live cattle and hogs; and that to do so will not violate said order.

See Exhibit Q to O. Bill, Trans., pp. 48, 49.

In the case of E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S., p. 23, this Court said: "A decree which ordered the carrier to desist from charging a greater compensation for the lesser than for the longer haul, would be in no way responsive to the conclusion that the rate for a lesser distance was unreasonable in and of itself. Such a decree *would in effect authorize the carrier to continue to charge at its election a rate which was in itself unreasonable to the shorter point.*"

See also 190 U. S., p. 284, I. C. C. v. L. & N. R. R. Co.

To authorize the appellees to continue to charge the present rates upon live cattle and live hogs provided the appellees secure an increase in the rates upon the dressed or prepared products of cattle and hogs is inconsistent with the theory that the present rates upon live cattle and hogs are unjust or unreasonable *in and of themselves.*

XIX.

Appellees' Rates Upon Live Cattle and Hogs are as Low as the Rates Charged by Other Railroads in Other Parts of the United States for Similar Distances.

Mr. O. P. Anderson and other witnesses compiled elaborate comparisons between the rates charged by appellees upon live cattle and live hogs, with the rates charged upon the same commodities for similar distances, by other railroads, in other sections of the United States, and the result of such comparisons is very favorable to the appellees.

Anderson's Test., Trans., p. 915 et seq., and Exhibit No. 1 to Anderson's Test.

Keeper's Test., Trans., p. 407, and Ex. No. 3¼ to Keeper's Test.

Gorman Test., Trans., pp. 969–972, and Ex. No. 1 to Gorman's Test.

In the Danville case, Judge McDowell, in considering the testimony as to the reasonableness of the Danville rates, was led to the conclusion "that the most satisfactory test to be applied in this case (*i. e.*, the Danville case) is to compare the Danville rates with those in force at numerous other cities and towns, in the South, where the circumstances are, as nearly as may be, similar to those at Danville. This has been done by numerous witnesses for the defense. The rates to and from a great number of towns and cities in the South—some larger and some smaller, some of more, and some of less commercial importance, than Danville; some inland and some having water as well as rail transportation; some being on only one railroad and some having more than one road—have been shown. The result of compari-

son between these rates and the Danville rates is the conclusion that the latter compare favorably with the former."

117 Fed. Rep., p. 745, I. C. C. v. Southern Ry. Co.; affirmed by the Court of Appeals, 122 Fed. Rep., p. 800.

This Court quotes approvingly the following language:

"The law makes it the duty of every common carrier to receive and carry all goods, . . . and authorizes a reasonable reward to be charged for the service. The amount to be paid is, in a measure, subject to the agreement of the parties; but when the amount is not fixed by contract, the law implies that the carrier shall have a reasonable reward, *which is to be ascertained by the amount commonly or customarily paid for other like service.*"

183 U. S., p. 98, Cotting v. Kansas C. Stockyards Company.

XX.

The Second Section of the Act to Regulate Commerce Has No Application to This Case

The second section of the Act to Regulate Commerce enacts:

"That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them *a like and contemporaneous service* in the transportation of *a like kind of traffic*, under substantially similar circumstances and conditions, such common

carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

24 U. S. Stat. at Large, pp. 379, 380.

The second section was construed by this Court, in Wight v. U. S., 167 U. S., pp. 516, 518. In that case a railroad company charged one shipper of beer a higher rate than another shipper of beer for carriage from the same place of shipment (Cincinnati), to the same place of destination (Pittsburg). The Court said that it was the purpose of *the second section* to enforce equality between shippers, and to prohibit "any rebate or other device by which two shippers, shipping over the same line, *the same distance*, under the same circumstances of carriage, are compelled to pay different prices therefor."

It will be noticed that in order for the second section to apply there must be "a like service" and "a like kind of traffic." In the Wight case, the railroad company not only transported the freight "over the same line," and for "the same distance," but it also transported for each of the shippers "a like kind of traffic," viz., beer.

In the case at bar there is no pretense that the appellees charge one shipper of live cattle and hogs any more or less than they charge any other shipper of live cattle and hogs over the same line and for the same distance.

Neither is there any pretense that appellees charge one shipper of the dressed or prepared products of cattle and hogs any more or less than they charge any other shipper of dressed or prepared products of cattle and hogs, over the same line for the same distance.

The only complaint is that appellees charge a shipper of live cattle and hogs higher rates than they charge a shipper of the

dressed or prepared products of cattle and hogs; and a complete answer to that complaint is that the traffic in live cattle and hogs is not "like" the traffic in dressed or prepared products of cattle and hogs; nor is the service rendered in the transportation of live cattle and hogs "like" the service rendered in the transportation of the dressed or prepared products of cattle and hogs. It might as well be said that the traffic and the service rendered in transporting a live passenger in a sleeping car is "like" the traffic, and the service rendered, in transporting a corpse in a baggage car.

I am not now referring to the question as to which of those services cost most to the carrier, or is of most value to the shipper. My only contention, at this point, is that without regard to either cost, or value, the service and the traffic in the one case is not "like" the service and traffic in the other.

The service rendered in the transportation of live cattle and hogs requires the use of open and well ventilated cars; it requires that persons accompany the cattle and hogs to take care of them en route; it requires that the cattle and hogs be fed and watered and rested en route; it requires that stockyards and stockpens be provided for their reception at point of shipment, and for their delivery at the point of destination; and it requires prompt delivery to meet special market days, and hours.

The service rendered in the transportation of the dressed or prepared products of cattle and hogs requires the use of refrigerator cars. It requires that ice and salt be carried in order to maintain a proper degree of refrigeration; but it does not require that persons accompany the products to take care of them en route; nor does it require that the products be fed, or watered, or rested en route; nor does it require that stockyards or stockpens, or other depots be provided either for the reception of the products at point of shipment or for the delivery of the products at point of destination (the uncontradicted evidence being that the products are loaded by the shippers at their own

packing-houses, and are unloaded by the shippers or consignees at the point of destination, into houses not furnished by the carrier; nor does the service require prompt delivery to meet special market days and hours.)

As, then, there is neither a "like service" nor "a like kind of traffic" the second section has no application.

XXI.

The Third Section of the Act to Regulate Commerce Prohibits Only Such Preferences as Are Unjust or Unreasonable

The third section of the Act to Regulate Commerce was modeled upon the second section of the English Railway and Canal Traffic Act of 1854, and upon Section 11 of the English Railway and Canal Traffic Act of 1873. For the convenience of the Court, I print in parallel columns so much of said sections as are material for the present purpose:

Undue Preference Clause.	Undue Preference Clause.
English Acts	*American Act*
Sec. 2. Railway and Canal Traffic Act, 1854.—1 *Nev. & Mac., p.* 2.	Sec. 3. Act to Regulate Commerce.
Sec. 11. Railway and Canal Traffic Act, 1873.—1 *Nev & Mac. p.* 11. . . . . And no such company shall make or give any *undue* or *unreasonable* preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any *undue* or *unreasonable* prejudice or disadvantage in any respect whatsoever. —1 *Nev. & Mac., pp.* 2–11.	That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any *undue or unreasonable* preference or advantage to any particular person, company, *firm, corporation,* or *locality,* or any *particular description of traffic,* in any respect whatsoever, or to subject any particular person, company, *firm, corporation,* or *locality,* or any *particular description of traffic* to any *undue* or *unreasonable* prejudice or disadvantage in any respect whatsoever.—24 *U. S. Stat. at Large, p.* 380.

The Court will notice that the only difference between the English acts and the third section of the American act is that the latter uses the words "firm, corporation or locality," which are not expressly specified in the English acts.

In Section 1 of the U. S. Revised Statutes it is provided that in determining the meaning of any act of Congress passed subsequent to February 25, 1871, "words importing the singular number may extend and be applied to several persons or things;" and the word "'persons' may extend and be applied to partnerships and corporations."

As the words "firm" and "corporation" used in the third section of the American act are, by statutory definition, included in the word "person," their express specification in the third section adds nothing to its legal effect.

And as it is absolutely impossible to conceive of a prejudice to a "locality," as separate and distinct from the "persons" who reside at such "locality," that word also is mere tautology.

It is also absolutely impossible to conceive of a prejudice to "any particular description of traffic" as separate and distinct from the "persons" who engage in such traffic.

In the case of Interstate Commerce Commission v. Baltimore & Ohio Railroad Company, Mr. Justice Brown, speaking for this Court, said:

"It is not all discriminations or preferences that fall within the inhibition of the statute; *only such as are unjust or unreasonable.*" . . . "Indeed, the possibility of just discriminations and reasonable preferences is recognized by these sections, in declaring what shall be deemed unjust."

145 U. S., pp. 276, 277, I. C. C. v. B. & O. R. R.

In the case of Interstate Commerce Commission v. Alabama Midland Railway Co., Judge Bruce said:

"The words 'any undue or unreasonable preference or advantage' plainly imply that every preference or advantage is not condemned, *but such, only, as are undue or unreasonable.*"

69 Fed. Rep., pp. 231, 232.

In the case of the Commercial Club of Omaha v. Chicago & N. R. Co., decided November 18, 1897, the Commission, speaking through Commissioner Knapp, said:

"It must be remembered that not every inequality in rates constitutes a violation of the law. *Discrimination is forbidden only when it is unjust. Preferences and prejudices are not prohibited unless they are undue.* The language of the statute implies that there may be discriminations which are not unjust and preferences which are not undue."

7 I. C. Rep., p. 404.

It goes without saying that where lower rates are charged to one "particular description of traffic" than to another "like kind of traffic" and those traffics are competitors in a common territory, such disparity of rates constitutes a preference in favor of the one and a prejudice or discrimination as against the other.

But the question still remains whether the preference, or prejudice, or discrimination, is "*undue or unjust.*"

XXII.

The Cases Decided by this Court in which the Third Section was Involved.

In the case of the T. & P. Ry. v. I. C. C., 162 U. S., p. 127 (known as the Import Case), it appeared that the Texas & Pacific Railway Company and the Southern Pacific Company, in connection with certain steamships, participated in through rates from Liverpool to San Francisco via New Orleans; and that they accepted as their proportion or share of such through rates for the transportation of through traffic from New Orleans to San Francisco, a materially lower sum than they charged for the transportation of the same kind of traffic originating at New Orleans and carried by them to San Francisco.

In other words, the "particular description of traffic" which originated at Liverpool was carried by said railway companies from New Orleans to San Francisco for a materially lower sum than a "like kind of traffic" originating at New Orleans; notwithstanding the fact that the traffic originating at Liverpool, and the traffic originating at New Orleans, was carried from New Orleans to San Francisco over the same line, in the same direction; and perhaps in the same train, and even in the same car.

There was manifestly a preference in favor of the traffic originating at Liverpool, and a prejudice against the traffic originating at New Orleans; and yet it was held by this Court that such preference and prejudice were not "undue or unreasonable." It appeared that the through rates from Liverpool to San Francisco were, in effect, fixed and controlled by the competition of sailing vessels for the entire distance; by steamships and sailing vessels, in connection with railroads across the Isthmus of

Panama; and by steamships and sailing vessels in connection with the Canadian railways; and that if the Texas & Pacific Railway Company and the Southern Pacific Company should be prevented from participating in said traffic, such traffic would move via the other competing routes and lines; that such diversion of the traffic to said competing lines would be of no benefit to New Orleans; that such diversion would be of no benefit to any one except to the competing lines; and that its only effect, so far as the parties before the court were concerned, would be to deprive the Texas & Pacific Railway Company and the Southern Pacific Company of such profits as they might otherwise have realized from their proportions or shares of said through rates.

This Court said:

"The third section forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation or locality; and as there is nothing in the act which defines what shall be held to be due or undue, reasonable or unreasonable, such questions are not questions of law but of fact. *The mere circumstance that there is, in a given case, a preference or an advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act.* Hence it follows that before the Commission can adjudge a common carrier to have acted unlawfully, it must ascertain the facts; and here again we think it evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the Commission in forming its judgment whether such preference or advantage is undue or unreasonable."

162 U. S., pp. 219, 220.

The Court held that as the through rates from Liverpool to

New Orleans were forced upon the Texas & Pacific Railway Company and the Southern Pacific Company by the competition above referred to, the preference in favor of the traffic originating at Liverpool, and the prejudice against the traffic originating at New Orleans were not "undue or unreasonable," within the meaning of the third section. It is apparent that the preference in the case at bar in favor of the product traffic, and the prejudice against the live stock traffic, are as much the result of competition as was the preference and prejudice which existed in the "Import" case.

In the case of the I. C. C. v. The Alabama Midland Ry., 168 U. S. p. 144, it appeared that the Alabama Midland Railway and other connecting railway lines, participated in through rates from New York, via Troy, Ala., to Montgomery, Ala.; and that such through rates to Montgomery, Ala., were materially less than the through rates to Troy, although Troy was nearer than Montgomery to New York by 52 miles. In fact the through rates to Troy were higher than the through rates to Montgomery, by the full amount of the local rate from Montgomery back to Troy.

In other words, the "particular description of traffic" which was destined to Montgomery was carried by said railroad company from New York to Montgomery for a materially lower sum than a "like kind of traffic" destined to Troy; notwithstanding the fact that the traffic destined to Montgomery, and the traffic destined to Troy, was carried from New York to Troy over the same line, in the same direction, and perhaps in the same train, and even in the same car.

There was manifestly a preference in favor of the traffic destined to Montgomery, and a prejudice against the traffic destined to Troy; and yet it was held by this Court that such preference and prejudice were not "undue or unreasonable." It appeared

that the through rates from New York to Montgomery were, in effect, fixed and controlled by the competition of rival lines which did not pass through Troy; and that if the Alabama Midland Railway Co. should be prevented from participating in said traffic, such traffic would move via said rival lines; that such diversion of said traffic to said rival lines would be of no benefit to Troy, nor to any one else, except the said rival lines; and that its only effect, so far as the parties before the Court were concerned, would be to deprive the Alabama Midland Railway Co. and its connections of such profits as they might otherwise have realized from their proportions or shares of the through rates from New York to Montgomery.

This Court said: "In construing statutory provisions, forbidding railway companies from giving any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatever, the English courts have held, after full consideration, that competition between rival lines is a fact to be considered, and that a preference or advantage thence arising is not necessarily undue or unreasonable."

168 U. S., p. 164.

The Court held that as the through rates from New York, etc., to Montgomery were forced upon the Alabama Midland Railway and its connections by the competition above referred to, the preference in favor of the traffic destined to Montgomery, and the prejudice against the traffic destined to Troy, were not "undue or unreasonable" within the meaning of the third section; and it is apparent that the preference in the case at bar, in favor of the product traffic, and the prejudice against the live-stock traffic, are as much the result of competition, as was the preference and prejudice which existed in the "Alabama Midland" case.

In the case of the L. & N. R. R. Co. v. Behlmer, 175 U. S., p. 648, it appeared that the several defendant carriers participated in through rates on hay from Memphis, Tenn., via Summerville, to Charleston, S. C.; and that such through rates to Charleston were materially less than the through rates from Memphis to Summerville, although Summerville was nearer than Charleston to Memphis by about 20 miles. In fact the through rates on hay from Memphis to Summerville were higher than the through rates on hay from Memphis to Charleston, by the full amount of the local rate from Charleston back to Summerville. In other words, the "particular description of traffic" (i. e. hay) which was destined to Charleston, was carried by the defendant railroad companies from Memphis to Charleston for a materially lower sum than a "like kind of traffic" (i. e hay) destined to Summerville; notwithstanding the fact that the hay destined to Charleston, and the hay destined to Summerville, were carried from Memphis to Summerville over the same line, in the same direction, and perhaps in the same train, and even in the same car.

There was manifestly a preference in favor of the hay traffic destined to Charleston, and a prejudice against the hay traffic destined to Summerville; and yet it was held by this Court that such preference and prejudice were not "undue or unreasonable." It appeared that the through rates from Memphis to Charleston were, in effect, fixed and controlled by the competition of rival lines which did not pass through Summerville; and that if the defendant railroad companies should be prevented from participating in said traffic, such traffic would move via said rival lines; that such diversion of said traffic to said rival lines would be of no benefit to Summerville, nor to anyone else, except the said rival lines; and that its only effect, so far as the parties before the Court were concerned, would be to deprive the defendant railroad companies of such profits as they might otherwise have realized from their proportions or shares of the through rates on hay from Memphis to Charleston.

This Court said: "That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights, which would otherwise go by other competitive routes, are or are not undue or unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered."

175 U. S., p. 665.

This Court held that as the through rates on hay from Memphis to Charleston were forced upon the defendant railroad companies by the competition above referred to, the preference in favor of the hay traffic destined to Charleston and the prejudice against the hay traffic destined to Summerville were not "undue or unreasonable" within the meaning of the third section; and it is apparent that the preference in the case at bar in favor of the product traffic, and the prejudice against the livestock traffic, are as much the result of competition as was the preference and prejudice which existed in the "Behimer" case.

In the case of E. T. V. & G. Ry. Co. v. I. C. C., 181 U. S., p. 1, it appeared that the several defendant carriers participated in through rates on certain traffic from New York via Chattanooga to Nashville, Tenn.; and that such through rates to Nashville were materially less than the through rates from New York to Chattanooga although Chattanooga was, by defendants' lines, nearer than Nashville to New York by about 150 miles. In fact the through rates on said traffic from New York to Chattanooga were higher than the through rates on said traffic from New York to Nashville (in some instances), by the full amount of the local rate from Nashville back to Chattanooga. In other

words, the "particular description of traffic" which was destined to Nashville was carried by the defendant railroad companies from New York to Nashville for a materially lower sum than a "like kind of traffic" destined to Chattanooga; notwithstanding the fact that the traffic destined to Nashville and the traffic destined to Chattanooga were carried from New York to Chattanooga over the same line, in the same direction, and perhaps in the same train, and even in the same car.

There was manifestly a preference in favor of the traffic destined to Nashville and a prejudice against the traffic destined to Chattanooga; and yet it was held by this Court that such preference and prejudice were not "undue or unreasonable." It appeared that the through rates from New York to Nashville were, in effect, fixed and controlled by the competition of rival lines which did not pass through Chattanooga; and that if the defendant railroad companies should be prevented from participating in said traffic, such traffic would move via said rival lines; that such diversion of said traffic to said rival lines would be of no benefit to Chattanooga, nor to any one else, except the said rival lines; and that its only effect, so far as the parties before the Court were concerned, would be to deprive the defendant railroad companies of such profits as they might otherwise have realized from their proportions or shares of the through rates from New York to Nashville.

This Court said:

"Indeed, the findings of fact made by the Commission in this case leave no room for the contention that either undue preference in favor of Nashville (the longer distance point) or unjust discrimination against Chattanooga (the shorter distance point) arose merely from the act of the carriers in meeting the competition existing at Nashville. The Commission found that if the defendant carriers had not adjusted their rates to meet the

competitive conditions at Nashville, the only consequence would have been *to deflect the traffic at the reduced rates over other lines* From this it follows that, even although the defendant carriers had not taken the dissimilarity of circumstance and condition into view, and had continued their rates to Nashville just as if there had been no dissimilarity of circumstance and condition, *the preference in favor of Nashville* growing out of the *conditions there existing would have remained in force and hence the discrimination which thereby arose against Chattanooga would have likewise continued to exist. In other words, both Nashville and Chattanooga would have been exactly in the same position* if the long and short haul clause had not been brought into play." . . . . "To compel the carriers to desist from all Nashville traffic under the circumstances stated would simply result in deflecting the traffic to Nashville to other routes, and thus entail upon the carriers who were inhibited from meeting the competition, although they could do so at a margin of profit, the loss which would arise from the disappearance of such business, *without anywise benefiting the public*"

181 U. S., pp. 19, 20.

This Court further said:

"In a supposed case when, in the first instance, upon an issue as to a violation of the fourth section of the act, it is conceded or established that the rates charged to the shorter distance point are just and reasonable in and of themselves, and it is also shown that the lesser rate charged for the longer haul is not wholly unremunerative and has been forced upon the carriers by competition at the longer distance point, it must result that a discrimination springing alone from a disparity in rates cannot be held, in legal effect, to be the voluntary act of the defendant carriers, and as a consequence the provisions of the third section of the act forbidding the making or giving of an undue or unreasonable preference or advantage will not apply.

"The prohibition of the third section, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the *voluntary* and *wrongful* act of the carriers complained of as having given undue preference and does not relate to acts *the result of conditions wholly beyond the control of such carriers.* To otherwise construe the statute would involve a departure from its plain language and would be to confound cause with effect. For, if the preference occasioned in favor of a particular place by competition there gives rise to the right to charge the lesser rate to that point, it cannot be that the availing of this right is the cause of the preference, and especially is this made clear in the case supposed, since it is manifest that forbidding the carrier to meet the competition would not remove the discrimination."

181 U. S., p. 18

This Court held that as the through rates from New York to Nashville were forced upon the defendant railroad companies by the competition above referred to, the preference in favor of the traffic destined to Nashville and the prejudice against the traffic destined to Chattanooga were not undue or unreasonable within the meaning of the third section; and it is apparent that the preference in the case at bar in favor of the product traffic, and the prejudice against the livestock traffic, are as much the result of competition as was the preference and prejudice which existed in the "Chattanooga" case.

In the case of the I. C. C. v. L. & N. R. R., 190 U. S., p. 273, the complaint alleged in substance that the defendant railroad companies charged certain rates upon certain commodities from New Orleans, La., to LaGrange, Ga., which were unjust and unreasonable in themselves, "and relatively unjust and unreasonable as compared with lower rates charged by defendants for carrying the same commodities over longer distances from New

Orleans, through LaGrange, to Hogansville, Newnan, Palmetto and Fairburn, Ga., and other localities;" that said relative rates subject merchants and dealers in said commodities "to undue and unreasonable prejudice and disadvantage, and give undue and unreasonable preference and advantage to merchants and dealers at Hogansville, Newnan, Palmetto, Fairburn and other localities and traffic consigned thereto."

190 U. S., pp. 274, 275.

It appeared that the through rates from New Orleans to LaGrange on said commodities were materially less than the through rates from New Orleans to Hogansville, Newnan, Palmetto, Fairburn and Atlanta, although LaGrange was, by defendants' lines, nearer than said other stations to New Orleans. In fact the through rates on said commodities from New Orleans to LaGrange were higher than the through rates on said commodities from New Orleans to Atlanta, Ga. (in some instances) by the full amount of the local rate from Atlanta back to LaGrange. In other words the "particular description of traffic" which was destined to Atlanta, was carried by the defendant railroad companies from New Orleans to Atlanta for a materially lower sum than a "like kind of traffic" destined to LaGrange; notwithstanding the fact that the traffic destined to Atlanta, and the traffic destined to LaGrange were carried from New Orleans to LaGrange over the same line, in the same direction, and perhaps in the same train, and even in the same car.

There was manifestly a preference in favor of the traffic destined to Atlanta, Hogansville, Newnan, Palmetto and Fairburn, and a prejudice against the traffic destined to LaGrange; and yet it was held by this Court that such preference and prejudice were not "undue or unreasonable." It appeared that the through rates from New Orleans to Atlanta were, in effect, fixed and controlled by the competition of rival lines which did not

pass through LaGrange; and that if the defendant railroad companies should be prevented from participating in said traffic such traffic would move via said rival lines; that such diversion of said traffic to said rival lines would be of no benefit to LaGrange, nor to any one else, except the said rival lines; and that its only effect, so far as the parties before the Court were concerned, would be to deprive the defendant railroad companies of such profits as they might otherwise have realized from their proportion or shares of the through rates from New Orleans to Atlanta.

This Court held that as the through rates from New Orleans to Atlanta were forced upon the defendant railroad companies by the competition above referred to, the preference in favor of the traffic destined to Atlanta, and the prejudice against the traffic destined to LaGrange, were not "undue or unreasonable" within the meaning of the third section; and it is apparent that the preference in the case at bar in favor of the product traffic, and the prejudice against the livestock traffic are as much the result of competition as was the preference and prejudice which existed in the LaGrange case.

The Court will notice that while all of the cases cited in this section of my argument involved the long and short haul clause contained in the fourth section of the Act to Regulate Commerce, they also involved the third section of said act. The Court will also notice that they involved not only the question of preference or prejudice to different "localities," but also the preference or prejudice to "particular descriptions of traffic," and the preference or prejudice to the "persons, companies, firms and corporations" engaged in such traffic at the several localities referred to in said cases. The Court will further notice, that everything said by it in reference to what constitutes undue or unreasonable preference or prejudice, applies as well to "par-

ticular descriptions of traffic" as it does to particular "localities," or to "particular persons, companies, firms and corporations."

The suggestion of appellants that the words "undue or unreasonable," have a different meaning when applied to "persons, companies, firms, corporations or particular descriptions of traffic" from what they have when applied to "localities" assumes that Congress intended to attach to the words "undue or unreasonable" several different and distinct meanings in the same section of the act.

The words "under substantially similar circumstances and conditions" occur in the second section as well as in the fourth section of the act, and in one of the first cases in which the Commission delivered a written opinion, Chairman Cooley said: "It is not at all likely that Congress would deliberately, in the same act and when dealing with the same general subject, make use of a phrase which was not only carefully chosen and peculiar, but also controlling, in such different senses that its effect as used in one place upon the conduct of the parties who were to be regulated and controlled by it would be essentially different from what it was as used in another."

1 Ann. Rep. I. C. C., p 67, in the matter of the petitions of the L. & N. R. R. Co. and others.

In the case at bar, instead of asking the Court to hold that the words "undue or unreasonable" have different senses in two different sections of the act, the Court is asked to go further, and hold that they have different senses in the same section, and that what does not constitute undue or unreasonable preference or prejudice in regard to different "localities" may constitute undue or unreasonable preference or prejudice in regard to different "persons, companies, firms, corporations or particular descriptions of traffic."

XXIII.

We Do Not Contend that the Mere Fa t of Competition Relieves the Carrier from the Restraints of the Third and Fourth Sections.

Mr. Shaver, of counsel for appellant, in his printed argument in the Circuit Court quotes an extract from the opinion of this Court in the case of the I. C. C. v. Alabama Midland Ry. Co., 168 U. S., p. 167, as follows:

"In order further to guard against any misapprehension of the scope of our decision, it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of 'undue or unreasonable preference or advantage,' or what are 'substantially similar circumstances and conditions.' The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking the matter into consideration."

The same extract was relied upon by the Commission in the "Chattanooga case," and is quoted by this Court in its opinion in that case; and this Court held that it had no such meaning as was attributed to it by counsel for the Commission.

181 U. S., pp. 15, 16, 17, E. T. V. & G. Ry. Co. v. I. C. C.

While the mere fact that competition, no matter what its character or extent, does not necessarily relieve the carrier from

the restraints of the third and fourth sections, yet where the competition is actual, and so forceful as to affect rates, it does relieve the carrier from the restraints of said sections.

See the cases heretofore cited in Section XXII.

Mr. Shaver, of counsel for appellant, in his printed argument in the court below, quotes an extract from the opinion of this Court in the case of L. & N. R. R. Co. v. Behlmer, 175 U. S., p. 674, as follows:

"It follows that while the carrier may take into consideration the existence of competition as the producing cause of the dissimilar circumstances and conditions, his right to do so is governed by the following principles: First, the absolute command of the statute that all rates shall be just and reasonable and that no undue discrimination be brought about" . . . .

Said extract quoted by Mr. Shaver is only a portion of a paragraph, and the entire paragraph was relied upon by the Commission in the "Chattanooga case." Said paragraph was quoted by this Court in that case; and this Court held that it had no such meaning as was attributed to it by counsel for the Commission.

181 U. S., pp. 15, 16, 17, E. T. V. & G. Ry. Co. v. I. C. C.

I concede that the right of a carrier to take into consideration the existence of competition is governed by the "command of the statute that all rates shall be just and reasonable and that no undue discrimination be brought about"

But I have shown in Sections XVI, XVIII and XIX that appellees' rates upon livestock are just and reasonable; and I have shown in Section XXII that the discrimination in favor of livestock product is not "undue."

XXIV.

The Contention of Appellant's Counsel that the Chicago Great Western Company had No Right to Inaugurate Competition by Making the Contract of August 8, 1902.

The Chicago Great Western Company did not inaugurate competition on August 8, 1902. Competition in the carriage of the products of live stock from Missouri River points to Chicago has existed from the passage of the Act to Regulate Commerce down to the present time. Prior to March 24-25, 1902, when the restraining orders or temporary injunctions were granted by Judge Grosscup, the competition consisted chiefly in secretly cutting the published rates.

After the granting of said restraining orders or injunctions, the carriers ceased the secret cutting of published rates; and on August 8, 1902, when the contract was made by the Great Western Company, the competition consisted in the efforts of each of the carriers to solicit the traffic, and to render the best and quickest service, in its transportation.

The error of appellant's counsel, on this point, consists in assuming *that competition cannot exist unless there be a cutting of rates* either openly or secretly. On the contrary, competition may be as severe, and as costly to the carrier, and as beneficial to the public, when maintained at open published rates, as though it were maintained by reducing rates.

To illustrate: If a carrier by providing costly locomotives and cars, and by running its trains at an extraordinary high rate of speed, and by improving its roadbed and superstructure, expends an extra amount of money which in the aggregate equals 2 cents per 100 pounds on the freight traffic carried by it, and by means of such expenditures it is enabled to so increase its speed

and improve its service, as to deprive its competitor of the latter's proportion of the competitive traffic, such competition in the way of increasing speed and improving service, is as costly to such carrier as if said carrier had made a reduction in its rates of 2 cents per 100 pounds; and it is as effectual in securing the traffic.

Again, competition may be exceedingly severe, though maintained at open published rates, and though neither of the competing carriers may make any extraordinary expenditures in the improvement of its service.

To illustrate: I will take an actual case. The Central of Georgia Railway owns a line of road from Atlanta via Macon and Ft. Valley to Columbus, Georgia, a distance of 203 miles, as shown by the following diagram No. 6.

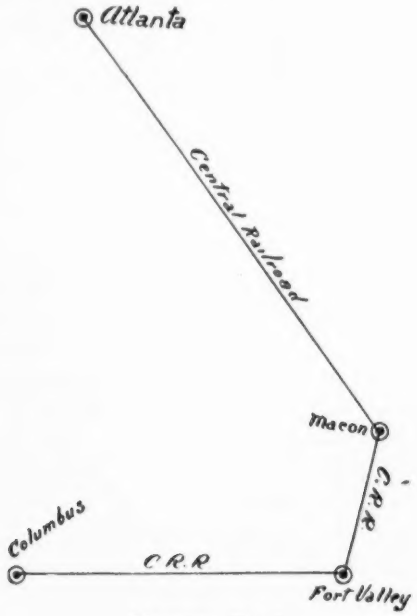


Diagram No. 6

For a number of years the Central of Georgia Railway was the most direct route between Atlanta and Columbus, and the one usually employed in the transportation of freight between those cities. As the rates charged by that company between Atlanta and Columbus were made by the Georgia State Railroad Commission they were at least reasonably low, and were so regarded by the shipping public. Afterwards a railroad was constructed from Atlanta via Williamson to Columbus, a distance of only 117 miles, as against 203 miles via the old line of the Central. Both the old and new lines are shown on the following diagram No. 7. The new line is owned by the Southern Railway.

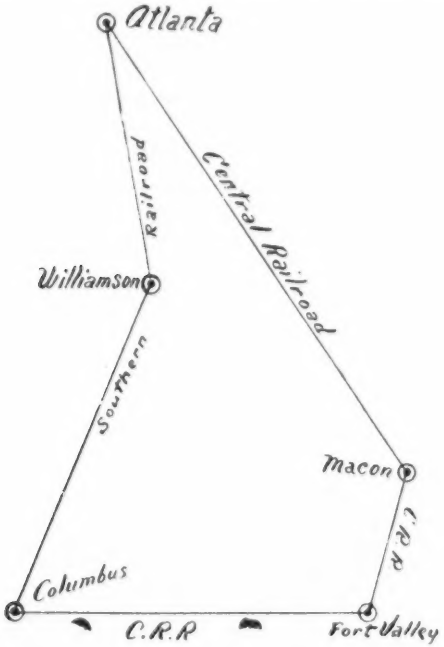


Diagram No. 7

It is obvious that upon the completion of the new line its Traffic Manager would willingly accept for transportation be-

tween Atlanta and Columbus—a distance of only 117 miles—the rates which the old line had been theretofore charging for a distance of 203 miles; and it is equally evident that the traffic between Atlanta and Columbus would be entirely diverted from the old line to the new, so long as both lines should maintain the same rates between Atlanta and Columbus; because no one would ship by a line 203 miles long when he could obtain the same rate by another line only 117 miles long.

The old line must therefore do one of three things. It must either increase its speed and improve its service; or, reduce the rates between Atlanta and Columbus; or, abandon all of the Atlanta-Columbus traffic to the new line.

Under the cases decided by the Supreme Court, commented upon in Section XXII of this argument, the old line could reduce the rates between Atlanta and Columbus, in order to secure or retain its proportion of the Atlanta-Columbus traffic, as against the new line, without being compelled to reduce the rates to or from the shorter distance stations, located on the old line between Atlanta and Columbus.

Such shorter distance stations might make precisely the same argument as is made by complainant in this case, viz.: that the old line inaugurated the competition by reducing the rates between Atlanta and Columbus, and thereby disturbed the relation which previously existed between the rates to and from the shorter distance stations on said line. But the all-sufficient answer would be, that though the old line inaugurated a reduction in the rates between Atlanta and Columbus, it did not do so voluntarily, but was forced to do so by reason of the competition of the new and shorter line; that the reduction of the rates by the old line, instead of inaugurating the competition, was the result of the competition inaugurated by the construction of the new line.

And so, in the case at bar, the Great Western Company, though it inaugurated a reduction of rates on livestock products, by making the contract of August 8, 1902, it did not inaugurate the competition in the transportation of those products. On the contrary, said reduction was the *result* of the competition *then existing*, and it was forced upon said company by the fact that its competitors were, under the then existing rates, securing more than their proportion of the competitive traffic; and if the Great Western had not made said reduction, it would have been forced to abandon a portion of its share of the competitive traffic to its rivals.

It is not explicitly explained in the testimony why the Great Western Company was not getting its proportion of the competitive traffic in the products of livestock. But it was, as hereinbefore shown in Sections XII and XIII, under the disability of having the longer line from Kansas City and St. Joseph to Chicago and therefore unable to render as speedy and efficient service as its rivals., while from Omaha it was a newly constructed line with no established patronage. It is quite usual in this country for one of several competing lines to be at a physical disadvantage by reason of its being the longer line, or having heavier grades and curves than its competitors, or of being a new line. And when it finds that it is unable to secure its proportion of the competitive traffic at the rates charged by its competitors, it reduces its own rates somewhat below those charged by its competitors; and its right to do so is well recognized in this country.

All of the water lines, as well as the rail and water lines, owing to their physical disability, insist upon charging rates which are less than those charged by the all-rail lines, between the same competitive points.

The differences between the rates charged by lines laboring

under disabilities, and the rates charged by their stronger competitors, are known in railroad parlance as "differentials." So far from such differentials inaugurating competition, they are the direct result of a previously existing competition; and they never would have been adopted by the lines laboring under disability had it not been for the fact that the previously existing competition was so severe that it was impossible for them to secure their proportion of the competitive traffic, so long as they charged as high rates as were charged by their stronger competitors.

It is not material to inquire whether President Stickney of the Great Western Company was correct in supposing that his company, on August 8, 1902, was not securing its due proportion of the competitive product traffic; nor is it material to inquire whether he was justified in desiring to secure a greater proportion of said traffic.

Even in the days when the pooling of traffic was not prohibited, it was always found to be extremely difficult for competing lines to agree with each other as to what their respective proportions of the competitive traffic should be.

As the pooling of traffic is now prohibited by the fifth section of the Act to Regulate Commerce, carriers cannot by agreement between them settle the proportions of the competitive traffic to which they are respectively entitled. Each line therefore is, by the law, required to judge for itself as to what its proportion of the competitive traffic should be; and it is perfectly natural that, under such law, each line should, to some extent, overestimate its own proportion. It is of the very essence of that competition, the suppression of which is prohibited by the fifth section, that competing carriers shall determine for themselves to what proportions of the competitive traffic they are entitled; and then to attempt to secure that proportion, either by a public reduction of the existing rates, or by improving their speed and service.

XXV.

The Contention that the Chicago Great Western Company Had No Right to Rely Upon the Mere Possibility of Competition by the Other Lines.

Appellant's counsel contended in oral argument in the Circuit Court that as there had been no cutting of rates from March 24-25, 1902, to August 8, 1902, when the contract was made by the Chicago Great Western Company, that company had no right to rely upon the mere possibility of its rivals cutting the rates in the future.

Counsel referred to the following extract from the opinion of this Court in the LaGrange case, viz.:

"In the report of the Commission, a suggestion is found that LaGrange should be entitled to the same rate as Atlanta, because if the carriers concerned in this case in connection with other carriers reaching LaGrange chose to do so, they might bring about competition by the way of a line between Macon and LaGrange which would be equivalent to the competitive conditions existing at Atlanta. We are unable, however, to follow the suggestion. To adopt it would amount to this: that the substantial dissimilarity of circumstances and conditions provided by the Act to Regulate Commerce would depend, not as has been repeatedly held, upon a real and substantial competition at a particular point, affecting rates, but upon the mere possibility of the arising of such competition. This would destroy the whole effect of the act and cause every case where competition was involved to depend not upon the fact of its existence as affecting rates, but upon the possibility of its arising What the fourth section of the Act to Regulate Commerce has reference to is an

actual dissimilarity of circumstances and conditions, not a conjectural one."

190 U. S., 282, 283, I. C. C. v. L. & N. R. R. Co.

I have shown in Section XXIV of this argument that on August 8, 1902, when the contract was made by the Great Western Company, there was actually existing competition in the transportation of live-stock products between the Missouri River points and Chicago, and that said existing competition was such as to actually affect rates. In fact, said competition was such as to compel the Great Western Company to reduce its rates on said products, or abandon a portion of its share of said products to its rivals.

The case at bar therefore is not one of the "mere possibility of competition arising," but it is one where "competition affecting rates" actually existed.

XXVI.

The Contention That the Competition Prior to the Injunction Was Illegal, and Therefore Cannot Be Relied Upon by Appellees.

I do not concede the abstract proposition that a railroad cannot rely upon actually existing competition, when it is such as to affect rates, merely because it may have been conducted by secretly and illegally cutting rates. A railroad, like an individual, has the right to defend itself against an antagonist, however illegal may be the conduct of such antagonist in making the assault.

But it is useless to now discuss such abstract proposition; because the defendants do not rely upon the competition which

existed prior to March 24–25, 1902. They place their defense upon the competition which existed between March 24–25, 1902, when the injunctions were granted, and August 8, 1902, when the Great Western contract was made; and during that period, there is no pretense that the competition was in any respect illegal.

XXVII.

The Contention that the Chicago Great Western Company Should Not Be Allowed to Take Advantage of Its Own Wrong.

Appellant's counsel contended in oral argument in the Circuit Court that as the Chicago Great Western Company inaugurated a reduction of rates on livestock products by the contract which it made on August 8, 1902, it would be inequitable to allow that company to rely upon the effect of said reduction; because, to do so would be to permit said company to take advantage of its own wrong.

The contention assumes that the reduction of rates made by the Great Western Company on August 8, 1902, was *wrong;* whereas I have shown in Sections XXIV and XXV of this argument that in making said reduction said company committed no wrong. Even if it be assumed, for the purposes of this section of my argument, that the Great Western Company, by reducing the rates on August 8, 1902, did thereby inaugurate a competition, what provision of the Act to Regulate Commerce makes it unlawful or *wrong* for a railroad company to inaugurate competition? While it is true that the Act to Regulate Commerce does not require railroad companies to compete, it does, by its pooling section, prohibit the suppression of competition; and the manifest purview of the entire act is to encourage competition.

XXVIII.

The Commission Erred in Holding that the Chicago Great Western Company Unduly Discriminated Against the Livestock Traffic.

The Commission in its Report and Opinion said:

"It is undoubtedly true that the Chicago Great Western Company had a right to change its rate on packing-house products for the purpose of increasing its business, but that right is qualified by the prohibition that that company shall not *unduly discriminate* against another kind of traffic; and when that company established and put in force from Kansas City and St. Joseph to Chicago rates on the products of livestock that were lower than rates it was then exacting between the same points on livestock, it *unduly discriminated* against the latter traffic."

Rep. & O., Trans., pp. 45, 46.

The word "discriminate" (so far as it relates to differences between persons, localities, or traffics) is to be found only in the second section of the act; and I have hereinbefore shown, in Section XX of this argument, that the second section has no application to this case.

I assume that what the Commission intended to say, in the extract above quoted from the Report and Opinion, was that the right of the Chicago Great Western Company to change its rates on packing-house products is qualified by the prohibition that said company shall not unduly "prejudice" another kind of traffic; and when that company established and put in force rates on the products of livestock that were lower than rates it was then exacting on livestock, it unduly "prejudiced" the

latter traffic. In other words, I assume that the Commission intended to find a violation of the third section, which prohibits "undue prejudice," instead of a violation of the second section which prohibits "unjust discrimination."

I concede that the right of the Chicago Great Western Company to change its rates on packing-house products is qualified by the prohibition that said company shall not unduly prejudice the livestock traffic; but I deny that the acceptance by that company of lower rates on livestock products than it charges on livestock creates an "*undue prejudice*" against the livestock traffic.

No prejudice is "*undue*" unless it arises from *the* "*voluntary*" and "*wrongful*" act of a carrier; and no reduction of rates by a carrier is either "voluntary" or "wrongful," if it be forced upon the carrier by actual competition affecting rates.

181 U. S., p. 18, E. T. V. & G. Ry. Co. v. I. C. C.

I have hereinbefore shown in Sections X, XI and XII that the Great Western Company was forced by the competition existing when the contract of August 8, 1902, was made to reduce its rates on the livestock product, or abandon a portion of its share of that traffic to its competitors.

XXIX.

The Commission Erred in Holding that the Prejudice Against Chicago is Undue.

The Commission in its Report and Opinion said:

"The discrimination against the transportation of live stock to Chicago from the shipping points in question, brought about by defendants' action in establishing and putting in force upon the products of live stock, rates of transportation lower than those contemporaneously exacted by defendants for the transportation of live stock, between the same points, injured the live stock market of Chicago, and those interested therein; is not justified by difference to defendants in the cost of transportation, and is not otherwise justified; and therefore subjects the traffic in live stock, and the Chicago live stock market, and those interested therein, including complainant, to undue and unreasonable prejudice and disadvantage, and gives to the traffic in the products of live stock and shippers and localities interested in such traffic undue and unreasonable preference and advantage."

Rep. & O., Trans., p. 41.

I have hereinbefore shown, in Sections XXIV to XXVIII inclusive, that the action of the Great Western Company in reducing its rates on livestock products, by making the contract of August 8, 1902, did not create undue or unreasonable prejudice either against the traffic in livestock, or the livestock market of Chicago, or those interested therein; and if I be right in my contention as to that company, the other defendant companies who were forced to meet the rates put in by the Great Western Company cannot be guilty of *undue* or *unreasonable* prejudice either to the traffic in livestock, or to the livestock market of Chicago, or to those interested therein.

XXX.

The Fact that Appellees Could, If They Chose to Do So, Make the Competition on Livestock as Severe as the Competition on the Product is Not Material.

Appellant's counsel contended in oral argument in the Circuit Court that as the appellees have seen proper to reduce the rates on livestock products, and as they could, if they chose to do so, make corresponding reductions in the rates on livestock, they should be compelled to make such reductions in the latter rates.

In other words, appellees should be compelled to compete as severely in the livestock traffic as they have seen proper to compete in the livestock product traffic. This is exactly analogous to the contention of the same counsel in the LaGrange case, and it was with reference to said contention that this Court said it "would destroy the whole effect of the act, and cause every case where competition was involved to depend not upon the fact of its existence as affecting rates, but upon the possibility of its arising."

190 U. S., p. 283, I. C. C. v. L. & N. R. R.

XXXI.

Appellees Do Not Contend That a Railroad May Use Its Franchise to Build Up Some Markets and Destroy Others.

The Commission in its Report and Opinion said:

"As it appears to us, a contrary holding would be equivalent to saying that a quasi-public servant may use its franchise for the purpose of building up some markets and destroying others, if in its judgment its stockholders will be benefited by such action."

Rep. & O., Trans., p. 46.

I concede that no railroad company has the right to use its franchise "for the purpose of building up some markets and destroying others," even though in its judgment its stockholders will be greatly benefited by such action; but I deny that either of the defendants in reducing the rates upon livestock products did so for any such "purpose."

I have hereinbefore shown in Sections XXIV to XXVIII inclusive that the Great Western Company in reducing its rates on livestock products by making the contract of August 8, 1902, did so, not for the "purpose" of building up one market or destroying another; but for the purpose of securing its share of the livestock product traffic; and that said reduction was not voluntary, but forced upon it by competitive conditions which it could not ignore without abandoning to its rivals a portion of its share of said traffic. And in Section XXIX, I have shown that the other defendant companies were forced to meet the rates put in by the Great Western Company or abandon all of the livestock product traffic to that company.

The prohibition of the third section, when that section is considered in its proper relation, is directed against "undue preference arising from the *voluntary* and *wrongful* act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of such carrier."

181 U. S., pp. 18, 19, E. T. V. & G. Ry. Co. v. I. C. C.

It is true that the appellees by accepting lower rates on livestock products than they charge on livestock, may have aided somewhat in building up the Missouri River markets, and may have somewhat injured Chicago as a livestock market, and persons interested in the livestock traffic. But those results were merely incidental, and entirely foreign to the *purpose* of the de-

fendants. Said results have followed inexorably from the competition which the Act to Regulate Commerce is supposed to encourage, and the suppression of which is, by that act, in effect, made illegal. It follows that such loss as may have inured to one market, or to one traffic, as compared with another market or another traffic, in consequence of said competition, is, in contemplation of the Act to Regulate Commerce, *damnum absque injuria*.

To paraphrase the language of this Court in the Chattanooga case: "If the preference occasioned in favor of a particular traffic (e. g. the livestock product traffic) by competition gives rise to the right to charge the lesser rate on that traffic, it cannot be that the availing of this right is the cause of the preference." . . . . "The only principle by which it is possible to enforce the whole statute is the construction adopted by the previous opinions of this Court; that is, that competition which is real and substantial and exercises a potential influence on rates on a particular traffic, brings into play the dissimilarity of circumstances and conditions provided for by the statute, and justifies the lesser charge on the more competitive traffic than on the less competitive traffic, and that this right is not destroyed by the mere fact *that incidentally* the lesser charge on the more competitive traffic may seemingly give preference to that traffic, and the greater rate on the less competitive traffic may apparently engender a discrimination against it. We say seemingly on the one hand, and apparently on the other, because in the supposed cases the preference is not 'undue' nor the discrimination 'unjust.' This is clearly so when it is considered that the lesser charge upon which both the assumption of preference and discrimination is predicated is sanctioned by the statute, which causes the competition to give rise to the right to make such lesser charge."

181 U. S., 18. 19, E. T. V. & G. Ry. Co. v. I. C. C.

XXXII.

A Carrier May Promote Its Own Interest Provided it Does Not Create an Undue Preference.

In his printed argument in the Circuit Court, Mr. Shaver of counsel for appellant, said:

"It is, of course, conceded that a carrier may so adjust its rates as to promote its legitimate interest, but in so doing, it cannot adopt rates or a rate adjustment which will bring about an *undue* preference or an *undue* prejudice or any violation of the law."

I fully agree with Mr. Shaver's statement of the law as set forth in the extract just quoted; but, as held by this Court in the case of T. & P. Ry. v. I. C. C., 162 U. S., p. 238, the question whether discrimination is due or undue is a question of fact, and I deny that the reduction in rates on livestock products, made by the Chicago Great Western contract on August 8, 1902, constitutes an *undue* preference, or an *undue* prejudice, or any other violation of the law.

I have hereinbefore shown in Section XXII that a preference or prejudice is not *undue* unless it arises from the *voluntary* and *wrongful* act of a carrier; that as a carrier has a right to compete, its doing so is not "*wrongful;*" that where the act done by the carrier is forced upon it by competition, such act is not "*voluntary;*" and that the mere fact that *incidentally* the lesser charge on the more competitive traffic may seemingly give preference to that traffic, and the greater rate on the less competitive traffic may apparently engender a prejudice against it, such apparent preference and prejudice are not undue.

181 U. S., pp. 18, 19, E. T. V. & G. Ry. Co. v. I. C. C.

In his printed argument below, Mr. Shaver also cited the case of Harris v. Cockermouth & Workington Ry. Co., 3 C. B. (N. S.) 693, as sustaining the proposition that "preferences given to prevent diversion of traffic from the carrier or to induce transfer of traffic to one carrier which would otherwise go to another, are unlawful and cannot be justified on the ground of profit to the carrier giving them."

In the Harris case there was no actual competition; but certain advantageous terms were given to Lord Lonsdale's tenants because it was said that if those terms were not given, Lord Lonsdale *might make a railway which would compete with the railway of the defendant.* It will be found in the judgment of Mr. Justice Wills that his opinion was based exclusively upon the fact *that there was no existing competition*, but merely a fear that competition might arise in the future.

8 Ry. & Can. Traf. Cas. (Brown & Macnamara), p. 105., Pickering, Phipps et al. v. L. & N. W. R. Co.

In other words, the Harris case is in strict accord with the LaGrange case cited in Section XXX, and in which this Court held that the mere possibility of competition arising in the future is not sufficient. The Harris case is no authority that a carrier is not justified in reducing its rates to secure its proper share of a certain traffic, when the reduction is forced upon it by competition actually existing, such as that in the case at bar.

The Harris case was referred to by this Court in the "Import Case" as follows:

"But Chief Justice Cockburn said: 'I quite agree that this Court has intimated, if not absolutely decided, that a company is entitled to take into consideration any circumstances, either of a general or of a local character, in considering the rate of charge which they will impose upon any particular traffic. . .

. . As, for instance, in respect of terminal traffic, there might be competition with another railway; and in respect to terminal traffic as distinguished from intermediate traffic, it might well be that they could afford to carry goods over the whole line cheaper, or proportionately so, than they could over an intermediate part of the line.'"

162 U. S., pp. 223, 224, T. & P. Ry. v. I. C. C.

It will be noticed that this Court interprets the Harris case as conceding in effect that actual competition, as contradistinguished from mere possible competition, may be taken into consideration by a carrier in fixing its rates; and, under that interpretation also, the Harris case is a decision in our favor.

Mr. Shaver, in his printed argument below, also cited the case of Evershed v. London & Northwestern Ry. Co., 2 Q. B. Div. 254, as sustaining the proposition "that preferences given to prevent diversion of traffic from the carrier or to induce transfer of traffic to one carrier which would otherwise go to another, are unlawful and cannot be justified on the ground of profit to the carrier giving them."

Section 90 of the English Railway Clauses Act, 1845, contains what is known as the English "Equality Clause," which provides "that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, *passing only over the same portion of the line of railway under the same circumstances.*"

2 Ann. Rep., I. C. C. (1888), p. 89.

The English "undue preference clause" is quoted above in Section XXI.

In the case of Pickering, Phipps and others v. London & Northwestern Ry. Co. and others, Lord Herschell, in commenting upon the Eversheld case, said:

"In Eversheld's case no doubt, in the argument in the Court of Appeal, both the equality section and the undue preference section were alluded to as they were in a judgment to which I will call attention in a moment; but the equality section clearly applied in that case, because all the goods were carried only over the same piece of line, and, therefore, on that ground the House of Lords affirmed the judgment in Eversheld's case; but in the view of the House of Lords, in the subsequent case of the Denaby Main Colliery Company, it was only on that ground that they affirmed it, and not with any reference to Section II. of the Act of 1854 (which is the English 'undue preference clause'), inasmuch, as in the subsequent case, the House of Lords held that no such action, as was brought in Eversheld's case, would have lain in respect of any charge of undue preference under the Act of 1854. *Therefore Eversheld's case as an authority upon this point is gone.*"

8 Ry. & Can. Traf. Cas., p. 108, Pickering, Phipps and others v. London & Northwestern Ry. Co.

The English "equality clause" required an absolute rigid equality of charge in the limited cases to which it applied; but it only applied in those cases where passengers, or where goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, *passed only over the same portion of the line of railway* under the same circumstances. The expression "passing only over the same portion of the line," was construed by the English courts to mean "passing between the same points of departure and arrival and passing over no other part of the same line."

4 Ry. & Can. Traf. Cas., p. 452, M. S. & L. Ry. Co. v. The Denaby Colliery Co.

4 Ry. & Can. Traf. Cas., p. 460, Murray v. G. & S. W. Ry. Co.

6 Ry. & Can. Traf. Cas., p. 141, The Denaby Main Colliery Co. v. The M. S. & L. Ry. Co.

Law Rep., 21, Q. B. (1888), pp. 217, 218, L. & Y. Ry. Co. v. Greenwood.

The English equality clause has never been reenacted in this country; the nearest approach to it is the second section of the Act to Regulate Commerce, but that section does not contain the words "passing only over the same portion of the line of railway under the same circumstances."

24 U. S. Stat. at Large, pp. 379, 380.

It will be noticed that Lord Herschell held that the Evershed case is not now an authority in England except upon the English "equality clause," which is not in force in this country; and that as to the English "undue preference clause" (Section 2 of the English Act of 1854), upon which the undue preference clause in the third section of the Act to Regulate Commerce is modeled, *the Evershed case, as an authority, "is gone."*

8 Ry. & Can. Traf. Cas., p. 108, Pickering, Phipps and others v. London & Northwestern Ry. Co., and others.

The Ever-hed case was relied upon by the Interstate Commerce Commission in the "Import case;" and, in reference to it, this Court said:

"In the case of Budd v. London & Northwestern Ry. Co., 4 Eng. Ry. and Canal Traffic Cases, 393, and in London & Northwestern Railway v. Evershed, 3 App. Cas., 1029, it was held that it was not competent for the railway company to make discriminations between persons shipping from the same point of departure to the same point of arrival, but even, in those cases, it

was conceded that there might be circumstances of competition which might be considered. At any rate, those cases have been much modified, if not fully overruled by the later cases—particularly in Denaby Main Colliery Company v. Manchester, Sheffield & Lincolnshire Railway Co., 11 App. Cas., 97, and in Phipps v. London & Northwestern Railway, 2 Q. B. D. (1892), 229, 236."

162 U. S., p. 224, T. & P. Ry. Co. v. I. C. C.

It will, therefore, be seen that neither the Harris case nor the Evershed case is now authority for the proposition to support which they were cited by Mr. Shaver.

XXXIII.

The Object of the Chicago Great Western Company in Reducing the Rate on Livestock Products was Not to Build Up the Missouri River Markets.

Mr. Shaver, of counsel for appellant, in his printed argument in the Circuit Court said: "The object of the reduction in the rate on the products by the Chicago Great Western Company, making that rate lower than the rate on the livestock, and the necessary effect of that rate adjustment, was to divert to the Missouri River markets shipments of livestock which would otherwise go to Chicago, and thus build up the river markets at the expense of Chicago. This is a conceded fact, or if not conceded it is abundantly proven."

The fact is neither conceded nor proven; on the contrary, it is denied and disproven.

The Commission finds and so reports that "the President of the Chicago Great Western Company stated that his company

entered into the aforesaid contract *for the purpose* of securing a greater proportion of the traffic in the products of livestock than it had previously been able to obtain."

Rep. & O. Trans., p. 40.

Again the Commission says: "The President of the Chicago Great Western stated that his company entered into the contract *for the purpose* of securing more of the traffic in the livestock products than it had previously been able to obtain."

Rep & O. Trans., p 45.

Again the Commission says: "It is undoubtedly true that the Chicago Great Western Company had a right to change its rate on packing-house products *for the purpose* of increasing its business, but that right is qualified by the prohibition that that company shall not unduly discriminate against another kind of traffic."

Rep. & O. Trans., pp. 45, 46.

It will be seen from the above extracts from the Report and Opinion of the Commission that the object or purpose of the Great Western Company in making the contract of August 8, 1902, was not to build up the Missouri River markets at the expense of Chicago, but it was to secure to that company what its President considered to be its due share of the product traffic.

I also deny that the "necessary effect" of the reduction in the rate on the product was to divert to the Missouri River markets shipments of livestock which ought otherwise go to Chicago. I deny that the effect of said reduction has in fact been to divert to the Missouri River markets shipments of livestock which ought otherwise go to Chicago. I insist that the great weight of the testimony shows that even under the present rate adjust-

ment, Chicago has a decided advantage over the Missouri River points and over the intermediate points.

See diagram No. 8.

From stations on the C. M. & St. P. Ry. west of St. Paul, ranging from 75 to 395 miles, the combination of the livestock rates from said stations to St. Paul, plus the packing-house product rate from St. Paul to Chicago, is in all instances greater than the straight rates on livestock from the same stations to Chicago.

Calkins Ex. A, Trans. p. 539.

The same is true from stations on said railway south of St. Paul, ranging from 75 to 200 miles.

Calkins Ex. B, Trans., p. 540.

The same is true from stations on said railway west of Cedar Rapids, ranging from 14 to 200 miles.

Calkins Ex. E, Trans., p. 543.

The same is true from stations on said railway west and north of Des Moines, ranging from 25 to 200 miles.

Calkins Ex. D, Trans., p. 542.

The same is true from stations on said railway north and west of Sioux City, ranging from 25 to 330 miles.

Calkins Ex. D, Trans., p. 542.

The same is true from stations on said railway west and southwest of Ottumwa, ranging from 25 to 200 miles.

Calkins Ex. C, Trans., p. 541.

The same is true from stations on the C. R. & I. P. Ry. east

CHARTS

TOO

LARGE

FOR

FILMING

and west of Kansas City, St. Joseph, Des Moines and Cedar Rapids.

Gower Test., Trans., pp. 752, 753, 754 and 752.

The same is true from stations on the C. & N. W. Ry. 70 miles south of Sioux City and 75 miles east of Sioux City.

McCullough Ex. A, Trans., p. 941.

The same is true from stations on said railway northwest of Sioux City, ranging from 44 to 338 miles.

McCullough Ex. B, Trans., p. 942.

The same is true from stations on said railway west of South Omaha, ranging from 25 to 250 miles.

McCullough Ex. D, Trans., p. 943.

The same is true from stations on said railway east of South Omaha, ranging from 27 to 160 miles.

McCullough Ex C, Trans., p. 943.

The average rate into Cedar Rapids, Iowa, on cattle and hogs, plus the product rate to Chicago, is 24½ cents; while the average rate upon the animal from points in Iowa to Chicago is 21 cents, giving an advantage to the Chicago packer of 3½ cents.

Koch Test., Trans., p. 604.

From the foregoing references to the testimony it will be seen that the rate adjustment is quite as favorable to Chicago as it should be.

If Chicago has the advantage in the rate adjustment over St. Paul, at a station on the C. M. & St. P. Ry., 395 miles west of St. Paul; and if Chicago has the advantage in the rate adjustment over Sioux City at a station on the C. & N. W. Ry., 338 miles northwest of Sioux City; and if Chicago has the advantage in

the rate adjustment over South Omaha at a station 250 miles west of South Omaha, I am at a loss to understand how that adjustment can be unfair to Chicago.

The actual movement of cattle and hogs under the present rate adjustment also proves that the effect of said adjustment has not been to divert to the Missouri River markets shipments of livestock which should otherwise go to Chicago.

From stations on the C. & N. W. Ry., even in the so-called 23½ cent zone, the shipments of cattle and hogs during the fiscal year ending June 30, 1905, to Chicago were 10,286 cars; to South Omaha only 1,893 cars; and to Sioux City only 1,710 cars.

McCullough, Trans., p. 983.

Seventy per cent of the livestock moving over the Chicago & Northwestern Railway moves to Chicago, while the remaining 30 per cent is divided between St. Paul, Sioux City, South Omaha, Marshalltown, Des Moines and Cedar Rapids.

McCullough, Trans., p. 956.

From stations on the C. G. W. Ry., located more than 300 miles from Chicago and within 150 miles of St. Paul 1,425 cars of livestock moved to Chicago as against 1,023 cars to St. Paul during the fiscal year ending June, 1905.

Stickney, Trans., p. 634.

From stations on the C. G. W. Ry. located within 150 miles of Kansas City and more than 440 miles from Chicago, 164 cars of livestock moved to Chicago as against 105 cars of livestock to Kansas City during the same year.

Stickney, Trans., p. 634.

During the same year, out of a grand total of 15,134 cars of livestock, handled by the C. G. W. Ry., 65.1 per cent went to

Chicago; the remaining 35 per cent moved as follows: 6.9 per cent to St Paul; 6.9 per cent to Omaha; 19 per cent to St. Joseph and 2.1 per cent to Kansas City.

Stickney, Trans., p. 634.

During the same year the mileage of loaded livestock cars on the C. G. W. Ry. were as follows: To Chicago, 2,597,216; to St. Paul, 68,163; to Omaha, 43,400; to St. Joseph, 178,464; to Kansas City, 80,953.

Stickney, Trans., p. 635.

It will be seen that the mileage of loaded livestock cars on the C. G. W. Ry. to Chicago was more than seven times as much as the combined mileage to all of said Missouri River markets.

During the same year the average distance that livestock was hauled on the C. G. W. Ry. was—to Chicago 263 miles; to Kansas City, 250 miles; to St. Paul, 66 miles; to St. Joseph, 62 miles, and to Omaha, 43 miles.

Stickney, Trans., p. 635.

It will be seen, therefore, that though the average distance to Chicago was greater than to any of said Missouri River markets, Chicago obtained 65.1 per cent of the grand total of 15,134 cars of livestock handled by the C. G. W. Ry. during that year.

But, if the fact were that the *incidental* effect of the reduction in the rate on the products by the Chicago Great Western Company had been to divert to the Missouri River markets certain shipments of livestock which might otherwise have gone to Chicago, it would by no means prove that the action of the Chicago Great Western Company was unlawful. If the action of the Chicago Great Western Company, in making said reduction in the product rates, was forced upon it, and was necessary to enable it to obtain what it considered to be its due share of the

product traffic, the fact that the *incidental* effect of such reduction may have been to have diverted a portion of the product traffic to the Missouri River markets is, so far as Chicago is concerned, *damnum absque injuria*. Competition which is real, and substantial, and exercises a potential influence on rates on a particular traffic, brings into play the dissimilarity of circumstances and conditions provided for by the statute, and justifies the lesser charge on the more competitive traffic than on the less competitive traffic; and this right is not destroyed by the mere fact *that incidentally* the lesser charge on the more competitive traffic may *seemingly* give a preference to that traffic, and the greater rate on the less competitive traffic may *apparently* engender a discrimination against it.

See 181 U. S., pp. 18, 19, E. T. V. & G. Ry. Co. v. I. C. C.

XXXIV.

THE QUESTION AS TO WHO ORIGINATES A REDUCTION OF RATES IS NOT MATERIAL.

In his printed argument in the Circuit Court, Mr. Shaver of counsel for appellant, said:

"It cannot be questioned that the Chicago Great Western *originated* the so-called competition. The *originator* of *competition* cannot be heard to set up that competition in justification of a preference in rates. *If so, whenever a carrier desires to give a preference, he will only have to reduce his rate and thus inaugurate competition between his own and rival lines.*"

And further:

"The competition in rates between the Missouri River and Chicago, if any exists, is *between the defendants themselves.* They

should not be allowed to set up their own action in justification of a wrong."

With respect to the position of appellant, the Circuit Court in the course of its opinion said:

"Their position is that competition cannot apply to this case because one of the defendants (the Chicago Great Western Railway Company) originated the competition in rates. They argue that in all of the other cases decided by the Supreme Court the competition resulting in the cutting of rates was begun by some transportation company not a defendant in the hearing before the Commission and the Court, *and that the identical question involved in this case has not been passed upon by the Supreme Court.*"

Trans., p. 177.

It is submitted, however, with all deference to the views of counsel for appellant, that the identical question suggested by him in this case was necessarily involved in every case decided by this Court on the third and fourth sections of the act; which cases have been hereinbefore commented upon in Section XXII of this brief.

In all of these cases it was held that the existence of competition, which affects rates, differentiates the circumstances and conditions; and in none of them was the question as to who originated the competition deemed of sufficient importance to merit either suggestion from the counsel, or comment from the Court.

There is not in the opinions of the Circuit Courts, the Circuit Courts of Appeal, or this Court, in any of the cases referred to in Section XXII of this brief, the slightest suggestion, or intimation, that the carrier, who, under stress of the competition which prevailed, first inaugurated the reduction in rates to

the competitive points should be identified, and required to reduce all of its intermediate rates in conformity with the fourth section; or to remove all prejudices or disadvantages to which other points on its line may have been incidentally subjected by reason of the reduction of rates to the competitive points.

Nor is there the slightest suggestion or intimation that other carriers serving the competitive points, who met the reduction in rates so inaugurated by a competitor, are, because they did so, under legal obligation to reduce all their intermediate rates in conformity with the fourth section; or to remove all prejudices or disadvantages to which other points on their lines may have been incidentally subjected by reason of their meeting the rates to the competitive points.

As forcefully said by his Honor, Judge Bethea, in this case at Circuit, with respect to the inauguration of *competition in rates:*

"Why a defendant cannot begin the competition is not apparent. Some one must begin. *Why not a defendant if he is losing the business?*"

Trans., p. 177.

XXXV.

The Practice of Making Rates on Livestock the Same as, or Lower Than, the Rates on the Products of Livestock, Is by No Means Universal.

The Commission, in its Report and Opinion, said:

"Aside from the rates in question, carriers generally make rates on livestock somewhat, and in many cases considerably, lower than on the product. This was formerly true concerning rates made by carriers operating between the Missouri River and

Chicago; but soon after the large packers erected packing-houses at different points on the Missouri River changes began to take place."

Rep. & O., Trans., p. 32.

This finding of the Commission is disproven, even as to the territory in controversy, by Appendix "G" to the Sixteenth Annual Report of said Commission, entitled "A Forty-year Review of Changes in Freight Tariffs," prepared by the Auditor of the Commission, and put in evidence by defendants.

Trans., pp. 987, 989, 990, 991, 993, 1188, 1189.

Said appendix shows that for sixteen years and seven months, out of a total period of twenty-three years, extending from 1879 to 1902, the rates on live cattle from Kansas City to Chicago were higher than the rates upon the products of cattle, by from 5 to 7½ cents; and that during about one and one-half months of that period the rates on live cattle were from 17 to 20 cents higher than the rates upon the product.

Trans., pp. 987, 989, 990, 991, 993, 1188, 1189.

Said appendix further shows that for fifteen years and six months of the same period the rates on live hogs from Kansas City to Chicago were higher than the rates on their product by from 5 to 11.6 cents per 100 pounds.

Trans., pp. 987, 989, 990, 991, 993, 1188, 1189.

Said appendix further shows that for sixteen years and ten months of the same period the rates on live cattle from Kansas City to St. Louis were higher than the rates on their products by from 5 to 15½ cents.

Trans., pp. 987, 989, 990, 991, 993, 1188, 1189.

Mr. Keepers testified that the present rates on livestock from Omaha and Sioux City, to New Orleans and Cairo, are much higher than the rates on packing-house products.

Trans., p. 419.

XXXVI.

The Practice of Making Rates on Raw Material the Same as, or Lower than, the Rates on Manufactured Products, is by No Means Universal.

The Commission in its Report and Opinion said:

"Carriers usually make lower rates on raw material than on its manufactured products."

Rep. & O., Trans., p. 32.

All of the raw cotton of the South that is moved to the North pays to the Southern railroads higher rates per 100 pounds than manufactured cotton products.

Trans., p. 1372.

Raw cotton is produced in the South, but not in the North; and the Southern railroads in carrying raw cotton to the North meet no competition in that traffic from the Northern lines; but cotton products are manufactured in the North as well as in the South, and the Southern railroads in moving such products to the North meet with very strong competition from the Northern lines in the transportation of that traffic. The result is that the Southern railroads can successfully maintain higher rates per 100 pounds for the transportation of raw cotton than they can secure for the transportation of manufactured cotton products.

The Commission itself authorized a rate of as much as $2.15 a bale on uncompressed cotton from Meridian and Jackson to New Orleans; and at the same time it authorized a rate of as much as $1.65 per bale on compressed cotton between the same points.

2 I. C. Rep., p. 791, N. O. Cotton Ex. v. I. C. R. R. Co.

The uncompressed bale represents the raw material from which the compressed bale is manufactured by putting it into a powerful steam compress, and increasing its density to about 22½ pounds to the cubic foot.

From 40 to 45 bales of compressed cotton can be carried in a box car; while only from 20 to 25 bales of uncompressed cotton can be carried in the same car.

2 I. C. Rep., p. 781, N. O. Cotton Ex. v. I. C. R. R. Co.

That fact doubtless influenced the carriers as well as the Commission in recognizing the propriety of charging more per 100 pounds upon what may be regarded as the raw material than was accepted upon what may be regarded as the manufactured product.

In the case of I. C. C. v. L. S. & M. S. Ry. Co., 134 Fed. Rep., pp. 947, 948, a higher rate per 100 pounds was authorized for the carriage of straw than was charged for the carriage of wheat.

Straw may be regarded as the raw material, and wheat as the manufactured product;—the process of manufacture consisting of threshing the wheat from the straw.

The fact that wheat occupies, per 100 pounds, much less cubic space in a car than straw occupies, doubtless influenced the carriers as well as the Court in recognizing the propriety of charging more per 100 pounds upon what may be regarded as the raw material than was accepted upon what may be regarded as the manufactured product.

The same consideration applies to the case at bar; as it re-

quires about two cars of cattle or hogs to make one car of live stock products.

Rep. & O., Trans., p. 39.

In this connection, it must be remembered that livestock is itself a manufactured product, in the most practical sense of the term.

It requires about four cars of corn to manufacture one car of cattle.

Trans., p. 571.

From Spencer, Ia., to Chicago, a distance of 454 miles, a carload of corn pays the carrier $112.20, and four carloads of corn, of course, pay $448.80; while a carload of cattle, between the same points, pays only $48.18.

Trans., pp. 576, 577.

It will be seen that the revenue realized per carload on the raw material (corn) is more than nine times as much as the revenue realized per carload on the manufactured product (live stock).

In the case at bar, the Commission has, in effect, ordered us to reduce the livestock rates in order to equalize them with the livestock product rates. Will the Commission in some subsequent case, on complaint of shippers of corn, order us to reduce our rates upon corn in order to equalize them with our livestock rates?—and if so, what is to be the ultimate result of the endless chain of rate reductions that may be ordered by the Commission?

XXXVII.

The Principle that Rates on Raw Material Should Not Exceed Those on Manufactured Products Cannot Be Enforced Except Where There is No Competition.

Suppose that a railroad, shown on the following diagram, No. 9, runs from "A" to "B," and has no competition:

A B

Diagram No. 9.

Such a railroad, in the total absence of competition, would naturally charge the higher rate upon livestock, or upon livestock product, according to whether the one or the other costs the railroad the most to carry it.

While I am firmly convinced from the testimony in the case at bar that it costs more to carry livestock than it costs to carry the products of livestock, I will assume, for the purposes of this section of my argument, that it costs more to carry the product; and under that assumption, the supposed railroad would, in the absence of competition, charge a higher rate upon the product than it charged upon the livestock.

But now let us suppose that there is also a navigable river, which runs from "A" to "B," as shown in the following diagram No. 10.

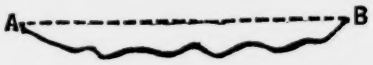


Diagram No. 10.

It is well known that while steamboats are well adapted to the carriage of boxed meats, they are not well adapted, if at all, to the carriage of live animals.

Suppose that steamboats plying on the river from "A" to "B" cut the rail rates on boxed meats to a point below the rail rates on livestock. What shall the railroad do?

If the railroad refuses to meet the boats' rates on boxed meats, all of the boxed meat traffic will go by the boats; and at a rate less than the rail rate on livestock.

The relation between the rates on livestock and the rates on boxed meats as established by the railroad will be destroyed by the boats' competition as effectively as if the railroad had met the boats' rates on the boxed meats.

The public will be deprived of the railroad's service as a carrier of boxed meats; the railroad will lose the revenue which it could have earned from carrying boxed meats, at the boats' rates; and no one will be benefited except the boats.

If, on the other hand, the railroad meets the boats' rates on boxed meats, *its* action will not *create* the preference in favor of boxed meats. The preference was created *by the boats.* The railroad did not *voluntarily* meet the boats' rates on boxed meats, but it was forced to do so, or abandon the boxed meat traffic.

181 U. S., p. 18, E. T. V. & G. Ry. Co. v. I. C. C.

The question as to whether the rates on raw material shall, or shall not, exceed those on manufactured products, cannot, in

the face of competition, be determined by reference to any theoretical relation which may be supposed to exist between them.

The question must necessarily be determined by the varying circumstances and conditions which affect the two kinds of traffic, and competition will be found to be the most potent of any of those circumstances and conditions.

On the cross-examination of President Ripley, one of complainant's expert railroad witnesses, I submitted to him the following diagram No. 11:

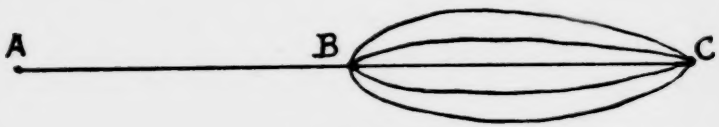


Diagram No. 11.

I asked him to first suppose that he is the president of a railroad running from "A" to "B;" that "A" is a point 450 miles west of the Missouri River, and that "B" is a point on said river; that the road runs through a country where livestock is raised, but where there are no packing-houses for the slaughter of cattle. I asked him whether, in fixing his rates for the carriage of livestock from "A" to "B," he would take into consideration the rates charged on packing-house products by the various competing lines operating between the Missouri River and Chicago, which is represented on said diagram by the letter "C." His answer was: "Certainly not. The two territories are entirely distinct and separate. Whatever the rate was from 'B' to 'C' would not have any effect on what we should consider a proper rate from 'A' to 'B.' Conditions might be entirely different. Probably would be."

I then asked him if, in the event he should build an extension of his road from "B" to "C," he would fix his rates on packing-house products moving between "B" and "C" in relation to his rates on livestock, and whether he would reduce his rates on livestock because he was forced to accept lower rates on packing-house products between "B" and "C." His answer was: "Certainly not."

Trans., pp. 1118, 1119.

The same diagram was submitted by me to Mr. Peabody, another railroad expert introduced by complainant, and he answered the questions put to Mr. Ripley in the same way as Mr. Ripley had answered them.

Trans., pp. 1372, 1373.

XXXVIII.

The Cost of Transportation Cannot Be Used as a Factor in Making Rates.

The Commission, in its Report and Opinion, said: "Although we think cost of transportation is a very important element, we do not consider it a controlling element in this case."

Rep. & O., Trans., p. 44.

The Commission might have said, with equal accuracy, that the cost of transportation cannot be a *controlling* element in any case.

In the first place, it is impossible to ascertain the cost of carrying any one article, or any one description of traffic, between any two points on a railroad; and in fixing a rate upon

such article or traffic, it would be manifestly absurd to attempt to use as a factor something which we know cannot be ascertained.

The reason why it is impossible to apportion with accuracy the cost of service among the items of traffic is thus stated by the Commission In Re Southern Ry. & S. S. Association, sometimes cited as In Re L. & N. R. R.:

"First of all, when it is undertaken, there must be an apportionment between the passenger traffic and the freight traffic; and if we suppose this to be made with reasonable accuracy, there must then be a like apportionment between the different kinds and classes of freight. Freight comes to a road in infinite variety; some heavy, some light, some in large packages, some in small, some perishable or of a special value and requiring

peculiar accommodations and care; it is picked up in varying quantities at numerous stations, to be carried differing distances, sometimes on fast trains and sometimes on slow; the service is performed by men whose compensation differs, but the most of whom have something to do with all branches of the traffic, so that all assist in carrying it on over a road and by means of buildings, appliances, and equipment which have been provided for the whole. Any attempt to apportion the cost, therefore, would, at the best and under the most favorable circumstances, only reach an approximation. *This is so well understood, the world over, that the propositions which from time to time have been made in other countries to measure the charges of the carrier by the cost of carriage solely have always been abandoned after investigation.*"

1 Interstate Commerce Rep., p. 282, right col.

For several years, after the Commission was first organized, it required railroad companies, in their annual reports, to attempt to apportion the expense between the freight and passenger service; but the Commission soon became convinced of the futility, not to say absurdity, of the requirement, and since 1893 the Commission has not required the railroads to even attempt to make such an apportionment.

Statistics of Railways, 1893, p. 81.

But, if the cost of carrying any one article, or any one description of traffic, between any two points on a railroad, could be ascertained with substantial accuracy, it could not be used as a rate-making factor. Upon this subject the Commission said:

"On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring its different sections into more intimate business and social relations, could never have grown to any considerable magnitude, and in some cases could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation added. The traffic would thus be precluded, because the charge for carriage would be greater than it could bear."

1 Ann. Rep., I. C. C. (1887), p. 30.

It is true that some railroad companies, even now, attempt to make an apportionment of their expenses between the passenger traffic and the freight traffic; but it is done upon an arbitrary basis, and without any attempt to arrive at absolute accuracy, even as between those two grand divisions of traffic.

Mr. James Peabody, a most eminent railroad statistician, and

who was examined by complainant in the case at bar, has devised a system by which, after making an arbitrary apportionment of some of the expenses between the passenger traffic and the freight traffic, he can ascertain, with approximate accuracy, "the average cost per gross ton mile" of *all* freight carried over any of the divisions of the Atchison, Topeka & Santa Fe Railway. Mr. Peabody's system is a great advance in railroad accounting, and it entitles him to the gratitude of every railroad official and of every court, or commission, entrusted with the duty of examining into the reasonableness of rates.

But even under his system, as he himself states, while it enables him to ascertain with approximate accuracy, the "average cost per gross ton mile" of carrying *all* freight, it does not enable him to ascertain "the average cost per gross ton mile" of *any particular article* or *any particular freight traffic.*

Trans., pp. 1219, 1220.

The "average cost per gross ton mile" of *all* freight, having been arrived at by Mr. Peabody's system of accounting, it is comparatively easy to form a reliable opinion as to whether the cost per gross ton mile of any particular article, or traffic, is greater than "the average cost per gross ton mile" of *all* freight. For instance, while it is impossible, even by Mr. Peabody's system, to ascertain how much the cost "per gross ton mile" of the livestock traffic, exceeds "the average cost per gross ton mile" of *all* freight, any one familiar with the circumstances and conditions under which the livestock traffic and the other freights are moved, is able to form a reliable opinion as to whether the cost of the livestock traffic is greater or less than the average cost of *all* traffic. Mr. Peabody testified that the cost per gross ton mile of the livestock traffic is greater than the "average cost per gross ton mile" of *all* freight; because

the livestock traffic "requires a great deal of special equipment; trains are run faster; they are run lighter; they involve a large amount of damages; they require a great deal of special equipment; and it is altogether more expensive."

Trans., p. 1346.

In this opinion Mr. Peabody was, in effect, corroborated by every witness who testified upon this point. The witnesses differed as to whether the cost of the livestock traffic was greater or less than the cost of the product traffic, but no witnesses disputed the proposition asserted by Mr. Peabody that the cost of the livestock traffic, "per gross ton mile," is greater than "the average cost per gross ton mile" of *all* freight; and therefore, if rates are to be adjusted on the basis of relative cost, livestock rates should be raised, instead of being lowered, as is, in effect, ordered by the Commission in this case.

Another, and by far the most important reason, why the cost of transportation cannot be used as a controlling factor in making freight rates, is that competition will not permit it to be done.

Let us assume, for the sake of argument, that it is possible to ascertain accurately the cost of transporting livestock from the Missouri River to Chicago, and that such cost amounts to 50 cents per 100 pounds; it is manifest that if any one of the eight carriers competing for the traffic in that territory agrees to accept 23½ cents per 100 pounds, the other carriers must accept as low a rate, or abandon the livestock traffic; and the fact that such lower rate is less than the cost of transporting the traffic can cut no figure whatever in the matter.

XXXIX.

The Value of the Service is an Important Factor in Making Rates.

The Commission in its Report and Opinion said:

"The value of the service is, and always has been considered by carriers, one of the most important elements to be considered when fixing the rates to be charged for transportation."

Rep. & O., Trans., p. 44.

In its first annual report the Commission said:

"It was, therefore, seen not to be unjust to apportion the whole cost of service among all the articles transported, upon a basis that should consider the relative value of the service more than the relative cost of carriage. Such method of apportionment would be best for the country, because it would enlarge commerce and extend communication; it would be best for the railroads, because it would build up a large business, and it would not be unjust to property owners, who would thus be made to pay in some proportion to benefit received; such a system of rate making would in principle approximate taxation; the value of the article carried being the most important element in determining what shall be paid upon it."

1 Ann. Rep. I. C. C., p. 31.

The phrase "value of service," as thus used by the Commission, is made to depend upon the value of the article transported; and upon the principle suggested by the Commission the rate upon the high-priced fat cattle shipped from Iowa to Chicago

for slaughter or export should be very much higher than the rate upon the low-priced scrawny cattle shipped to Chicago to be sold as "canners" or "feeders;" but the competition between the carriers in that territory has rendered it impossible to maintain any greater rate on the high-priced than on the low-priced cattle.

The phrase "value of service" is also used in railroad parlance to indicate the difference between the value of an article at the point of shipment, and the value of a similar article at the place of destination.

If a bushel of wheat produced in Kansas, 700 miles distant from Chicago, be worth 50 cents a bushel at the station in Kansas, and the same grade of wheat be worth $1 per bushel at the elevators in Chicago, the "value of the service" to the shipper rendered by the carrier in transporting the wheat from Kansas City to Chicago is 50 cents per bushel; the shipper could afford to pay 50 cents per bushel without sustaining any loss. But if he paid the entire difference, he would make no profit by the shipment; and therefore, to induce him to ship, the carrier is forced to accept a rate materially less than 50 cents; and in the case supposed the rate would not exceed 25 cents. We see that the "value of service" even in the sense in which I am now using it is controlled by competition. It is the competition between product and product. The price of the Kansas wheat at the point of shipment, as compared with the price of wheat at the point of destination, controls the rate which the carrier can obtain for transportation.

The phrase "value of service" is used in still another sense, to indicate the difference between the rate for which one carrier will transport an article, and the rate for which his competitor will transport it. In the case of the Kansas wheat, just referred

to, if there be two competing lines running from a station in Kansas, to Chicago, the "value of the service" to the shipper rendered by either line cannot exceed the "value of the service" rendered by the other line. The lowest rate offered by either of the lines will control the "value of the service;" and in that case the "value of the service," instead of being fixed, as in the last case, by the competition between product and product, will be fixed by the competition between carrier and carrier. Though the "value of the service" to the shipper as fixed by the competition between product and product may amount to 25 cents per bushel, as shown above, the "value of the service" as fixed by the competition between carrier and carrier may be very much less; though it cannot be more than the "value of the service" as fixed by the competition between product and product. In a word, whether we attempt to use the "cost of service" or the "value of service" in rate-making, we find ourselves absolutely controlled by competition either between market and market or between product and product, or between carrier and carrier; and the most powerful of all those kinds of competition is the competition between product and product.

XL.

If the Law Requires that Rates Shall be Based Either on "Cost of Service," or "Value of Service," the Order of the Commission is Illegal.

Mr. James Peabody, one of appellant's expert witnesses, after stating, on pages 1350 and 1351 of the transcript, his opinion as to the difference in the cost of transporting livestock, and the cost of transporting its products, said: "If I was to make the rates as made on a (the) basis of today, allowing cattle

at 23½ cents, I should put the packing-house products at 28½ cents, and the dressed meats at 33½ cents."

Trans., p. 1351.

He afterwards explained that by using the expression, "If I was to make the rates," he meant that if he were to make them himself, instead of the rates being made by his competitors.

Trans., p. 1373.

Mr. Tomlinson, appellant's chief expert witness, after stating that the most important factor is the "value of the service," testified that the rates on livestock being represented by 100 per cent, the rates on beef (dressed) should be 175 per cent thereof. In other words, whether the rates be based upon "cost of service" or upon "value of service," the rates upon the products should, in the opinion of both of said witnesses, be higher than the rates on the livestock.

The order of the Commission, made in this case on January 7, 1905, orders the defendants to cease and desist from maintaining or enforcing the relation of rates, "whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago, in the State of Illinois, from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive."

Under said order the defendants have the right to accept as low rates upon the products as they may contemporaneously charge upon the livestock.

In the Chattanooga case, the Commission ordered that no greater sum be charged for the carriage of freight to Chatta-

nooga, the shorter distance point, than was exacted to Nashville, the longer distance point; and this Court held that, under such an order, the defendants had the right to continue to exact the current rate to Chattanooga provided the rate to Chattanooga was made the same as to Nashville.

181 U. S., p. 26, E. T. V. & G. Ry. Co. v. I. C. C.

A similar order, in the LaGrange case, was similarly construed by this Court.

190 U. S., p. 284, I. C. C. v. L. & N. R. R.

If, under the law, the rates upon the products of livestock should be higher than the rates upon livestock, the Commission should have so ordered, and should have stated the difference in rates that must be maintained between the two traffics;—provided the Commission has any power to fix relative rates.

If it constitutes unjust preference in favor of the product traffic to charge less rates upon that traffic than upon the live stock traffic it constitutes unjust prejudice to the livestock traffic to charge as high rates upon it as upon the product traffic; and persons interested in the livestock traffic could successfully maintain a complaint based upon the ground that the defendants (though acting in full obedience to the order of the Commission in this case) were giving an undue preference to the product traffic, by accepting as low rates upon that traffic as they charged upon the livestock traffic, when the rates upon the product trafic should be 75 per cent higher than the rates on the livestock traffic.

In the case of I. C. C. v. W. & A. R. R. et al. the United States Circuit Court of Appeals of the Fifth Circuit said:

"If the mere charging of a greater rate for the shorter than for the longer haul, gives an undue and unjust preference to the longer distance points, and subjects the shorter distance points to any undue prejudice or disadvantage, it is difficult to see how the charging exactly the same rate for the shorter haul, than is charged for the longer, shall escape condemnation."

93 Fed. Rep., p. 91, I. C. C. v. W. & A. R. R.

XLI.

The Court Has No Power to Modify the Order of the Commission.

It may be contended by counsel for appellant that the only error committed by the Commission was in not going far enough in favor of the livestock traffic; and that the appellees, therefore, have no right to complain of the error.

Under the sixteenth section of the Act to Regulate Commerce this Court has no power to enforce any order of the Commission unless it be a "lawful order." The question in this Court is not how much error there may be, nor in whose favor the error may be; but is there any material error, for or against any one? It has been repeatedly held that the Court has no power to modify the order of the Commission.

In the case of I. C. C. v. L. S. & M. S. Ry. Co. it was said:

"It has been urged, in behalf of the Commission, that the Court has general equity powers in this cause to make such mandatory injunction, other than the enforcement of the order of the Commission, as will satisfy justice. The act itself confines the action of this Court to the enforcement of the lawful

orders or requirements of the Interstate Commerce Commission. It has been frequently decided in the Federal Courts that, under the act, the function of the Court is to enforce or to refuse to enforce, the order of the Commission as made; that the Court cannot amend or modify an order, or make another order; that the Federal Court has no revisory power over the orders of the Commission; and that it cannot undertake to decide whether the respondents have violated an order which the Commission might lawfully have made."

134 Fed. Rep., p. 947, I. C. C. v. L. S. & M. S. Ry. Co.
64 Fed. Rep., p. 723, I. C. C. v. D. L. & W. R. Co.
73 Fed. Rep., p. 409, I. C. C v. L. & N. R. R.
74 Fed. Rep., p. 841, D. G. H. & M. Ry. v. I. C. C.

XLII.

The Law Does Not Require that Rates Should Be Made with Reference to the Interests of Any Particular Market or Markets.

Mr. Tomlinson, the chief expert witness for appellant, states the real gist of the complaint in this case as follows:

"In other words, the markets in the West have grown much faster than has Chicago."

Trans., p. 1561.

The Commission, in its Report and Opinion, concedes that the relation of rates "should not be adjusted with reference to the interests of any particular market or markets;" it says that "relatively just and reasonable rates should be established, regardless of results that may ensue;" and that "the livestock

should be allowed to go wherever it will under such circumstances."

Rep. & O., Trans., p. 45.

Appellant relies upon the alleged fact that the markets in the West have grown faster than Chicago, as evidence that the relation of rates complained of is not just and reasonable; whereas if it be a fact that the Chicago livestock market has not grown so fast as the Western markets, which are located in the center of the livestock territory, it is evidence that the relation of rates is just and reasonable; because it prevents Chicago from securing a monopoly of the livestock traffic, and permits the livestock to be slaughtered near where it is raised.

XLIII.

In Determining the Question of Undue Preference, the Interests of Chicago are Not Alone to be Considered.

In the case of T. & P. Ry. v. I. C. C., known as the "Import Case," this Court said:

"We read the act in question to direct the Commission, when asked to find a common carrier guilty of a disregard of the act, to take into consideration all the facts of the given case—among which are to be considered the welfare and advantage of the common carrier and of the great body of the citizens of the United States who constitute the consumers and recipients of the merchandise carried;" . . . . "all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, ship-

pers and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act."

162 U. S., pp. 218, 219, T. & P. Ry. v. I. C. C.

The determination of a case like the one at bar, calls into play the attributes of the statesman, as well as those of the jurist. Such a case cannot be decided upon mere mathematical calculations, based upon interminable labyrinths of facts; nor can it be decided by taking a microscopical view of a single point on the map of the United States, like the city of Chicago.

From the above language of this Court it will be seen that the Court must consider not only the interests of Chicago, but also the interests of producers of livestock; the interests of shippers of livestock; the interests of consumers of livestock; and the interests of the carriers of livestock. The decision at last must be controlled by whatever may be found to be "the greatest good to the greatest number."

I shall assume for the purposes of this section of my argument that the rate adjustment complained of has had the effect to divert a portion of the livestock from Chicago to the western markets on the Missouri River.

It appears that, within a comparatively recent period, packing-houses have been established at a number of points on the Missouri River; that said packing-houses are of modern construction and equipment; and that some of the persons who own packing-houses in Chicago also own packing-houses at Missouri River points.

It appears that members of the Chicago Livestock Exchange

act as commission men in the sale of livestock at Chicago; that they receive certain commissions for their services; and that some of them have offices or agencies at some of the Missouri River points. It also appears that the Union Stockyards Company of Chicago receives almost all of the livestock brought to Chicago and charges for unloading and handling the stock.

FIRST.

The following persons are interested against the present rate adjustment, assuming, for argument's sake, that its tendency has been to divert a portion of the livestock to the Western markets:

(1) The Union Stockyards Company. It is interested in having all of the livestock produced in the United States brought to Chicago.

(2) Such members of the Chicago Livestock Exchange as have no offices or agencies on the Missouri River. They also are interested in having all the livestock brought to Chicago.

(3) Such Chicago packers as have no packing-houses on the Missouri River. They also are interested in having all livestock brought to Chicago.

SECOND.

The following persons are not interested in the present rate adjustments, the one way or the other:

(1) Such members of the Chicago Livestock Exchange as have offices on the Missouri River. They can sell livestock either at Chicago or on the Missouri River, as they may prefer, and earn, presumably, the same commission at either place.

(2) Such Chicago packers as have packing-houses on the Missouri River. They can slaughter livestock at either place, as they may prefer, and, presumably, at the same cost of slaughter.

(3) Purchasers of livestock for export, or for slaughter in the Eastern States. The rates on livestock from Chicago, as well as from the Missouri River, to New York, are lower than the rates on livestock products. (Trans., p. 1737.) In other words, purchasers of livestock for export, or for eastern slaughter, whether they make their purchases at Chicago or at the Missouri River, have lower rates to New York on livestock than are charged on the livestock products; and that is the very kind of adjustment upon which appellant insists in this case.

(4) Purchasers of livestock to be used as feeders. Such livestock is not intended for immediate slaughter; and therefore it in no sense competes with livestock products.

It is a significant fact that none of the persons who are classified by me, as not interested the one way or the other in the present adjustment have appeared at the hearing as witnesses.

THIRD.

The following persons are interested in favor of the present adjustment:

(1) Stockyards located at the various Missouri River markets.

(2) Such members of livestock exchanges on the Missouri River, as have no offices at Chicago.

(3) Such Missouri River packers, and interior packers, as have no packing-houses at Chicago.

(4) All producers of livestock, who live west of Chicago. Their interest is to have the competition of numerous markets in which to sell their stock; instead of being compelled to rely upon Chicago alone.

(5) All consumers of livestock products, the world over. They are interested in having the competition of numerous markets in which to buy. They get meat which is more wholesome when it is slaughtered near the farms where it is produced. And they save the freight from the Missouri River markets to Chicago on the offal and other waste.

(6) The railroads between the Missouri River and Chicago. They cannot increase the rates on the livestock products; and each of them would lose hundreds of thousands of dollars should they be forced to reduce the livestock rates to the level of the product rates.

Crosby, Trans., pp. 245, 279.
Keepers, Trans., p. 416.
Calkins, Trans., p. 536.
Tittemare, Trans., p. 584.
Gower, Trans., p. 750.
McCullough, Trans., pp. 936, 944.

I earnestly insist that upon a "fair consideration" of all the above mentioned interests, the "balance of convenience" is very decidedly in favor of the present adjustment; and if that be so, such prejudice as may exist against Chicago, is not, in contemplation of law, "undue," or "unjust."

XLIV.

The Chicago Great Western Contract Does Not Violate the Anti-Trust Law.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, contended that the contract of the Chicago Great Western Company gives to that company a monopoly in the transportation of a certain percentage of the products manufactured on the Missouri River for a period of seven years; and that it restrains trade or commerce, because, for seven years, it withdraws from competition in transportation a certain percentage of the product manufactured on the Missouri River. I quote from said argument as follows:

"It is clear that during the period of seven years the contract in question in this case withdraws from competition in transportation a large part of the product of livestock manufactured on the Missouri River. No other carrier can participate in the transportation of that product, no matter to what extent it may lower its rates. During the period named the transportation of that traffic belongs exclusively under contract to the Chicago Great Western Road."

Mr. Shaver misinterprets the Great Western contract. It does not bind the Missouri River packers to absolutely deliver any percentage of their product traffic to the Great Western Company. They may, at their election, not deliver a single pound of their traffic to that company, provided they prefer to pay to it each month certain liquidated damages provided for in the contract.

Trans., p. 1915.

But if Mr. Shaver's interpretation of the contract be correct, then according to his argument if a railroad company issues its bill of lading obligating itself to transport a carload, or train load, of railroad iron from New York to San Francisco, at a certain rate, it violates the Anti-Trust Law; because "no other carrier can participate in the transportation of said iron, no matter to what extent it may lower its rates;" and "during the period required for the transportation of said iron from New York to San Francisco, the transportation thereof belongs exclusively under the bill of lading, to the company issuing the same." The principle contended for by Mr. Shaver would render every bill of lading, issued for the transportation of interstate traffic, illegal and void. I think it needs no authority, in this Court, to show that such an argument is unsound.

But the appellees, for whom I appear, are not interested in the question as to whether the Great Western contract is legal or illegal; their only interest *is in the rates which the Great Western Company accepts for the transportation of livestock products* from the Missouri River to Chicago. Even if said Great Western contract should be adjudged to be illegal and the parties to said contract should be enjoined from acting under it, the Great Western Company could, entirely independent of said contract, elect to continue to accept rates on the livestock products as low as, or even lower than, the rates specified in said contract; and if said company should elect so to do, the other defendants would be compelled to accept rates no higher than those offered by the Great Western, or they would have to abandon the product traffic to that company.

XLV.

The Rate on Livestock from the Missouri River when Consigned to Chicago Proper is no Higher than the Rate on the Products.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, said:

"When the livestock is consigned to Chicago proper, its rate is higher than on the products, but when it goes beyond Chicago the rate for the haul as far as Chicago is the same as that on the products."

In support of his statement Mr. Shaver referred to certain tables in the appendix to his argument which show that the *nominal* local rate on cattle and hogs from Missouri River points to Chicago is 23½ cents, while the actual local rate on packing-house products from the same Missouri River points to Chicago is 20 cents.

The rate of 23½ cents on cattle and hogs is a mere nominal or paper rate, and it is never actually charged.

The Commission in its Report and Opinion says: "Since all, or nearly all, the livestock carried easterly from the Missouri River is shipped there in the first instance from other points, practically no shipments are made from the river to Chicago upon the local rates in force between those points, and such rates are therefore important, principally, because of their effect upon rates from the intermediate points."

Rep. & O., Trans., p. 35.

All of the witnesses who testified upon the point state that livestock consigned from the Missouri River to Chicago proper does not actually pay more than 20 cents per 100 pounds, which is the same as the rate charged on the products; and the adjustment, therefore, is the same as that ordered by the Commission.

In said argument, Mr. Shaver further said:

"Why, when the traffic is shipped on a through rate from west of the Missouri River to points east of the Illincis-Indiana State line, is the proportional rate from the Missouri River to Chicago on the livestock not higher than on the product?"

A sufficient answer to the question is, that even the order of the Commission in this case does not require that the rates on livestock shall be higher than the rates on the product. On the contrary, the order in effect directs that the rates on livestock shall not be higher than the rates on the products.

XLVI.

The Commission Has No Power to Make Relative Rates.

It was twice decided by this Court that the Commission has no power to make specific rates.

167 U. S., 479, I. C. C. v. C. N. O. & T. P. Ry.
162 U. S., p. 197, C. N. O. & T. P Ry. v. I. C. C.

The Commission then attempted to make relative rates; and the U. S. Circuit Court of Appeals for the Eighth Circuit said:

"Prescribing a rate from Pueblo, Col., to San Francisco, Cal.,

by reference to a rate that had theretofore been established by carriers between Chicago and San Francisco, involved the exercise of legislative functions to the same extent as fixing the rate between the former points on an independent consideration of what would be a reasonable compensation for the service."

. . . . . "We feel constrained to hold that the Commission exceeded its authority in this part of the order, and that it had no more power to fix a rate from Pueblo to San Francisco by relation to the theretofore existing rate from Chicago to San Francisco than it had to fix a former rate upon an independent consideration of what would be a reasonable charge."

101 Fed. Rep., pp. 784, 785, Southern Pac. Co. v. Col. Fuel & Iron Co.

To paraphrase the language just quoted, the Commission had no more power to fix a rate on livestock, by relation to the rate on livestock products, than it had to fix the former rate upon an independent consideration of what would be a reasonable charge.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, said:

"But the Court will observe that the order does not say what the rate shall be either on the livestock or its product, but leaves it to the discretion of the defendants to determine how the unlawful relation may be remedied. That may be done either by advancing the product rates or by reducing the livestock rates, or by both such advance and reduction in certain proportions." . . . . "The order requires, when considered as a whole and when the body of the report of the Commission is considered, simply that whatever rates the defendants may establish on the livestock shall not be higher than the rates on the product."

It is "true that the order does not say what the rates shall be either on the livestock or its product;" but, as conceded by Mr. Shaver, the order does require "that whatever rates the defendants may establish on the livestock shall not be higher than the rates on the product." The Commission does, therefore, expressly make or fix the rates which the defendants "shall" *in the future charge* on the livestock, by ordering that such rates "shall" not *in the future* be higher than the rates on the product.

The cases above cited in this section show that the Commission has no more power to fix *a future rate* on livestock, by relation to the rate on its products, than it has to fix the former rate upon an independent consideration of what would be a reasonable charge

The Commission has the power to express its opinion as to whether the present relation between the rates on livestock and the rates on the product is undue or unreasonable; but it has no power to even express an opinion as to whether the present relation will *in the future* be undue or unreasonable; and that is precisely what the Commission assumed to do in this case.

In the case of I. C. C. v. C. N. O & T. P. Ry. Co., this Court said:

"It will be perceived that in this case the Interstate Commerce Commission assumed the right to prescribe rates which should control *in the future*, and their application to the Court was for a mandamus to compel the companies to comply with their decision—that is, to abide by their legislative determination as to the maximum rates to be observed *in the future*."

167 U. S., p. 500, I. C. C. v. C. N. O. & T. P. Ry. Co.

Again, this Court said:

"If there were nothing else in the act than the first section

commanding reasonable rates, and the twelfth empowering the Commission to execute and enforce the provisions of the act, we should be of the opinion that Congress did not intend to give to the Commission the power to prescribe any tariff and determine what *for the future* should be reasonable and just rates. The power given is the power to execute and enforce, not to legislate. The power given is partly judicial, partly executive and administrative, but not legislative."

167 U. S., p. 501, I. C. C. v. C. N. O. & T. P. Ry. Co.

This Court, commenting upon Section 6 of the Act to Regulate Commerce, said:

"It will be perceived that the section contemplates a change in rates (i. e., by the carrier) either by increase or reduction, and provides the conditions therefor; but of what significance is the grant of this privilege to the carrier if the *future* rate has been prescribed by an order of the Commission, and compliance with that order enforced by a judgment of the Court in mandamus? The very idea of an order prescribing rates *for the future*, and a judgment of the Court directing compliance with that order, is one of permanence." . . . . "Incorporating into a statute the common law obligation resting upon the carrier to make all its charges reasonable and just, and directing the Commission to execute and enforce the provisions of the act, does not by implication carry to the Commission or invest it with the power to exercise the legislative function of prescribing rates which shall control *in the future*." . . . . "The grant to the Commission of the power to prescribe the form of the schedules, and to direct the place and manner of publication of joint rates, thus specifying the scope and limit of its functions in this respect, strengthens the conclusion that the power to prescribe rates or fix any tariff *for the future* is not among the powers granted to the Commission."

"These considerations convince us that under the Interstate Commerce Act the Commission has no power to prescribe the tariff of rates which shall control *in the future*, and, therefore, cannot invoke a judgment in mandamus from the courts to enforce any such tariff by it prescribed."

167 U. S. pp. 505, 506, I. C. C. v. C. N. O. & T. P. Ry. Co.

It is true that in the case then before this Court the rates which the Commission had attempted to prescribe were what are called "specific rates," whereas in the case at bar the rates which the Commission has attempted to prescribe are what are called "relative rates;" but it will be noticed that the case before this Court did not turn upon the question whether the rates were "specific" or "relative;" and that the only question was as to the right of the Commission to prescribe *any* kind of rates, either "specific" or "relative," which "shall control *in the future*."

This Court, referring to an argument contained in an opinion rendered by Commissioner Cooley, said:

"We think that nearly all of the argument which he makes to show that the Commission has no power to fix a minimum or establish an absolute rate, goes also to show that it has no power to prescribe *any* tariff, or fix *any* rate to control *in the future*."

167 U. S., p. 511, I. C. C. v. C. N. O. & T. P. Ry. Co.

Whether specific rates or relative rates now in effect are undue or unreasonable is a judicial question to be determined by the circumstances and conditions now or heretofore existing; but whether certain specific or relative rates will be just and reasonable in the future is a legislative question which cannot be determined in advance either by the judiciary or by the Interstate Commerce Commission.

In the language of this Court, "it is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act."

167 U. S., p. 499, I. C. C. v. C. N. O. & T. P. Ry. Co.

The order of the Commission in the case at bar, instead of confining itself to a determination that the present relation of rates between livestock and its products is undue or unreasonable (which would be a judicial act); assumes to go farther, and to order, as conceded by Mr. Shaver, that in the future "whatever rates the defendants may establish on the livestock shall not be higher than the rates on the products" (which is a legislative act).

Whether the present relation between the rates on livestock and the rates on its product is undue or unreasonable, must be determined by the facts and circumstances which are now existing; and those facts and circumstances can be ascertained from the testimony either by the Commission or by the Court.

But, whether the same relation will be undue or unreasonable in the future, can only be determined *by the facts and circumstances which may exist in the future;* and as neither the Commission nor the Court can foretell what those facts and circumstances will be, it is impossible to judicially determine now whether such future relation will or will not be undue or unreasonable.

Congress being the legislative department of the government, may have the power, either by direct enactment or through the instrumentality of the Interstate Commerce Commission, to declare what shall in the future be deemed to be just and reasonable rates, whether "specific" or "relative." By the act approved June 29, 1906, Congress has assumed to confer that power upon the Commission; but that act was not in force when the proceedings in this case were had.

XLVII.

The Missouri River Packer Has No Undue Advantage of the Shipper of Livestock.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, said:

"Manifestly, lower rates on the product than on the livestock makes it cheaper to slaughter the stock at the river and then ship the product on to Chicago or to the East under the reduced rate. Take the following as an example:

"A live steer of the weight of 1,000 pounds gross.

"The livestock rate of 23½ cents per 100 pounds on this gross weight of 1,000 pounds amounts to an aggregate of $2.35.

"Take the amount of the product in this steer which can be made merchantable as 70 per cent, or 700 pounds.

"The aggregate rate of $2.35 on the 1,000 pounds gross weight, when applied to the 700 pounds as product, amounts to 33 4-7 cents per 100 pounds.

"The rate on prepared product is 20 cents per 100 pounds or less.

"Deduct 20 cents from 33 4-7 cents and we have 13 4-7 cents per 100 pounds as the excess of the rate on the crude product in the live steer over the rate on the product manufactured at the Missouri River.

"To the extent of 13 4-7 cents per 100 pounds the Missouri River packer, or shipper of the prepared product, has the ad-

vantage of the shipper of the crude product in the live steer from the river, or from the territory east of the river in which the 23½ cent rate prevails. The shipper of the live steer in the above example pays the full rate on 300 pounds of valueless matter."

The example put by Mr. Shaver assumes that the steer is slaughtered at the Missouri River; and he compares the actual rate from the Missouri River to Chicago on the product, with the nominal rate from the Missouri River to Chicago on the live-stock. He assumes that the rate from the Missouri River to Chicago on live-stock is 23½ cents.

It is true that there is a nominal local rate from the Missouri River to Chicago on live stock of 23½ cents; but the Commission finds and reports that "since all or nearly all the livestock carried easterly from the Missouri River is shipped there in the first instance from other points, practically no shipments are made from the river to Chicago upon the local rates in force between those points, and such rates are therefore important principally because of their effect upon rates from the intermediate points."

Rep. & O., Trans., p. 35.

In the table of rates hereinbefore set forth in Section IX it is shown that the rate applicable on shipments of livestock from the Missouri River to Chicago, when such shipments move to the Missouri River from other points, is 20 cents per 100 pounds; and not 23½ cents as stated in Mr. Shaver's example.

The rate on the prepared product from the Missouri River to Chicago is, as conceded by Mr. Shaver, 20 cents per 100 pounds. It follows that where a shipment of livestock, and a shipment of product, are both made from the Missouri River to Chicago, the rate is the same, viz.: 20 cents per 100 pounds; which adjustment

fully complies with the order made by the Commission in the case at bar.

And so, if a shipment of livestock, and a shipment of the product are both made from the Missouri River to points east of Chicago (i. e. points east of the Indiana-Illinois State line), the rate is the same, viz.: 18.5 cents per 100 pounds, which adjustment also fully complies with said order of the Commission.

Trans., pp. 237, 398, 505.

But even if it were true, as assumed by Mr. Shaver, that the Missouri River packer, or shipper of the prepared product, has under the present adjustment, some advantage of the shipper of livestock, such advantage or preference is not *undue;* because it is a mere *incidental* effect resulting from the reduction made by the Great Western Company in the product rates; which reduction was forced upon that company by the competition then existing; and which reduction was necessary to enable that company to secure what was considered to be its fair share of the product traffic.

181 U. S. pp. 18, 19, E. T. V. & G. Ry. Co. v. I. C. C.

XLVIII.

The Fact that Chicago Receives a Greater Proportion of the Livestock than is Received by the Missouri River Markets is Evidence that the Rate Adjustment is Fair to Chicago.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, said:

"The fact that Chicago receives a greater proportion than the other (Missouri River) points notwithstanding the rate adjustment, is no justification of that rate adjustment if it is unfair or

unduly preferential; a fleet horse frequently wins although heavily handicapped."

Of course, if the rate adjustment is in truth unfair, or unduly preferential, the fact that Chicago receives a greater proportion of the livestock is no justification of such adjustment; but the fact that Chicago receives a greater proportion of the livestock is highly persuasive evidence that the adjustment is neither unfair to Chicago nor unduly preferential to the Missouri River markets. Though a fleet horse may sometimes win, although heavily handicapped, the fact that a fleet horse wins is at least presumptive evidence that he was not too heavily handicapped

XLIX.

The Fact that Rates are Unreasonably Low is Not Conclusive that There is No Profit in Them.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, said: "It is claimed that the rates on both the live stock and the products are unreasonably low, and that there is no profit in them, and yet in the very next breath it is said that if the order of the Commission is complied with, by advancing the product rates, it will work irreparable damage to the carriers by diverting the traffic to other lines. In other words, the diversion of a traffic in which there is no profit will work irreparable damage. This, to say the least, taxes our credulity and smacks of inconsistency."

While we do claim "that the rates on both the live stock and the products are unreasonably low," we have never claimed "that there is *no* profit in them."

It was proven in the Circuit Court by Mr. Ripley and by Mr. Peabody, and illustrated by certain exhibits filed by Mr. Ripley,

that neither the live stock rates nor the product rates pay their proper proportion of the "total transportation cost" (which includes interest and taxes), or even their proportion of the "total operating cost" (which excludes interest and taxes). (Trans., pp. 1104, 1105, 1106, 1222, 1223.) For that reason we claim that said rates are unreasonably low. Every article transported by a railroad should pay not only its proportion of "total operating cost," but also its proportion of "total transportation cost," including interest and taxes; and where the rate upon any article fails to accomplish that result, such rate is "unreasonably low," and should be raised if competition will permit it to be done.

But while Mr. Ripley and Mr. Peabody testified that neither the live stock rates, nor the product rates, pay their proper proportion of the "total transportation cost," or even their proportion of the "total operating cost," they also testified that all of said rates pay some profit over and above the "movement cost," which means the cost or expense of the mere movement of that particular traffic. (Trans., pp. 1104, 1231, 1232.) Whatever such profit may amount to, it is to the interest of the public, as well as of the carrier, that the carrier should be allowed to earn it.

In the case of the E. T. V. & G. Ry. Co. v. I. C. C., this Court said:

"There is a conceded margin of profit in the rates now in force to Nashville and Memphis with reference *to the additional expense incurred in carrying eastern traffic to those destinations.*" . . . . . "To compel the carriers to desist from all Nashville traffic under the circumstances stated would simply result in deflecting the traffic to Nashville to other routes, and thus entail upon the carriers who were inhibited from meeting the competition, although they could do so at margin of profit, the loss which would arise from the disappearance of such business, without anywise benefiting the public."

181 U. S., p. 20, E. T. V. & G. Ry. Co. v. I. C. C.

L.

THE PRESENT RATE ADJUSTMENT WAS NOT MADE WITH A VIEW OF PROMOTING ANY SET OF MARKETS OR INTERESTS.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, said:

"We think the carriers are going beyond their legitimate sphere of action and are treading upon dangerous ground, when they undertake to establish a rate or make a rate adjustment *with a view* of promoting any set of markets or interests."

I have shown hereinbefore in Section XXIX that the present rate adjustment was forced upon the other carriers by the action of the Great Western Company in reducing the rates upon livestock products; and that said company was forced by the competition then existing to make said reduction in order to secure its proportion of the product traffic. I have shown in Section XXXIII that said reduction was not made *with the object or view* of promoting any set of markets or interests; and that the only object or view which that company had in mind was to secure its share of the product traffic, and prevent said traffic from being entirely absorbed by the competitors of that company.

LI.

THE COMMISSION DID NOT GIVE DUE WEIGHT TO THE COMPETITION RELIED UPON IN THIS CASE.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, said:

"In the present case it (the Commission) considered the competition set up and held it to be insufficient to justify the reduction in the product rate," etc.

"That the Commission considered and gave due weight to the competition set up in this case appears from the whole tenor of its Report and Opinion."

After quoting several extracts from said Report and Opinion, he further said :

"It is clear from these quotations (and others that might be made) that the Commission considered the competition brought about by (the) contract of the Chicago Great Western Company, and held that competition to be insufficient or not of a character to justify what it (the Commission) found to be the unjust discrimination in rates resulting from that contract."

A similar argument was made by the same counsel in the "LaGrange" case.

That case was originated by a petition filed before the Commission by Fuller E. Calloway against the L. & N. R. R. Co. and others.

In the report and opinion of the Commission rendered in that case, the Commission expressly recited that it had "fully considered all the evidence and material facts and given due weight to the competition of carriers and of markets for Atlanta trade, together with the fair interests of the defendant carriers, the interests of the communities involved, and those of the complainant and other dealers concerned."

7 I. C. Rep., p. 438, Calloway v. L. & N. R. R. Co.

But notwithstanding such express recital, this Court reversed the Commission, "upon the error of law committed by the Commission when it decided that the railroad companies were powerless to consider the competitive rates prevailing at Atlanta," etc.

190 U. S., p. 283, I. C. C. v. L. & N. R. R. Co.

So, in the case at bar, we ask this Court to affirm the decree of the court below, and reverse the Commission upon the error of law committed by the Commission when it decided that the appellees were powerless to consider the competitive circumstances and conditions which affected the rates upon the livestock product.

LII.

The "Social Circle Case" Has, in Effect, Been Overruled.

In his printed argument in the Circuit Court, Mr. Shaver, of counsel for appellant, referred to the case known as the "Social Circle Case," as authority for the proposition that the question as to whether the competitive circumstances and conditions in a given case are so dissimilar as to justify the rates charged, "is one of fact peculiarly within the province of the Commission," whose conclusions thereon will not be reversed by the Court.

In the "Social Circle case" this Court said that the conclusions of the Commission had "been accepted and approved by the Circuit Court of Appeals, and we find nothing in the record to make it our duty to draw a different conclusion."

162 U. S., p. 194, C. N. O. & T. P. Ry. v. I. C. C.

But, in the case at bar, the conclusions of the Commission have not been accepted or approved by the Circuit Court of Appeals, or by any other court. On the contrary they have been disapproved by the court below, and the question now up for decision, is whether the conclusions of the Commission or of the Circuit Court shall be accepted or approved by this Court.

His Honor Judge Bethea required that the witnesses be

brought before him; and nearly six weeks were consumed in examining them orally in his presence. He gave to the matter the most thorough and painstaking investigation possible.

In the "Behlmer case," the "Social Circle case" was relied upon by counsel for the Commission. It was argued in the "Behlmer case," that the state of the record in the "Social Circle case" was such that an analysis of the action taken below might have well led this Court to a different opinion; in other words, might have justified this Court in the holding that both the Commission and the Circuit Court of Appeals had rested their conclusions, in the "Social Circle case," not on the want of proof as to the claimed competition, but solely on the absence of legal power to assert competition of the character relied on; but this Court replied that even if such argument were conceded, it could have no influence upon the decision of the "Behlmer case." "Because the only deduction possible from the proposition would be that the particular case (i. e. the Social Circle case) had been decided on a question of fact, when it should have been controlled by a question of law, which would afford no reason for the failure to apply sound principles of law to the facts of this record. It involves a complete *non sequitur* to assert that because legal principles may not have been applied to a given case on the assumption that the facts did not render their application necessary, therefore, in future cases, where it was found that the facts brought the controversy within the principles, they should not be applied."

175 U. S., p. 673, L. & N. R. R. Co. v. Behlmer.

I insist that the language just quoted in effect overruled the "Social Circle case;" and it is certain that the "Social Circle case" cannot be reconciled with the subsequent cases decided by this Court, and which are referred to in Section XXII of this argument.

LIII.

The Order of the Commission is Not Conclusive Upon this Court.

In his printed argument in the Circuit Court Mr. Shaver, of counsel for appellant, contended that the order of the Commission is *prima facie* lawful, and that the burden is upon appellees to show clearly to the satisfaction of the Court that it is unlawful. Mr. Shaver admitted, in effect, that the Act to Regulate Commerce only makes the "findings of fact" *prima facie* evidence. He cited several cases decided at Circuit as holding that "the conclusions of the Commission based upon their findings of fact" are also "presumed to be well founded and correct;" but he admitted that those courts "have gone further" than the statute. Certainly none of said cases has ever been affirmed by this Court.

The first case cited by him is the I. C. C. v. L. & N. R. R. Co., 102 Fed. Rep., pp. 709, 710, the opinion in which at Circuit was rendered by District Judge Toulmin. Judge Toulmin originated the proposition that the "*conclusions*" of the Commission are presumed to be correct, and he, of course, cited no authority to sustain him. His decision in that case was reversed both by the Circuit Court of Appeals and by this Court; though neither of said courts noticed the proposition originated by him.

190 U. S., pp. 273, 279, I. C. C. v. L. & N. R. R. Co.

The next case cited by Mr. Shaver is the I. C. C. v. L. & N. R. R. Co., 118 Fed. Rep., p. 613. The decision in that case was rendered by District Judge Speer; he quotes the proposition, as announced in Judge Toulmin's opinion, but cites no other authority in support of it. The decision of Judge Speer was ap-

pealed from by defendants. They afterwards dismissed the appeal, not because they thought that either the Commission or Judge Speer was correct in the opinions rendered by them respectively in that case, but because they became satisfied that even if they should make their rates on the plan suggested by the Commission, the great bulk of the traffic would still move to Pensacola in preference to Savannah; and subsequent events have shown that they were correct.

It appeared in that case that the L. & N. R. R. owned a line of railroad running from Pensacola eastwardly to River Junction, a distance of 161 miles, and known as its Pensacola & Atlantic Division; and that said company was interested in having the traffic, which originates on said division, move to Pensacola, a port on its own line, in preference to Savannah, which is not located on its line, but is located 259 miles east of River Junction which is the extreme eastern terminus of the L. & N. R. R.

The Savannah Bureau of Freight & Transportation filed a petition before the Interstate Commerce Commission, the object of which was to compel the L. & N. R. R. Co. to readjust its rates from stations on the Pensacola & Atlantic Division, so that cotton and naval stores originating on said division would move to Savannah, a port in which the L. & N. R. R. was not interested, in preference to Pensacola, in which the L. & N. R. R. was very greatly interested.

The Commission decided in favor of Savannah, and ordered an adjustment of rates, which the L. & N. R. R. at first supposed would move the traffic to Savannah in preference to Pensacola. Judge Speer affirmed the order of the Commission and the L. & N. R. R. and other defendants appealed. But upon further investigation the L. & N. R. R. became satisfied that even under the adjustment as ordered by the Commission the great bulk of

the traffic would still move to Pensacola instead of Savannah; and as the L. & N. R. R. could accomplish its purpose as well by conforming to the order of the Commission, as it could by reversing Judge Speer, it concluded that the appeal would be thenceforth a mere moot court proceeding, and dismissed it as of no further use.

Mr. Shaver, in his printed argument, also referred to the case of E. T. V. & G. Ry. Co. v. I. C. C., 99 Fed. Rep., p. 664, in the Circuit Court of Appeals for the Fifth Circuit, and quotes an extract from the opinion of Judge Taft in which he describes the Interstate Commerce Commission as an "expert tribunal." Mr. Shaver also refers to the case of I. C. C. v. Southern Pacific Co. et al., 123 Fed. Rep., p. 603, in which District Judge Wellborn concurs with Judge Taft in describing the Interstate Commerce Commission as "an expert tribunal;" but neither Judge Taft nor Judge Wellborn approved the proposition originated by Judge Toulmin to the effect that the *conclusions* of the Commission are presumed to be well founded and correct, and will not be set aside unless error clearly appears. That proposition has no support except from Judge Toulmin and Judge Speer.

The conclusions of the Interstate Commerce Commission have been repeatedly set aside by this Court as shown by the cases referred to in Section XXII of this argument, and in none of those cases did the error of the Commission appear any more "clearly" than it appears in the case at bar.

Respectfully submitted,

ED. BAXTER,

Solicitor for Appellees as of Record.

No. 352.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

THE CHICAGO GREAT WESTERN RAILWAY COMPANY, Et Al., *Appellees.*

Appealed from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR THE APPELLANT THE INTERSTATE COMMERCE COMMISSION.

[REFERENCES ARE TO PRINTED RECORD.]

I.

STATEMENT.

This suit was brought by the complainant, the Interstate Commerce Commission, against the appellees, in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, on the 29th day of April, 1905, being Cause No. 27723, on the docket of said Court, under and by virtue of the act of Congress entitled "An Act to Regulate Commerce," approved February 4, 1887, as amended March 2, 1899, to

secure an injunction to compel obedience to the order of the Interstate Commerce Commission made by it against the appellees on the 7th day of January, 1905, whereby the appellees were commanded to cease and desist on or before the 15th day of February, 1905, from violating Sections 2 and 3 of said Act, by maintaining or enforcing higher rates of freight upon live cattle and live hogs than upon the dressed products thereof, on shipments to Chicago from points on the Missouri River between Sioux City, and Kansas City, inclusive, and from South St. Paul, and from points in the territory between the Missouri River and Chicago, and between South St. Paul and Chicago, which by the report and opinion of the Commission in the proceedings brought against the appellees by the Chicago Live Stock Exchange, in which the said order of the Commission was made, the charging of higher rates for live cattle and hogs than for the said products thereof was held to be a violation of Sections 2 and 3 of said Act.

The proceeding in which the said order was issued upon which this suit was brought was begun before the Interstate Commerce Commission by the petition of the Chicago Live Stock Exchange in April, 1902, filed in accordance with Section 13 of said Act, and charged the violation of Sections 1, 2 and 3, by the appellees, who were defendants therein, the complaint charging that the higher rate of freight upon live stock from said Missouri River points, from South St. Paul, and from the points intermediate between Missouri River and Chicago, and intermediate between South St. Paul and Chicago, than was charged upon the dressed meat and the prepared product, commonly called packing house products, violated Sections 2 and 3 of said Act, in that it was an unlawful discrimination against shippers of the live stock to Chicago, and gave to the shippers of the dressed meat and packing house products an undue and unreasonable preference and advantage as against the shippers of live stock to Chicago, and subjected the latter to an unjust and unreasonable prejudice and disadvantage; and that it subjected Chicago and the market at Chicago, the Chicago Live Stock Exchange and its members, who were engaged in the business of selling live stock on commission,

and the owners of live stock and shippers thereof, to an unjust and unreasonable prejudice and disadvantage, and gave an undue and unreasonable preference and advantage to the shippers of dressed meat and packing house products from the said Missouri River points and from South St. Paul to the localities and markets and persons engaged in a like business at the said locality on the Missouri River and at South St. Paul. (Pr. Rec., Exhibit A, p. 9.)

The several defendants in said proceedings answered therein denying the allegations of the complaint (Exhibits B, C, D, E, F, G, H, I, J, K, L, N, and O, Pr. Rec. pp. 11 to 27), except the Chicago and Northwestern Railway Company. After due notice in accordance with the provisions of the said Act to Regulate Commerce, the Interstate Commerce Commission on January 7th, 1905, filed its report and opinion therein, including its findings of fact and made the order which is the foundation of this suit, which is likewise made a part of the Appellant's Bill as Exhibit P (Pr. Rec. pp. 28 to 47) and Exhibit Q (Pr. Rec. pp. 47-49).

The order made the basis of the suit is as follows:

ORDER OF COMMISSION.

"This case being an issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

It is ordered, that, in accordance with said report and opinion, the present relation of rates maintained and enforced by defendants, the Chicago Great Western Railway Company; the Burlington, Cedar Rapids and Northern Railway Company; the Chicago, St. Paul, Minneapolis and Omaha Railway Company; the Chicago and Alton Railway Company; the Chicago and Northwestern Railway Company; the Chicago, Burlington and Quincy Railroad Company; the Chicago, Milwaukee and

St. Paul Railway Company; the Chicago, Rock Island and Pacific Railway Company; the Hannibal and St. Joseph Railroad Company; the Illinois Central Railroad Company; the Iowa Central Railway Company; the Kansas City, St. Joseph and Council Bluffs Railroad Company; the Minneapolis and St. Louis Railroad Company; the Missouri Pacific Railway Company; the Missouri, Kansas and Texas Railway Company; the Omaha, Kansas City and Eastern Railroad Company; the Wabash Railroad Company, and the Wisconsin Central Railway Company, whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago, in the State of Illinois, from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago, constitutes wrongful prejudice and discrimination, in violation of the provisions of the act to regulate commerce; and that said defendants be, and each of them is hereby, notified and required to cease and desist, on or before the 15th day of February, 1905, from maintaining or enforcing the said unlawful relation of rates, and from further continuing said unlawful prejudice and discrimination.

And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of section 15 of the Act to Regulate Commerce."

After having been duly served with subpoena, each of the defendants who are appellees herein, made due answer to said petition filed in the Circuit Court, which were all alike in substance, and which admit that said order of the Commission was duly made in said proceeding as above set forth, and had been duly served upon each of the defendants, and that they each refused at all times to comply therewith, but denied that the order of the Commission was a lawful order and

alleged that the same was in violation of the rights of the defendants and for that reason that they had not complied with the same.

They denied that the higher rates of freight upon live cattle and hogs than upon the dressed meats and the prepared products thereof created an undue and unreasonable prejudice or constituted an unjust discrimination in violation of Sections 2 and 3 of said Act to Regulate Commerce, but alleged that said order was not justified by the evidence produced before the Commission on said hearing, or by the facts, and that the same was unlawful and not within the jurisdiction of the Commission, and that it was unreasonable as to each defendant and a violation of its rights, for the reasons: (1) that the said rates on live stock were very low, and that no complaint had at any time been made by any shipper of live stock of said rates; (2) that each of the defendants had been obliged to make such rates and charges for the transportation of the dressed meats and prepared products because of the competitive conditions on Missouri River and South St. Paul in respect thereto, to meet the rates put in force by its competitors, and that the order of the Commission seeking to compel each defendant to make the same rate for the live animals is unreasonable and unlawful because it could only be complied with by a reduction of the rates on live animals, thereby compelling the defendant to make its rates and charges too low to be reasonable; (3) that competition of roads leading to other lake ports than the Gulf of Mexico, on such products, required the present rate on the products to meet that competition, and also that there are proportional rates upon which live stock originating west of Missouri River was shipped east thereof, which are all lower ~~higher~~ than the said rates on the dressed meat and packing house products from Missouri River to Chicago, and that all live stock shipped from Missouri River to Chicago are shipped upon such proportional rates; (4) that the rates on live stock complained of are not unreasonably high and cannot be reduced without making them unremunerative, which would deprive the defendants of their property without due process of law; (5) that the public interest and the maintenance of

market towns on the Missouri River and between there and Chicago required the maintenance of the existing relation of rates, and to comply with the order of the Commission would injure or destroy such markets and deprive the stock growers of that territory of the benefit and advantages of the markets, and that, therefore, they protested against the establishment of the relation of rates as ordered by the Commission; and (6) that the conditions surrounding the transportation of cattle and hogs differed so materially from the conditions surrounding the transportation of dressed and prepared products thereof, that the rate of the one could not be made the basis of the rates of the other.

In addition to the foregoing all of the defendants, except the Chicago Great Western Railway, also alleged that on August 8, 1902, one of their competitors (meaning the Chicago Great Western) entered into a contract with the shippers of dressed and prepared products, cattle and hogs, from Missouri River to Chicago, whereby said competitor agreed to carry for a long term the said dressed and prepared products to Chicago for the rate of 20 cents per hundred pounds; and that each of the defendants was compelled, in order to obtain any portion of the traffic, to put in force similar rates, and that, therefore, the establishment of the rates upon the dressed and prepared products by each of the defendants, other than the Chicago Great Western Railway, was the result of conditions beyond the control of either defendant, other than the Chicago Great Western Railway, and that to compel it to establish the relation of rates ordered by the Commission could only be complied with by a reduction of the rates on cattle and hogs, which are alleged to be now reasonable, and that the effect would be to compel their transportation at less than a reasonable rate; that being compelled by the competition growing out of said contract to charge the present rates on the dressed and prepared product, of such live stock, it is not unlawful for the said defendants to do so, and it does not constitute any undue or unreasonable prejudice or disadvantage against the shippers of cattle or hogs to Chicago in violation of Section 3 of said Act.

Intervening petitions were filed by the Union Stock Yards Company of Chicago, Sinclair & Co., Ltd., St. Joseph Stock Yards Company, St. Paul Union Stock Yards Company, Sioux City Stock Yards Company, and the Railroad and Warehouse Commissioners of Minnesota.

These petitions presented no material matter not arising upon the petition and answers and otherwise upon the record, and therefore will not be further considered in this statement.

After the filing of the said petition to enforce the order of the Commission as aforesaid, and the answers thereto, and on the —— day of August, 1905, the Commission also filed a petition as an original proceeding (being No. 27829) in the said Circuit Court under and by virtue of the Act of Feb. 19, 1903, known as the Elkins Act, wherein it alleged that the same defendants by demanding, charging and collecting the higher rate of freight for the transportation of live stock than for the transportation of the dressed meat and prepared products from the said Missouri River and intermediate points, and South St. Paul and intermediate points to Chicago, were thereby discriminating against the shippers of the live stock and persons engaged in business at that market, and in favor of the shippers of the dressed meats and packing house products, on the Missouri River and South St. Paul, and sought an injunction against the continuation of said discrimination.

Pleas for each of the defendants were filed to the last mentioned petition, wherein they sought to abate the same by reason of the pendency of said cause No. 27723, but these pleas were overruled and thereupon answers were filed thereto in substance the same as the answers to this petition.

(All proceedings in Cause No. 27829 are omitted from the printed Record because of the cost of printing, and because the decision of the questions involved in this cause 27723 disposed of all of the points raised in that case.)

The cases were consolidated and came on for hearing before the Honorable S. H. Bethea, District Judge, presiding and holding the Circuit Court of the United States for the Northern District of Illinois, sitting in chancery, on the 15th day of September, 1905, and the evidence was duly taken before said

Judge in open court at the hearing from time to time, and from day to day, and was completed on the 15th day of October, 1905, as shown by the printed Record and certificate of evidence, pp. 2067, 2068.

On the 20th day of November, 1905, the Honorable S. H. Bethea filed in said cause his opinion, decision and findings of fact therein (Rec. p. 177), wherein it was held that the bills should be dismissed. A decree was therefore accordingly so made. (Rec. pp. 178, 179.)

The complainant rested its case on the report, opinion and order of the Commission (Rec. pp. 209, 195), thereupon the defendants introduced voluminous evidence bearing mainly upon the earnings, cost of the service and profits relatively between dressed meat and packing house products, on the one hand, and cattle and hogs on the other, which was rebutted by complainant. The evidence comprises about 1,900 pages of the printed record, of which we submit an analysis following the findings of the Commission, and opinion of the Court.

II.

FINDINGS OF THE COMMISSION.

(Rec. pp. 30 to 47.)

Chicago is now and for many years has been the largest live-stock market in the United States; but during recent years packing houses have been erected and important live-stock markets built up at South St. Paul, Minn., Sioux City, Iowa, South Omaha, Neb., South St. Joseph and Kansas City, Mo., and at other points on the Missouri River. There are also many packing houses and live-stock markets of importance at different points in the territory lying between Chicago and the Missouri River. To a very large extent all these markets receive their supply of live stock from the same territory; that is to say, from points in states west of Chicago and east of the Rocky Mountains. An important portion of the products is shipped by way of Chicago and the Atlantic Seaboard to foreign countries and large shipments are also made by way of Chicago to consuming markets in the eastern part of the United States. Under these circumstances, the importance of

establishing and enforcing rates for the transportation of live stock and its products that are relatively just and reasonable will be readily observed. The higher the rate on the live stock compared with the rate on the products, the greater the difficulty of moving the former and the more freely the latter will move, over long distances. To illustrate: Other things being equal, if Chicago, compared with Kansas City, is 100 miles nearer the consuming market but 100 miles farther from the point where the live stock is raised, whether or not the live stock will be slaughtered at Chicago will depend largely upon whether or not the rate on live stock to Chicago plus the rate on the products from Chicago to the consuming market is more than the rate on the live stock to Kansas City plus the rate on the products from Kansas City to the consuming market.

Efforts to buy and sell in common territory, made by parties located and doing business at different points outside of that territory is called market competition; but market competition, so far as it relates to rates of transportation, can be made effective only through the instrumentality of common carriers. It often happens that the interests of carriers serving the same territory are in conflict, and under such circumstances, one carrier will sometimes make a rate on a particular kind of traffic that will result in considerable injury to persons and localities interested in another kind of traffic, and also to competing carriers, and, apparently, this is what has happened in the present case.

Live stock and its products are in sharp competition with each other in the different markets, and some of the defendants are more interested in the former than in the latter and vice versa. Those whose lines reach Chicago and also run through live-stock districts in states west, northwest and southwest of the Missouri River desire the long haul they will obtain if the live stock is shipped to Chicago, while those whose lines terminate at the river wish the live stock to be slaughtered there, because this will give them an opportunity to participate in hauling the products. And this conflict of interest appears to be largely responsible for the adjustment of rates complained of.

Aside from the rates in question, carriers generally make rates on live stock somewhat, and in many cases considerably, lower than on the products. This was formerly true concerning rates made by carriers operating between the Missouri River and Chicago; but soon after the large packers erected packing houses at different points on the Missouri River changes began to take place. The tonnage controlled by the packers was comparatively large, and this fact enabled them to obtain secret concessions from individual carriers. These concessions, being discovered by other interested carriers, were followed by open reductions in the published rates applied on the products. As corresponding reductions were not made in the live-stock rates the relation formerly existing between live stock and its products became changed. The rate on packing house products from Missouri River points to Chicago was finally made 5 cents per 100 pounds less than on live hogs.

* * * * * * * * * * * *

The distance from St. Paul to Chicago is about 400 miles and the average distance from the Missouri River points to Chicago is about 500 miles.

The rate from St. Paul to Chicago in each instance is about 80 per cent. of the rate to Chicago from Missouri River points, and carriers serving St. Paul endeavor to maintain this relation; but a reduction made in a rate from St. Paul might or might not be followed by a corresponding reduction from the Missouri River. * * * * The term live stock as used herein is intended to cover only cattle and hogs.

The local rate from the Missouri River to Chicago is ordinarily made the maximum on shipments to Chicago from points intermediate between Chicago and the river and is applied to all points in a territory ranging from 100 to 150 miles in width and lying immediately east of the river. The rates to Chicago from points east of said territory are somewhat less and are graded with some regard to distance. What has been said about local rates on live stock to Chicago from the river and the intermediate points applies also to the local rates on the products; and a like method obtains in making rates on live

stock and its products to Chicago from South St. Paul and points intermediate between those places.

Rates on live stock and its products to Chicago from Missouri River points and South St. Paul have ranged as follows: At the time the order referred to was complied with the rate from the river on live hogs and packing house products was made 22 cents per 100 pounds. The rate from the river on cattle was then 23½ cents, except that from Sioux City it was 25 cents; and these relations continued, with one unimportant exception, until December 1, 1894. At the latter date the rates were made the same on cattle and hogs and their products; namely, 23½ cents, except that the rate from Sioux City on cattle was not changed; and this adjustment was adhered to, except for short periods, until January 1, 1902. Between December 1, 1894, and January 1, 1902, except, possibly, for short periods, rates from South St. Paul were: On cattle 25 cents, on hogs 27, on packing house products 18½, and on fresh and dressed meats 20. On January 1, 1902, a rate of 18½ cents, called a proportional rate, was established and put in force from the river on live-stock products destined to points east of the Indiana-Illinois state line, but no other changes were made, either from the river or from South St. Paul. This adjustment continued until April 14, 1902, but meanwhile and on April 5 the complaint in this case was filed.

The first hearing was held at Chicago on May 15, 1902. At that time an officer of the Chicago, Milwaukee & St. Paul Company, speaking of his company and also for the other defendants, made a motion for an adjournment until some time in the month of July, and in support of the motion said: "It is the policy and the general practice of western roads to make their rates from the west and northwest to Chicago arbitrarily, regardless of destination. It is not obligatory. They do it when they can. Certain conditions have arisen which have made it necessary to depart in some respects from that policy, but those conditions will doubtless end with the 30th day of June next, and it is believed that thereafter the revision of the rates on live stock and live-stock products will be satisfactory to all persons interested; and for this reason we ask

for a postponement." He further stated that it was the intention of the defendants to make such adjustments as would accord with the order hereinbefore referred to. Upon this representation the hearing was adjourned until June 16, 1902, and it was afterwards postponed until the 6th day of the following November.

After the complaint was filed changes were made in the rates as follows: On April 14, 1902, a proportional rate of 18½ cents was put in force from the river on live stock either originating at points west of the river or destined to points east of the Indiana-Illinois state line, leaving the local rate to Chicago still 23½ cents. On August 8, 1902, pursuant to a contract entered into between the Chicago Great Western Company on the one hand and all packers doing business at the Missouri River points on the other, that company established and put in force from Kansas City and St. Joseph on the products of live stock a rate of 20 cents on traffic destined to Chicago and a rate of 18½ cents on traffice destined to points east of the Indiana-Illinois State line. The contract provided that these rates should remain in force seven years, in consideration whereof the packers agreed to deliver to the Chicago Great Western a certain percentage of their traffic in the products, or upon failure to do so, pay it each month, by way of liquidated damages, an agreed amount for each car short. The action of the Chicago Great Western was followed by other interested carriers and corresponding rates were put in force from other Missouri River points, while rates from South St. Paul were put in force as follows: On packing house products, 15 7/10 cents when destined to Chicago and 14 6/10 when destined to points east of Indiana-Illinois State line; and on fresh and dressed meats, 17 cents when destined to Chicago and 15 7/10 when destined to points east of the Indiana-Illinois State line. On August 11, 1902, the Atchison, Topeka & Santa Fe Company made a 12-cent rate to Chicago from Kansas City and intermediate points on live stock, and other carriers followed this action to the extent of making a 12-cent proportional rate from the river on live stock originating at points west of the river. On January 1, 1903, the Atchison Company canceled the 12-cent rate and made a rate of 18½ cents to take its place. This action was followed by

the other carriers to the extent of canceling the 12-cent proportional rate and making a proportional rate of 18½ cents to take its place. On March 1, 1903, the Atchison Company put in the place of its 18½-cent rate a rate of 20 cents and made a proportional rate from the river on live stock destined to points east of the Indiana-Illinois State line of 18½ cents; whereupon the other carriers substituted for their 18½-cent proportional rate a proportional rate of 20 cents and made another proportional rate from the river on live stock destined to points east of the Indiana-Illinois State line of 18½ cents.

Since the latter date no changes in the rates have been made. It will thus be seen that the expectations of defendants, as voiced by the officer of the Chicago, Milwaukee & St. Paul Company at the hearing on May 15, 1902, have not been realized, and the disparities in the rates are greater now than they were at that time. The Atchison Company is the only one of the defendants that is complying with the order in the Chicago Board of Trade case, hereinbefore mentioned. That company exacts from Missouri River points the same local rate and the same proportional rate on live stock that it exacts on the products of live stock, and makes the local rate, namely 20 cents, the maximum from the intermediate points. On the other hand, while the other defendants operating between the Missouri River and Chicago follow the Atchison Company rates so far as the rates on the products and the proportional rate on the live stock are concerned, they exact from the river on live stock a local rate of 23½ cents and make that rate the maximum from the intermediate points; that is to say, the local rate they exact from the river, and which is made the basis of rates from the intermediate points, is 3½ cents per 100 pounds more on live stock than on the products of live stock. And the defendants that carry live stock and its products to Chicago from South St. Paul and points intermediate between those places charge rates for the transportation that are very much higher on the former traffic than on the latter.

Since all, or nearly all, the live stock carried easterly from the Missouri River is shipped there in the first instance from other points, practically no shipments are made from the river

to Chicago upon the local rates in force between those points, and such rates are therefore important, principally, because of their effect upon rates from the intermediate points.

At the hearing on November 6, 1902, on motion of complainant, the complaint in this case, so far as it related to the Atchison, Topeka & Santa Fe Railway Company, was dismissed.

As applied to the other defendants that operate between the Missouri River and Chicago, it is substantially accurate to say that the matters advanced by them in justification of the discrimination complained of, are as follows: The Chicago Great Western contends that the discrimination is justified, first, by difference to the carriers in the cost of transportation, and second, by competition created by the packers, as hereinbefore described. The other defendants rely for their justification upon the competition created by the Chicago Great Western Company in making said contract and publishing and enforcing rates in accordance with its provisions.

Matters advanced in justification by the defendants that operate between South St. Paul and Chicago, as will be hereinafter explained, are somewhat different.

Generally speaking, the live stock is carried in cars owned by the carriers, while the products are carried in refrigerator cars owned by the packers. The refrigerator cars are nearly always returned empty to the shipping points, while 20 per cent. or more of the live-stock cars are returned loaded.

The carriers pay the packers for the use of the refrigerator cars 1 cent per mile for each mile the cars are transported, and make settlements among themselves at the rate of 6 mills per mile for the use of the live-stock cars. The former cars are much more expensive to build than the latter.

Evidence concerning weights of the cars used and the revenue-paying and other traffic carried in them was very conflicting, but we think fair averages would be about as follows:

PACKING HOUSE PRODUCTS.

Car	36,000	pounds
Revenue-paying load	28,000	"
Ice and other preservatives	3,000	"
Car, on return trip	36,000	"
Total weight carried for revenue received	103,000	"
Revenue on 28,000 pounds at 20 cents per 100	$56.00	
Less mileage from and to point of shipment	10.00	
Net revenue received	$46.00	

Revenue per 100 on total weight hauled, 4 cents and about 5 mills.

FRESH AND DRESSED MEATS.

Car	36,000	pounds
Revenue-paying load	21,000	"
Ice and other preservatives	4,000	"
Car, on return trip	36,000	"
Total weight carried for revenue received	97,000	"
Revenue on 21,000 pounds at 20 cents per 100	$42.00	
Less mileage from and to point of shipment	10.00	
Net revenue received	$32.00	

Revenue per 100 on total weight hauled, 3 cents and about 3 mills.

CATTLE.

Car	26,500	pounds
Revenue-paying load	22,000	"
Bedding, manure, etc	2,000	"
Car, on return trip	26,500	"
Total weight carried for revenue received	77,000	"
Revenue on 22,000 pounds at 20 cents per 100	$44.00	
Less mileage from and to point of shipment	6.00	
Net revenue received	$38.00	

Revenue per 100 on total weight hauled, 4 cents and a little more than 9 mills.

HOGS.

Car	26,500	pounds
Revenue-paying load	17,000	"
Bedding, manure, etc	2,000	"
Car, on return trip	26,500	"
Total weight carried for revenue received	72,000	"
Revenue on 17,000 pounds at 20 cents per 100	34.00	
Less mileage from and to point of shipment	6.00	
Net revenue received	$28.00	

Revenue per 100 on total weight hauled, 3 cents and about 9 mills.

If there should be a scarcity of cars the weights of the revenue-paying loads above stated would be somewhat increased, and we think the increases pertaining to packing house products and fresh and dressed meats would be greater than those pertaining to either cattle or hogs; but on account of the mileage received by them the packers do not, ordinarily, load very much in excess of the minimums required by the carriers, which are: On packing house products, 26,000 pounds; and on fresh and dressed meats, 20,000. The minimums pertaining to live stock vary according to the kind of live stock shipped and the length of the car used in each instance. The length of the car most generally used is 33 feet and 9 inches, and minimums pertaining to such a car are: On cattle, 22,000 pounds; and on hogs, double-deck, 22,000, and single-deck 17,000.

Further variations in the above comparisons might result from differences in incidental expenses pertaining to the different classes of traffic at terminals and while en route.

Packing house products and fresh and dressed meats are loaded and unloaded by the shippers. Live stock is nearly always loaded at the intermediate points by the shippers, without expense to the carriers, but the president of the Chicago Great Western stated that the carrier pays the stock yards company, in each instance, for loading, a fee which ranges from 25 cents to $1.50 per car. No explanation of the wide range in expense thus indicated was made, and a similar claim as regards expense was not made by any of the other defendants. The carriers pay the expense of unloading at Chicago, which is 25 cents per car, but this is included in a terminal charge of $2 per car, which is exacted on live stock, in addition to the transportation charges above specified.

Trains carrying packing house products or fresh or dressed meats are stopped at different points en route to afford an opportunity for re-icing the cars, but the re-icing is done at the expense of the shippers. On the other hand, the carriers bear the expense of spraying hogs while in transit during hot weather, and the expense of cleaning the live-stock cars, the amount of which has not been definitely shown, is also borne by the carriers.

Evidence concerning risk assumed by the carriers in transporting the different kinds of traffic was very conflicting, but the damages paid are such a small percentage of the revenue received that they are not a very important factor.

At many of their local stations the defendants furnish stock yards to accommodate shipments of live stock, but from the record it is impossible to say how much, if any, greater the expense of terminal facilities thus furnished is than the expense of terminal facilities furnished for shipments of live-stock products. In connection with some of these cattle yards defendants provide weighing facilities.

For the purpose of explaining more fully the matter of terminal expenses we quote from the testimony of an officer of the Chicago, Burlington & Quincy Company as follows: "Terminal charges on packing house product and live stock, viz., loading and unloading charges, switching charges paid other lines, etc., are difficult of comparison; they stand in different relation at different terminal points and the comparison would not be the same in the case of any two carriers because their means of access to the place of loading and unloading are seldom the same at any one point, nor is their relative situation the same at any two points. For illustration, this company reaches the Kansas City Stock Yards with its own rails and therefore does not pay any switching charge on live stock, but is obliged to pay $3 per car switching on packing house product shipped from the same point. At St. Joseph we pay a switching charge of $1 per car on live stock, while the Chicago Great Western Railway pays a total of $4 per car. We pay $1.50 per car on packing house products shipped from St. Joseph, while the Chicago Great Western Railway pays a total of $4.50 per car. At Chicago we pay a switching charge of $3.50 per car on packing house product delivered at the Union Stock Yards, which charge includes return of the empty car to our tracks. We pay from $2 to $5 per car for switching service on packing house product delivered on other lines in the City of Chicago; on live stock delivered at the Union Stock Yards we charge $2 per car in addition to the regular tariff rate and pay for trackage and unloading $1.75 per car, which does not include the

cost of our own switching service. There is no difference in the practice of the several lines who deliver live stock and packing house product at Chicago and Union Stock Yards from western points."

We understand that delivery in Chicago when that point is the final destination is nearly always at the Union Stock Yards, if the traffic is live stock; also, that a large portion of the products is delivered there. But while defendants exact a terminal charge of $2 per car for such delivery of live stock, they exact no terminal charge whatever for such delivery of live-stock products, if the traffic is shipped from a point west of Joliet, Ill. The latter point is located a short distance southwesterly of Chicago.

The freight traffic manager of the Atchison Company, testifying as to the effect of terminal and other charges paid and obsorbed by his company, said: "My view is that the rate on the product should be higher than the rate on the raw material. The rate of 12 cents per hundred pounds on live stock from the Missouri River to Chicago pays the Atchison road as much in gross for transporting a carload of live stock as the 18½-cent rate pays us for transporting a carload of fresh meat. By gross revenue I mean the charges we collect and retain after paying the terminal charges, switching charges, mileage, etc."

Defendants pass men free, who accompany and care for cattle and hogs while in transit, as follows: One man one way in charge of one car; one man each way in charge of two to five cars; two men each way in charge of six to ten cars; and three men each way in charge of eleven or more cars. Returning, these men ride on defendants' passenger trains.

Speed and tonnage of trains appear to be practically the same whether the traffic carried is live stock or the products of live stock. In each instance the tonnage offered is large and shipments are regularly and continuously made; and in these respects there is apparently no appreciable difference between the two classes of traffic.

Weights of products of cattle and hogs are percentages of weights of the live animals as follows: Hogs, meat products

about 72 per cent, total products, including offal, fertilizer, hair, etc., about 82 per cent; cattle, meat products, 45 to 60 per cent, total products about 67 per cent.

The value of the products of cattle and hogs, pound for pound, is about twice that of the live animals.

Although defendants do not exact higher rates per 100 pounds for transortation to Chicago from intermediate points between the Missouri River and Chicago than to the same destination from the river, nor claim a right to do so, some of them contend that as the bulk of the live-stock shipments are from the intermediate points while the shipments of the products are more largely from the river and the latter traffic is often carried in full train loads from the river while the former traffic, when shipped from the intermediate points, is what might be called pick-up business, the cost of transporting the live stock is greater than the cost of transporting the live stock products. This statement is true to the extent that the more switching done and the greater the number of stops made by a train the more expensive to the carrier the transportation service is, and more switching and stops are necessary when the shipments are from the intermediate points than when they are from the river. But the difference in cost thus indicated appears to be offset in the present case by the greater rate per ton per mile received by defendants on shipments from the intermediate points. As before stated, the rate is the same to Chicago from intermediate points in a territory ranging from 100 to 150 miles in width and situated just east of the river as from the river. The only one of defendants' operating officials who gave testimony on this point was the general manager of the Chicago, Burlington & Quincy Company, and he made replies as indicated below to questions concerning this matter.

Q. On the basis of the same rate on both live stock and the product, which would you consider the more remunerative traffic from a railroad standpoint, a train of fresh meat or packing house products from the Missouri River destined to Chicago, or a train of live stock picked up at main line stations east of the Missouri River?

A. That is a pretty difficult question to answer and I should think it was largely a matter of opinion, which would be arrived at by studying the ordinary conditions of handling the business. My judgment would be that the train of live stock would be the more remunerative of these two, although the difference might not be so very great. My reason for that is that while there are a good many expenses incident to the handling of live stock from local stations, the picking up of live stock on a division and gathering it into a train at a division point is not quite as expensive as hauling a train of the full size over the entire division. The cost per ton or per car is greater, but the total cost is not greater. The conditions in handling live stock, although they are pretty severe and pretty difficult to meet, have never been quite as severe or quite as difficult to meet as the conditions in hauling the dressed products.

Q. Make the same comparison between a train of live stock from the Missouri River and compared with a train of live stock picked up east of the Missouri River, at the same rate.

A. I should say that the train picked up at stations east of the Missouri River, assuming that the business was moving eastward, would be more remunerative than a solid train of the same number of cars and same weight picked up at the Missouri River terminal.

Packing house products and fresh and dressed meats include almost the entire products of live stock.

Carriers usually make lower rates on raw material than on its products, and all the railroad officials who testified in this case on that point, except the president of the Chicago Great Western Company, said that under normal conditions they believed the rates on live stock should not be higher, while some of them stated that in their opinion they should be lower, than on the products of live stock.

The president of the Chicago Great Western Company stated that his company entered into the aforesaid contract for the purpose of securing a greater proportion of the traffic

in the products of live stock than it had previously been able to obtain.

In justification of the discrimination complained of, defendants operating between South St. Paul and Chicago, in addition to matters advanced in justification by the other defendants as above specified, contend that if live-stock rates to Chicago from points in the state of Minnesota are reduced the Railroad & Warehouse Commission of that state will reduce rates on live stock from such Minnesota points to South St. Paul.

Under the laws of the State of Minnesota the Commission referred to has power, subject to revision by courts of competent jurisdiction, after complaint made and investigation duly had to substitute for rates established by common carriers doing business in that state, for the transportation of passengers or property therein, rates established by the Commission, if it determines that the rates established by the carriers are unequal or unreasonable.

The present adjustment of rates on live stock to Chicago as compared with South St. Paul, from the Minnesota points in question, was the result of conferences between said Commission and officials of the interested carriers.

After the complaint in this case was filed the Minnesota Commission notified the defendants referred to above as operating between Chicago and South St. Paul that if the rates on live stock from Minnesota points to Chicago were reduced the Commission would make corresponding reductions in the rates on live stock from such Minnesota points to South St. Paul.

Complainant introduced considerable evidence which showed that Chicago as compared with South St. Paul and the Missouri River markets has received a smaller proportion during recent years than prior thereto of the live stock raised in the territory under consideration, and claimed that this tended to show that the discrimination complained of has injured the Chicago live-stock market and those interested therein.

On the other hand, defendants showed that during recent years great improvements have been made in the facilities for handling live stock at South St. Paul and the Missouri River markets, including the erection of new packing houses and additions to old ones; that there has been a greater increase in the amount of live stock raised west of the river than east of it; and that live stock shipped from the river to Chicago shrinks in weight from 3 to 5 per cent while in transit; and claimed that these facts and others that are similar fully account for changes shown in the destination of live-stock shipments.

That the facts shown would tend to produce the effect claimed for them is evident, but in that connection it is impossible to determine to what extent each of the facts was effective.

Complainant also introduced considerable evidence tending to show that the rates exacted by defendants for transporting live stock to Chicago from points in the states of Iowa, Missouri, Wisconsin and Minnesota are unreasonable per se, but the testimony upon that point is unsatisfactory and we do not feel justified in making a finding in relation thereto.

Based upon the foregoing, we make specific findings as follows:

The discrimination against the transportation of live stock to Chicago from the shipping points in question, brought about by defendants' action in establishing and putting in force upon the products of live stock rates of transportation lower than those contemporaneously exacted by defendants for the transportation of live stock between the same points injured the live-stock market of Chicago and those interested therein, is not justified by difference to defendants in the cost of transportation, and is not otherwise justified, and therefore subjects the traffic in live stock and the Chicago live-stock market and those interested there, including complainant, to undue and unreasonable prejudice and disadvantage, and gives to the traffic in the products of live stock and shippers and localities interested in such traffic undue and unreasonable preference and advantage.

And under the head of Conclusions, the Commission further found:

"Packing house products and fresh and dressed meats include almost the entire products of live stock, and although at the same rate per 100 pounds the traffic in packing house products pays, above cost of transportation, a greater revenue than the traffic in either fresh or dressed meats, defendants make no difference in their rates on that account. They also charge the same rates for transporting cattle that they exact for transporting hogs.

If cattle and hogs are considered together on the one hand and packing house products and fresh and dressed meats on the other it will be seen that after deducting mileage according to payments made by defendants the revenue received by them compared with the paying and non-paying tonnage hauled is greater at the same rate on live stock than on the products of live stock. But expenses incidental to the transportation do not apply equally to the different classes of traffic.

Although the products of live stock are shipped to some extent from packing houses located at some of the intermediate points and the local rate from the river is made the maximum for such shipments, generally speaking, the local rates in question apply to live stock shipped from the intermediate points and products of live stock shipped from Missouri River points and South St. Paul, because the bulk of the live-stock shipments in question is from the intermediate points while shipments of the products are largely from the river and South St. Paul.

At intermediate stations where the tonnage of live stock shipped is considerable defendants provide, for the accommodation of this traffic, cattle yards, and, in many instances, weighing facilities. This is an expense that does not apply to shipments of the products; but, on the other hand, the switching and terminal charges paid on the products at Missouri River points and absorbed by defendants, although not definitely shown, are large, and fully sufficient, we think, to

offset terminal expenses on live stock at the intermediate shipping points.

Apparently, the switching and terminal charges paid by defendants at Chicago, when that point is the final destination, are the same whether the traffic is live stock or the products of live stock, except that defendants pay 25 cents per car for unloading the live stock and also pay for cleaning the live-stock cars, and we understand that nearly all the former traffic and a large portion of the latter is delivered at the Union Stock Yards; but while defendants exact a terminal charge of $2 per car for such delivery of live stock they make no terminal charge whatever for such delivery of live-stock products when the shipments are from points west of Joliet, Ill. The latter point is located a short distance south-westerly of Chicago.

Another expense incidental to the transportation of live stock that does not apply to the products is that connected with the transportation of men who accompany the live-stock shipments. Such transportation subjects defendants to some additional risk, but we think the risk is about the only expense connected with the transportation of the men that should be considered in connection with the transportation of the live stock. These men take care of the stock while in transit and thus relieve defendants of duties they would otherwise have to perform, and the carriage of the men free is incidental to, and cannot be considered separately from, the transportation of live stock. But whatever the expense to defendants thus caused may be, we are convinced that it is offset, and more than offset, by the fact that 20 per cent or more of the live-stock cars are returned to the shipping points loaded, while refrigerator cars are nearly always returned empty.

There are a few other differences in cost of transportation, but they are not very important and have been fully explained in the findings of fact; we do not deem it necessary, therefore, to notice them here in detail.

After a careful consideration of all matters disclosed by the record we conclude that the discrimination complained of

is not justified by difference to defendants in the cost of transportation.

* * * * * * * * * * * *

The competition between live stock and the products of live stock is very severe both in the markets of purchase and in the markets of sale, and live stock raised in the vicinity of the Missouri River is now and for many years has been transported to and slaughtered at different points in territory lying between that river and the Atlantic Seaboard. Packing houses at these different points have been established and maintained under rates of transportation which, generally speaking, have not been higher, while in many instances they have been lower, on the live stock than on the products; and the principle governing this adjustment, namely, that the rates on raw material shall not be greater than on the products of the material, has been applied in nearly all other cases of a similar nature. It is therefore apparent that if the matters of defense advanced in this case are held to justify the discrimination complained of many other discriminations of a like nature may result.

But some of the defendants contend that it is natural and therefore proper for live stock to be slaughtered at or near the points where it is raised. They say that if this is done shrinkages in weights and other waste that would otherwise result will be avoided.

The record shows that live stock shrinks some in weight while in transit, and this is naturally an advantage to the near-by market and one to which it is entitled, but such natural advantage does not justify a discrimination in rates in favor of the near-by market which would otherwise be unlawful. The record also shows that it is practicable to transport live stock long distances and that this has been done continuously for years for the purpose of increasing its business, but that right is qualified by the prohibition that that company shall not unduly discriminate against another kind of traffic; and when that company established and put in force from Kansas City and St. Joseph to Chicago rates on the products of live stock that were lower than rates it was then exacting between the same points on live stock it unduly discriminated against the

25

latter traffic. This conclusion is based upon all the circumstances and conditions surrounding the transportation of and the relation existing between these two classes of traffic, which have been fully explained above and need not be repeated here. As it appears to us, a contrary holding would be equivalent to saying that a quasi-public servant may use its franchise for the purpose of building up some markets and destroying others, if in its judgment its stockholders will be benefited by such action. The large interests affected, the immense amount of money invested, the many live-stock markets and packing centers that have been built up and maintained under the former relation of rates, and the injury that will result if the change in that relation is permitted to continue, amply warrant the conclusion that the discrimination in question is not justified by the desire of the Chicago Great Western Company to benefit its stockholders by increasing its business.

Having held that the action of the Chicago Great Western Company in reducing the rate on the products from Kansas City and St. Joseph without making corresponding reductions in the live-stock rate was unlawful, the like ruling must be made as to the other defendants who have followed that company in making the disparity complained of effective. The rate on the products was reduced from the other Missouri River points and South St. Paul because it had been reduced from Kansas City and St. Joseph and reduced from the intermediate points because it had been reduced from the river, and all the defendants have been and are practicing at these various points an unlawful discrimination against live-stock traffic. Therefore, whether the unlawful practice was begun by one or by another is not a matter of great importance. It is apparent that should we issue an order only against the Chicago Great Western requiring it to restore the former relation of rates and the order should be complied with, the principal ground of justification now advanced by the other defendants would be removed; and unless such action of the Chicago Great Western were followed by the other defendants it would become necessary to issue another order against the latter. Moreover, higher rates on live stock were being charged by a

number of the other defendants as well as the Chicago Great Western before the Chicago Great Western contract was made and at the time the complaint was filed.

The defendants operating between South St. Paul and Chicago contend that if rates on live stock from points in Minnesota intermediate between South St. Paul and Chicago are reduced to Chicago the Minnesota Commission will make corresponding reductions from such Minnesota points to South St. Paul. This contention was supported by testimony of a member of that commission, who stated that, in his opinion, the present adjustment of live-stock rates, as between South St. Paul and Chicago, is fair, and that, therefore, any reduction to Chicago, unless followed by a corresponding reduction to South St. Paul, would make the relation unequal. If such relation is now just (concerning which we express no opinion) and in complying with any order that may be made in this case these defendants reduce the rates to Chicago, corresponding reductions to South St. Paul should of course be made. This also applies to similar contentions of the interveners representing interests at points on the Missouri River."

The Court in its opinion (Record, p. 176) made certain findings of fact upon which the decree was based, as follows:

FINDINGS OF FACT.

First. That the live stock rates are reasonable in themselves. All live stock from points west, southwest and northwest of the Missouri River and St. Paul are shipped on a proportional rate from the Missouri River or St. Paul to Chicago. These rates are equal to or less than the rates on dressed meats and packing house products between the same points. There can be, and is, no complaint as to such traffic. The local rates from the Missouri River and St. Paul, and from 150 miles east, to Chicago, are as shown in above schedule. These rates gradually decrease until the Mississippi River is reached, and the average Iowa rate

is twenty-one cents. The great weight of evidence indicates that these rates are at least reasonably low.

Second. That the cost of carryng live stock is greater than that of carrying dressed meats and packing house products.

Third. That the value of the service of carriage is greater to the packers because of the higher price of a car of dressed meats or packing house products. Dressed meats and packing house products are in value worth nearly twice as much as live stock. This factor is important, in ordinary cases, however, in part, because of the greater risk of carriage, of high priced commodities. In these cases as to the particular commodities in question, the evidence shows that the defendant railroad companies pay out a much larger amount in damages arising from the carriage of live stock than they do for losses arising from the carriage of dressed meats and packing house products, in proportion to the value of the products carried, and more in damages per car regardless of the value. This makes the risk for carriage greater for live stock. The result is that the value of the service is not such an important factor in this kind of a case as it is considered to be in ordinary cases.

Fourth. That the rates in question given to the packers at Missouri River and St. Paul, were the result of competition. The product of the packers at these points was large in quantity, was certain and continuous in amount, was in the hands of a few people, and for years before the Federal injunction of March, 1902, had been competed for so strenuously by the railroads reaching and passing through these points, as to cause the cutting of rates and the giving of secret rebates in large amounts. Four of the defendant companies, the Chicago, Milwaukee & St. Paul Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Burlington & Quincy Railroad Company, passed through these points into the territory west of the Missouri River and St. Paul. Four other of the defendant companies, the Chicago, Great Western Railway Company, the Chicago & Alton Railway Company, and the Wabash Railroad Company reached the Missouri River points and St. Paul, competing for this business. Other railroads, running south to the Gulf of Mexico, also competed more

or less for said business, including the Atchison, Topeka & Santa Fe Railway.

After said injunction was granted the defendant railroads obeyed it, and until August of that year, the said traffic was carried under competition between the defendant at the rate of twenty-three and one-half cents from Missouri River points to Chicago, and twenty-five cents from St. Paul to Chicago, etc., as set out above. As a result of such competition, the Chicago Great Western Railway Company became dissatisfied with the proportion of the business it received, and in order to get what it claimed as its share, cut the rate of twenty cents to Chicago and eighteen and one-half cents to the Indiana line for eastern business, and published the same. This it did under a contract with the packers running for seven years. The Chicago Great Western Railway Company was the longest route from Chicago to the Missouri River points. The other defendant railroads to meet the rate made by the Chicago Great Western Railway Company, as a result of competition, met and published the same rate. These rates were not made voluntarily, but from necessity arising from competition. The necessity being that of carrying the goods at the lower rate or losing the business to which the officers of said companies thought they were entitled. This cutting of the rate by the Chicago Great Western Railway Company was not the origin of competition; that had existed legally since March, 1902, between defendant railroads, and also between them and the Atchison, Topeka & Santa Fe Railway Company.

There was not competition enough at said points to lower the rate as to live stock. There was little and different competition between the Missouri River and St. Paul and Chicago. The only places where the opportunities for competition existed as to live stock the same as to packing house products, were immediately at Missouri River points and St. Paul, and there only as to live stock driven in on foot from the surrounding country. There is comparatively a small amount of this stock. If it was exactly the same kind of a commodity as that furnished by the packers there would be an opportunity for competition in this at these points alone.

Fifth. That the competition in question did not result from agreement of the defendants, but was actual genuine competition.

Sixth. That the present rates have not materially affected any of the markets, prices or shipments; that they are reasonably fair to Chicago, and to the shippers; that the shipments of live stock from points between Chicago and the Missouri River and St. Paul are as great in proportion to the volume of business as before the present rates were made; that the majority of the live stock comes to Chicago from points as near as 150 miles this side of the Missouri River and St. Paul, and that the lower rate given to the packers does not seem to directly influence or injure the shippers of live stock.

Seventh. That the rates for carrying packers' products and dressed meats were remunerative. They did not pay any portion of the fixed charges and interest of the railroad companies, nor its full share of the operating expenses, but they did pay more than its cost of movement and leave something to apply upon operative expenses.

Eighth. That the welfare of the public, including the shippers, consumers and all localities and markets, does not seem to be materially affected by the present rates.

Ninth. That the usual custom is for railroads to charge a higher rate for the finished product than for the raw material, and this, as a rule, has been applied to live stock and its finished products. This is not universal, however. There are many commodities where the raw material is charged more for carriage than its finished product, as in the case of the raw material of cotton and the compressed cotton, straw, unbaled and baled, pig iron and its products and many other commodities.

It also appears that for sixteen years out of twenty-three, between Missouri River points and St. Paul and Chicago, the published rates on live stock were higher than on dressed meats and packing house products. Many witnesses testified that the ideal rate for the finished product would be higher than the raw material. This, however, was based on the presumption that competition or commercial necessity did not interfere, and that the cost of service and value of the products would be greater in case of the finished products than in that of the raw material.

On the 15th day of January, 1906, appellant filed its petition for appeal to this Court which is here presented, and on the same day filed its assignments of error, complaining that the Court erred in the particulars pointed out, as follows: (R., pp. 181 to 186.)

III.

ASSIGNMENTS OF ERROR.

1. Said Court erred in decreeing that the bill or petition of the Interstate Commerce Commission be dismissed.

2. Said Court erred in not granting the relief prayed for in the said bill or petition of the Interstate Commerce Commission.

3. Said Court erred in not rendering a decree for the enforcement of the order of said Commission.

4. Said Court erred in holding that the rates on live stock involved in said causes are reasonable in themselves.

5. Said Court erred in holding that the rates on the products of live stock involved in these causes were remunerative prior to their reduction.

6. Said Court erred in holding in effect that said rates on the products of live stock as reduced are remunerative and lawful rates.

7. Said Court erred in holding that the cost of carrying live stock is greater than that for carrying dressed meats and packing house products.

8. Said Court erred in holding that the rates in question given to the packers at the Missouri River and St. Paul on their products were the result of competition.

9. Said Court erred in holding that the alleged competition set up in these causes justified the reduction of the rates on the products below those on the live stock.

10. Said Court erred in holding that the alleged competition set up in these causes was bona fide and such as in contemplation of law can justify preferences or prejudices otherwise undue.

11. Said Court erred in holding that the competition alleged in these causes can be set up as a defense under Section 3 of the Act to regulate commerce.

12. Said Court erred in holding that the lower rates on the products of live stock than on the live stock has worked no injury to the shipper of the latter.

13. Said Court erred in holding that the present rates complained of in these causes are "reasonably fair to Chicago and to the shippers of live stock."

14. Said Court erred in holding that the rate of twenty cents per one hundred pounds charged for transportation by defendants of dressed meats and packing house products from Kansas City, St. Paul, South Omaha, Sioux City and other Missouri River points involved to Chicago, while the rate of twenty-three and one-half cents was, and is charged on cattle, hogs and sheep from the said Missouri River points to Chicago, did not, and does not, constitute an undue and unreasonable preference and advantage in favor of dressed meat and packing house products and the shippers of the same, and that said rate adjustment did not, and does not, subject such live stock, and the shippers thereof and the live stock market at Chicago to an undue and unreasonable prejudice and disadvantage in violation of Section 3 of the Act to Regulate Commerce.

15. Said Court erred in holding that the prima facie case made by the findings of the Commission had been overcome by the evidence offered before the Court, and in effect overruling the following ultimate findings of fact made by the Commission as follows:

> "Based upon the foregoing, we make specific findings as follows:
>
> "The discrimination against the transportation of live stock to Chicago from the shipping points in question, brought about by defendants' action in establishing and putting in force upon the products of live stock rates of transportation lower than those contemporaneously exacted by defendants for the transportation of live stock between the same points injured the live stock market of Chicago and those interested therein, is not justified by difference to defendants in the cost of transportation, and is not otherwise justified, and therefore subjects the

traffic in live stock and the Chicago live stock market and those interested therein, including complainant to undue and unreasonable prejudice and disadvantage and gives to the traffic in the products of live stock and shippers and localities interested in such traffic undue and unreasonable preference and advantage."

16. The Court erred in holding that the rate of twenty-five cents per one hundred pounds on hogs from South St. Paul and St. Paul to Chicago was just and reasonable.

17. The said Court erred in holding that the rate of fifteen and seven-tenths cents per one hundred pounds on packing house products and seventeen cents on dressed meat from St. Paul to Chicago, while the rate on cattle was twenty-five cents and on hogs twenty-seven cents did not constitute an undue and unreasonable preference and advantage to dressed meat and packing house products and the shippers thereof, and did not subject cattle and hogs and the shippers thereof to an undue and unreasonable preference and disadvantage.

18. The said Court erred in holding that the lower rate from Omaha, Des Moines, Marshalltown and Cedar Rapids, Iowa, to Chicago, on dressed meat and packing house products, than is the rate on cattle and hogs from the said points to Chicago, did not constitute an undue and unreasonable preference and advantage to the dressed meat and packing house products, and the shippers thereof, and did not subject cattle and hogs, and the shippers thereof, to an undue and unreasonable prejudice and disadvantage.

19. The said Court erred in holding that the lower rates on packing house products and dressed meat from the Missouri River points in question, and from interior points in Iowa, than is charged on live stock shipped locally from the said points to Chicago, did not create in favor of dressed meats and packing house products and the shippers thereof an undue and unreasonable preference and advantage, and did not subject the live stock market at Chicago and those interested including complainant, to an undue and unreasonable preference and disadvantage.

20. The Court erred in finding that:

"All the witnesses agreed in the showing that the cost of service in proportion to the value of both kinds of commodities was greater in carrying live stock."

21. The Court erred in finding that it was:

"Substantially agreed by the witnesses that the risk of carriage, notwithstanding the double value of fresh meats, was not as great in carrying fresh meats, and packing house products as in carrying live stock."

22. The Court erred in finding that the witnesses:

"All agreed that competition was the greatest factor in determining a rate."

23. The Court erred in finding that:

"The average Iowa rate to Chicago was twenty-one cents."

24. The Court erred in finding that the Chicago market is not injured by the present rate and basing that upon the finding that:

"The evidence tends to show that a majority of the cattle within 150 miles from the Missouri River and St. Paul went to Chicago rather than to the Missouri River and southeast from St. Paul upon the present rates."

25. The said Court erred in finding that the Chicago market fluctuated from five cents to fifty or seventy-five cents in a day.

26. The said Court erred in finding that:

"The evidence shows that the defendant railroad companies pay out a much larger amount in damages for losses arising from the carriage of live stock than they do for losses arising from the carriage of dressed meats and packing house products, in proportion to the value of the product carried and more in damages per car regardless of the value."

27. The said Court erred in its holding based on the quotation next above that:

"The result is that the value of the service is not such an important factor in this kind of a case as it is considered to be in ordinary cases."

28. The said Court erred in finding that:

"Other railroads running south to the Gulf of Mexico also competed more or less for said business."

That is the business for transporting packing house products and dressed meats, and in taking that in consideration.

29. The said Court erred in finding that the Chicago Great Western Railway Company was the longest route from Chicago to the Missouri River points, and in holding that:

"The rates were not made voluntary, but from necessity arising from competition, the necessity being that of carrying the goods at the lower rate or losing the business to which the officers of said companies thought they were entitled. This cutting of the rate by the Chicago Great Western Railway Company was not the origin of competition."

and in basing its decision thereon.

30. The said Court erred in holding in effect that because the railway companies did not make a lower rate on live stock because they did not see fit to do so as a result of competition between themselves, justified the roads in making a lower rate on packing house products and dressed meats without violating the third section of the Act to regulate commerce, prohibiting undue preference as between the two classes of commodities.

31. The Court erred in finding that:

"The only places where the opportunities for competition existed as to live stock the same as to packing house products were immediately at the Missouri River points and St. Paul."

32. The said Court erred in finding that:

"The present rates have not materially affected any of the markets, prices or shipments; that they are reasonably fair to Chicago and to the shippers; that the shipments of live stock from points between Chicago and the

Missouri River and St. Paul are as great in proportion to the volume of business as before the present rates were made; that the majority of the live stock comes to Chicago from points as near as 150 miles this side of the Missouri River and St. Paul and that the lower rate given to the packers does not seem to directly influence or injure the shippers of live stock."

33. The Court erred in finding that:

"That the welfare of the public, including the shippers, consumers and all localities and markets does not seem to be materially affected by the present rates."

34. The said Court erred in finding that, the law is intended only

"To prohibit unjust discriminations in the rendition of like service under similar circumstances and conditions."

35. The said Court erred in finding that:

"Any fact which produces an inequality of condition and a change of circumstances justifies an equality of charge."

And in applying that mistaken principle in the decision of this case.

36. The Court erred in finding that:

"The cost of service to the carrier would be an ideal theory, but is not practical,"

And in giving effect in its decision to its findings of fact that the cost of the carriage is greater in case of live stock than in dressed meats and packing house products.

37. The Court erred in finding that:

"The amount of the product or the commodity in the hands of a few persons to ship or compete for, entitles such shippers to the lower rate of freight than one having a less quantity."

And in applying that principle to thise case where the rates are based upon the unit of a car load.

38. The said Court erred in finding that:

> "In every case the Supreme Court has held that competition may be controlling."

And that such competition applies to Section 3 of the Act to Regulate Commerce with respect to preferences and discriminations as between different descriptions of traffic and the shippers thereof.

39. The said Court erred in its construction of the decision of the Interstate Commerce Commission in holding that:

> "The Interstate Commerce Commission, in its opinion, considered the facts as to competition and found they did not control the fixing of rates. Its opinion and the concurring opinion of Commissioner Knapp, show, however, that the majority of the Commission acting in this case (Fifer and Prouty) thought that it was not a case to which competition applied."

40. The said Court erred in finding that the same principle must apply in determining the question of undue and unreasonable preference as between different descriptions of traffic as apply to undue and unreasonable preference as between different places when it is charged that the fourth section of the Act to Regulate Commerce is violated.

41. The said Court erred in holding that the Chicago Great Western Railway Company did not begin the competition and that it was immaterial if it did, and in holding that it was the duty of the officers of that railroad company to get business in the interest of the stockholders to accomplish which that it had the right to reduce the rates on dressed meats and packing house products by the contract which it made with the Missouri River packers without being subject to the requirements of Section 3 of the Act to Regulate Commerce, prohibiting undue preference to any particular description of traffic or shippers thereof.

42. The said Court erred in holding that the evidence shows that "this carrier" (C. G. W. Ry. Co.) must reduce the rate or lose the business.

43. The said Court erred in holding that competition was:

"Limited to the live stock driven into the Missouri River points and St. Paul in determining whether that commodity is therein entitled to the same rate as packer's product shipped from those same points."

44. The said Court erred in holding that the evidence shows that in substantially all cases the factor of competition alone controls the rate, and in holding that the Supreme Court has held that competition may be controlling, and upon that mistaken theory in finding that:

"Upon a consideration of all the evidence the Court holds that the prima facie case made by the findings of the Commission has been overcome by the evidence offered before the Court."

Appellant here complains that the decree of the Circuit Court dismissing complainant's bill for enforcement of the said order of the Interstate Commerce Commission was erroneous for the reasons and in the particulars specified in the foregoing assignments of error, which appellant here urges, for which errors appellant now prays this Court to reverse said decree and to direct said Circuit Court to make a proper decree in the premises to the end that the defendants in said cause may be compelled to comply with said order.

IV.

BRIEF OF ARGUMENT.

EFFECT TO BE GIVEN THE COMMISSION'S DECISION.

The Act to Regulate Commerce is a remedial act, and it was intended that the Interstate Commerce Commission established by that act should in the first instance decide in accordance with the provisions of the act, alleged violations thereof, and that its decision with respect thereto should be regarded as correct, except on clear and satisfactory showing to the contrary.

The Supreme Court of the United States in the case of Smyth vs. Ames, 169 U. S., 466, said:

> "Undoubtedly that question (reasonableness of rates) could be more easily determined by a commission composed of persons whose special skill, observation and experience qualify them to handle great problems of transportation as to do justice both to the public and to those whose money has been used to construct and maintain highways for the convenience and benefit of the people."

It is provided in the 12th section of the act:

> "That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from said common carriers full and complete information necessary to enable the commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act."

In addition to the foregoing requirements, elaborate provision is made for securing the attendance of witnesses and pro-

duction of books, papers, tariffs, contracts, agreements and documents relating to any matter under investigation.

Section 13 provides that all manner of associations and societies, bodies, politic and municipal, shall have the right to complain before the Commission, of violations of the act, and provide that if "there shall appear to be any reasonable ground for investigating said complaint it shall be the duty of the Commission to investigate the matters complained of;" and further, that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

It was then provided by Section 14:

> "That whenever an investigation shall be made by said Commission it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon whch the conclusions of the Commission are based * * * and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.
>
> "All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained and to the common carrier that may have been complained of.
>
> "The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all Courts of the United States and of the several States without any further proof of authentication."

It was provided by the 15th section that "if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission either by the testimony of witnesses or other evidence, that anything has been done in violation of the provisions of this act, or any law cognizable by said Commission, by any common carrier * * * it shall be the duty of the Commission to forthwith cause a copy

of its report in respect thereto to be furnished to such common carrier, together with a notice to said common carrier to cease and desist from such violation," etc.

By the 16th section of the act provision was made that in case of disobedience of the order of the Commission it should have the right to apply in a summary way by petition to the Circuit Court of the United States sitting in equity, alleging such violation and disobedience, whereupon "said Court shall proceed to hear and determine the matter speedily as a Court of Equity without formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it thinks fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the Court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be prime facie evidence of the matters therein stated; and if it be made to appear to such Court, on such hearing, or on report of any such person or persons, that the order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such Court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said commission, and enjoining obedience to the same," etc.

By the 17th section, among other things the Commission was authorized to conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.

By the 19th section, among other things it is provided that "it may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties in any part of the United States into any matter or question of fact pertaining to the business of any common carrer, subject to the provisions of this act."

The 20th section authorized the Commission to require from any carrier subject to the provisions of the act, the most elaborate statistics relative to every branch of its business.

It cannot be questioned that these provisions manifest the intention that the Commission should secure the very widest possible personal, individual and official knowledge pertaining to every matter of fact which would enable it to determine whether the carrier in a given case had volated any of the prohibitory provisions of the act.

The law provides a special tribunal before whom persons claiming a violation of the act by any common carrier may present their petition for trial, with the obvious assurance that the decsions of the Commission will not be set aside except when clearly and manifestly erroneous.

Therefore, when considering whether the injunction as prayed for in this case to enforce the order of the Commission should be granted, it was the duty of the Court to give great weight to the decision of the Commission, and to enforce its order unless shown clearly to have been unlawful.

There is no contention that the Commission did not proceed in accordance with the provisions of the act, or that it excluded any evidence or refused to consider any matter proper to be considered.

But the whole contention, as evidenced by the opinion of the Circuit Court, may be summed up in the proposition that the conclusion of fact of the Commission to the effect that the difference in the rates on live stock and the products of live stock in question constitutes an undue preference to the shippers of the products of live stock and to the markets and localities enjoying those rates, and an unreasonable prejudice and disadvantage to the shippers of the live stock and the localities of Chicago as the point of destination in violation of Sections 2 and 3 of said Act, is not justified by the facts. There is no contention that the decision of the Commission was not justified by the facts presented to it; nor is there any contention that the circumstances and conditions which existed surrounding the traffic had so changed that if when the decision of the Commission was rendered there was an undue and unreasonable preference and discrimination, it did not still exist at the trial before the Court.

What the defendants sought to do in this case was to prove, independently of the decisions of the Commission and independ-

ently of the evidence before it, that such discrimination as existed was not an undue or unreasonable one. That is, they sought to prove that the Commission's conclusion was not correct, in holding the preference undue or unreasonable, or the disadvantage or prejudice unjust.

In addition to this, the contention was made that as a matter of law, if the live stock rate is a reasonable one, then the lower rate on the products of live stock could not constitute an unlawful discrimination where one of the carriers contracts to carry at such lower rate, and the others in order to meet the competition thereby created in order to themselves participate in the business, publish the same rates as are thus contracted for; that is to say, as a matter of law under such circumstances the Commission would have no right to hold that the preference or discrimination was undue or unreasonable, because the result of competition not applicable to live stock. The Circuit Court took this view and apparently on that sole ground held that the preference and discrimination was not undue, unjust or unreasonable.

The Court erred, therefore, in its decree dismissing the complainant's bill and refusing to enforce the order of the Commission in the foregoing third assignment of error, and in the particulars specified in the foregoing assignment of error No. 15, wherein the appellant complained that the Court erred in overruling the ultimate findings of fact by the Commission and that the relations of rates in question constituted a violation of the third section of the Act to Regulate Commerce.

V.

ANALYSIS OF THE POINTS TO WHICH THE EVIDENCE RELATED.

A.

COMPARATIVE RATES ON LIVE STOCK AND ITS PRODUCTS.

(1) Previous published rates on meat and product from Missouri River to Chicago. (Rec., p. 1645.)

(2) Previous published rates on meats and products from St. Paul to Chicago, Commission's findings ante.

(3) Previous published rates on meat and product from interior points to Chicago. (Rec., pp. 1599 to 1608.)

(4) Previous published rates on live stock from St. Paul to Chicago. (Rec., p. 1607.)

(5) Live stock rates from west of Missouri River and proportionals to Chicago. (Rec., pp. 1572-3.)

(6) Live stock rates from interior Iowa to Chicago. (Rec., pp. 1605 to 1608.)

(7) Balances or proportional rates live stock rates from Missouri River to Chicago. (Rec., pp. 1572-3.)

(8) Iowa distance tariffs on live stock. (Rec., p. 1687.)

(9) Illinois distance tariffs on live stock. (Rec., p. 1687.)

(10) Minnesota schedules on live stock. (Rec., pp. 1938-9.)

(11) Central Traffic Association tariffs. (Rec., p. 1686.)

(12) Rates via Mississippi River to Chicago eastern points on meat and product. (Rec., p. 1586.)

(13) Rates from Chicago to eastern points on meat and product. (Rec., p. 1389.)

(14) Present rates in question to Chicago on meat and product. (See attached table.)

(15) History of rates in question to Chicago on meat and product. (Rec., p. 1645 and Commission's findings.)

(16) Rebates from rates in question to Chicago on meat and product.

(17) History of live stock rates in question. (Rec., p. 1647, also Commission's findings.)

There is no dispute as to the foregoing points, and the Commission's decision as to the same, which covers all the essential points, is not questioned, except that the Circuit Court finds that the rates

> "That for sixteen years out of twenty-three, between Missouri River points and St. Paul and Chicago, the published rates on live stock were higher than on dressed meats and packing house products."

The finding was based on a history of the rates published by the Commission. (Rec., pp. 1644 and 1645.) That is not

contrary to the Commission's findings, because it referred to the published rates which for years were not maintained, while the Commission was speaking of actual rates from Missouri River on both live stock and the product, not published tariffs. The Commission found:

> "Aside from the rates in question, carriers generally make rates on live stock somewhat, and in many cases considerably lower than on the products. This was formerly true concerning rates made by carriers operating between Missouri River and Chicago; but soon after the large packers erected packing houses at different points on the Missouri River changes began to take place. The tonnage controlled by the packers was comparatively large, and this fact enabled them to obtain secret concessions from individual carriers."

The date when concessions began and period covered is not stated. The Commission also found that the published rates on live stock were important because they were the basis of rates in a zone east of Missouri River. It is shown in the evidence that live stock is not in fact shipped on the published rate locally from Missouri River but it moves on the balance of the rate, generally about 16 cents per 100 lbs., which is lower than the dressed meat and packing house product rates. Any seeming conflict between the Court's findings and those of the Commission as to the history of these rates actually paid, is thus explained so that there is in reality no conflict. We deem it necessary to review the item of evidence under this head because there is no controversy concerning the same. The rates in question are set out in the accompanying table. Comparative rates are set out in various exhibits cited as well as the changes in the rates, and will be referred to in argument when important.

STATEMENT SHOWING RATES ON CATTLE, HOGS, PACKING HOUSE PRODUCTS AND FRESH MEATS, CAR LOADS, FROM MISSOURI RIVER AND OTHER POINTS TO CHICAGO, ILL.

(RATES IN CENTS PER HUNDRED POUNDS.)

To Chicago, Ill. from	Cattle.	Hogs.	Packing House Products.	Fresh Meats.
Kansas City, Mo.	23.5	23.5	20	20
St. Joseph, Mo.	b20	b20		
Atchison, Kans.	c18.5	c18.5	a18.5	a18.5
Leavenworth, Kans				
Council Bluffs, Ia.	23.5	23.5	20	20
Omaha, Neb.			a18.5	a18.5
Nebraska City, Neb				
Sioux City, Ia.	25	23.5	20	20
			a18.5	a18.5
St. Paul, Minn.	25	27	15.7	17
So. St. Paul, Minn.		b17.5	a14.6	a15.7
Ottumwa, Ia.	22	21	16	
Des Moines, Ia.	22	23.5	18.5	
Marshalltown, Ia.	22	21	16	
Cedar Rapids, Ia.	21	18.5	13.5	

(a) Destined to points east of Illinois-Indiana State line.

(b) Applies on shipments originating beyond.

(c) When originating beyond and destined beyond the Illinois-Indiana State line.

B.

The greater part of the eveidence produced by defendants was directed to this subject in one or more of the particulars, hereinafter specified, with the object of showing that the profits of defendants' business of transporting the fresh meat and packing house products for the packers at Missouri River and South St. Paul, and at interior points, to Chicago, as compared with the profits in transporting cattle and hogs from Missouri River and St. Paul and from points intermediate to Chicago, does justify the unlawful discriminations and preferences found by the Commission; and that it erroneously held that said discriminations were not justified by the difference in the cost of the service, or otherwise justified.

RELATIVE COST OF THE SERVICE.

(1) Car loading in tonnage on each sort of freight.

(2) Train loading in tonnage and relative amounts of freight and gross weight.

(3) Weight of stock car without load.

(4) Weight of bedding in loaded cars of live stock.

(5) Cost of cleaning after shipments of live stock.

(6) Returning loading for live stock cars.

(7) Speed of trains carrying the different classes of freight.

(8) Weight of refrigerator car without load.

(9) Weight of ice and salt and preservatives when loaded.

(10) Return loading for refrigerator, or rather no return loading.

(11) Speed of returning cars, both as to refrigerator and stock cars.

(12) Car mileage cost for use of refrigerators, 1 cent, stock cars 6 mills.

(13) Terminal expenses and charges at originating and delivering points.

(14) Loss and damage claims for injury to live stock and meats.

(15) Stock yards expenses at the point of receiving.

(16) Return transportation of attendants going with live stock.

(17) Relative distance of haul of live stock and products, in question.

(18) Relative cost of maintenance of cars for both live stock and its product.

The evidence is conflicting as to each of the above items in paragraph B. Both the Court and Commission held, however, that the cost of the service was not material, and the Court did not find what the items of cost or the profits were, though it found that it cost more per cent to handle the live stock than the meat and other products.

But the Commission found the facts as to average of earnings and cost as hereinbefore shown in its findings, (ante p. ——), and certain of the above items, viz.: (1), (3), (4), (6), (8), (9), (10), (12), (13), (14), (15) and (17), which the Court did not question, as it made no finding as to either. We shall attempt to show under this head later on, that the relative cost of service or profits does not justify the discrimination, in order to show that the decree cannot be sustained on that ground, although the Court did not hold to the contrary; and we shall likewise attempt to show that the Court was not justified in concluding that the cost of the carriage of the live stock is greater than the product thereof, per car.

C.

EVIDENCE OF ABOVE ITEMS OF RELATIVE COST OF SERVICE REVIEWED.

The Commission held that the discriminations found to exist were not justified by the difference in the cost of transportation, (Ante, p. 24), but in its conclusion after reviewing the items of the difference in cost of transportation, the Commission said:

> "After a careful consideration of all matters disclosed by the record we conclude that the discrimination complained of is not justified by difference to defendants in the cost of transportation. And this was the view expressed by some of defendants' officials. The freight traffic manager of the Atchison Company, as hereinbefore stated, testified that from the Missouri River to Chicago a 12-cent rate on live stock is as profitable as a rate of 18½ cents on fresh meat. But this might be true when applied to transportation by the Atchison Company, although not true when applied to transportation by some of the other defendants. What are called 'out of pocket' expenses, which are paid by the defendants and because of which no charges in addition to the regular rates of transportation are exacted from shippers, vary according to the variations in location of defendants' respective lines of railway.

"In making calculations concerning cost of transportation we have endeavored to describe the general situation and have not attempted to give in detail the differences that exist between the different lines operating in the territory under consideration; first, because it would be impossible to state such differences accurately, and, second, because although we think cost of transportation is a very important element we do not consider it a controlling element in this case."

The Commission found (Ante, p. 15), that for hauling these different commodities from Missouri River to Chicago and returning the empty car, the carriers receive after paying car mileage net returns per 100 pounds gross weight both ways the following:

Packing house products	4.5c
Fresh and dressed meats	3.3c
Cattle	4.9c
Hogs	3.9c

The Commission was here speaking of profits and not cost.

The Court did not find to the contrary. Its finding was that it cost more to haul the live stock than its product per car. It does not appear that the Court considered the return haul or expense of car mileage so as to find the net revenue. As we shall show, the Court was in error, if it meant that considering these items it cost more to haul live stock.

It is the contention of the appellants' counsel that the Commission correctly concluded that the cost of service was not a controlling element, and that the Court was correct in concurring in that conclusion. But it is a material element for consideration, and was the point to which most of the evidence related.

We, therefore, submit that the Court erred as specified in the 7th assignment of error wherein the appellant complains that the Court erred in holding that the cost of carrying live stock is greater than that of carrying dressed meats and packing house products; and that said Court erred as specified in the 20th assign-

ment of error in finding as a fact that all the witnesses agreed in the showing that the cost of service in proportion to the value of both kinds of commodities was greater in carrying live stock.

Under these errors we submit the proposition that:

The profits of transporting cattle and hogs from Missouri River and points interermediate and from St. Paul to Chicago, are as great as the profits in transporting dressed meats and packing house products from Missouri River and from St. Paul to Chicago.

The gross earnings in each case must be obtained by multiplying the weight by the rate, hence the average car loading is an essential factor.

The relative cost of performing the service and the profits to be obtained are dependent upon the items named in the analysis of the points to which the evidence was directed, as hereinbefore set out under the headings "Relative Cost of Service" and "Relative Earnings and Profits."

It must be borne in mind that the mere opinion of a witness as to the relative cost of the service, aside from the actualities which his evidence shows, is of little, if of any importance. When we establish what these items are, the correct conclusion is to be deduced therefrom, independent of the mere opinion of interested witnesses who may or may not have taken into consideration all of the items which should be considered, as the basis of a correct conclusion or calculation. This is wherein the Court was in error; not believing the point very material, the Court did not analyze the details, but accepted mere opinions. Want of space and time suggests the idea, which we shall pursue, that only such of the evidence as seems best to establish a given fact should be cited or quoted from the voluminous record under appropriate heading, hence we cannot refer to the various opinions expressed.

(1) The car loading of dressed meat, packing house products and live stock as a part of the published rate should be estimated from the minimum weights made a part of the tariffs; because, when the railroad company publishes its tariff, it publishes the minimum weight per car load, which becomes as much a part of the tariff as the rate itself. It may be that in

some instances the minimum weights are exceeded; it may be, as it does appear from the evidence, that upon the average the minimum weights are somewhat exceeded, but the shippers' right, and the obligation of the carrier, are defined by the rates per hundred pounds on a specified minimum weight per car as expressed in the tariff. These minimum weights found by the Commission and undisputed are as follows:

"On packing house products, 26,000 pounds; and on fresh and dressed meats, 20,000. The minimum pertaining to live stock vary according to the kind of live stock shipped and the length of the car used in each instance. The length of the car most generally used is 33 feet and 9 inches, and minimums pertaining to such a car are: On cattle 22,000 pounds, and on hogs, double-deck, 22,000, and single-deck 17,000." (See Rec., p. 572, confirming this finding.)

The evidence fairly establishes, however, that on an average the actual car loading of commodities in question is as follows:

Cattle, 23,000-25,000. (Record, pp. 572, 1235, 1309, 1310.)

Hogs, 17,600. (Record, p. 572.)

Fresh meats, 21,000 or 22,000. (Record, p. 1499.)

Packing house products, 28,000 to 29,000. (Record, p. 1499.)

(2) The train loading, that is to say, the number of loaded cars carried in trains transporting these different commodities, was the subject of voluminous evidence, and there were various opinions expressed, but all of them must of necessity be based upon the actual make up of the trains in which commodities are carried. The only reliable evidence of these facts is the actual representative train loading of trains carrying these commodities, as well as trains carrying all freight as shown by the train consists, taken from the Railway Records of trains, as follows:

C. M. & St. P. Ry.: trains out of Savannah, at crossing of Mississippi River eastbound. (Rec., pp. 905-912.)

First 15 days of February, 1904:

Total trains	160
Total cars live stock	1786
Total cars fruit	40
Total cars of other perishable freight	527
Total cars dead freight	1435
Total cars empty	871
Total cars	4659

Average per train, loaded 24.1, empty 5, total 29.1.

Trains carrying live stock, and live stock and other freight 92.

Average cars live stock	19.41
Average cars of other freight	10.00
Average cars of empties	2.85

Total cars per train, loaded 29.4, empty 2.85, total 32.26.

The Burlington Road train consists for 15 days of October, 1904, and 15 days of April, 1905, into and out of Galesburg.

Dead freight trains	440
Dead freight cars	12,059
Average loaded cars	27.40
Average empty cars	10.83
Average all cars	38.23
Train carrying live stock	786
Cars of live stock	11,377
Cars of other freight	16,468
Empty cars	3,808
Total cars	31,655
Average loaded cars per train having live stock	35.43
Of which average live stock	14.48
Average of other loads	20.95
Average of empties	4.84
Total cars per train	40.27

Similar results are shows of consist of trains into and out of Creston, Iowa. All trains having live stock have more loaded cars and more tonnage, gross and net, than trains not carrying live stock. Nearly all trains carrying meat or other perishable freight carry live stock. Trains having only live stock have more loaded cars than trains carrying meat.

The C. & N. W. train consist make similar showings.

The average is made up for all roads which furnished the train consist will make similar showings.

Since expenses of train service and nearly all expenses of carriage except car mileage and terminal expense and cleaning cars is by the train as a unit, that is the proper basis of comparative earnings, expenses and profits.

Trains loaded without live stock	68
Loaded cars	1082
Average per train	15.91
Empties	609
Average per train	8.96
Average cars per train	24.86

First 15 days in October, 1904:

Cars of live stock	1333
Cars dead freight	1522
Cars perishable freight	532
Cars other freight	169
Empties	485
Total	4041
Trains carrying live stock, and live stock and other freight	74
Average cars of live stock	18.01
Average cars of other freight	14.35
Average cars of empties	1.26
Total loads 32.36, empties 1.26, total	33.62
Trains without live stock	56
Loads	1161
Empties	392
Average loads per train	20.73
Average empties	7
Average cars per train, total	27.73

The Illinois Central Railway train consist for 15 days of April and October, 1900, shows a greater number of loaded cars for trains carrying live stock out of Ft. Dodge, Iowa, and Freeport, Ill., than in trains not having live stock. (Record, pp. 1666-1675.)

(4) The weights of stock cars and of the bedding was the subject of various opinions and some definite evidence. It is clearly shown that the weights of these cars vary considerably, which would naturally be so, and that the weights of the bedding varies considerably because of its accumulation and as the cars make trip after trip without being cleaned, the weight of the bedding would depend upon the accumulation to a large extent. But the bedding put in a car having old bedding is less than when clean. (Record, p. 1073.)

It is shown that on the whole the average weight of stock-cars in which live stock is carried is approximately 29,000 lbs. and that the average weight of the bedding is approximately 1,000 lbs. per car. The Commission found that the average is 28,000 pounds for the car and 2,000 pounds for bedding. (Record, pp. 1063, 1067, 1073, 1238, 1237.)

(5) The cost of cleaning cars varies according to the circumstances, the weather and the amount of bedding that is permitted to accumulate. It may be correctly stated that on an average the cars are not cleaned more than once every two months or six times per year, and that they make several trips without being cleaned (Record, pp. 1237-8), and therefore there should not be charged up as an item of cost the cleaning of every car. Probably the cost of cleaning a car should be charged for every third or fourth trip.

The evidence fairly shows that the cost of cleaning of the live stock cars for each cleaning will not average more than 50 cents, and that estimated on the relative basis of each car of live stock, 25 cents would more than cover the cost of cleaning. (Record, pp. 1631 and 1634.)

(6) The return loading of live stock cars is a material item as compared with the dressed meat and packing house product cars which have no return loading, with the exception of the Illinois Central. The evidence is not definite with respect to the return loading, nor the stock yards or the packing house product and dressed meat cars. It does show in practically all cases the dressed meat cars are returned empty, but the stock car is returned loaded to the extent of 20 per

cent. as found by the Commission of the return movement. (Record, p. ——.)

(7) Relative speed of trains carrying any two classes of commodities is not materially different. (Record, pp. 1298, 1430, 1905, 1298, 1300.)

(8) and (9) The weight of refrigerator cars and the ice salt and preservatives varies, but on an average will equal 44,000 pounds. (Record, p. 1498.)

(10) and (11) The return loading for refrigerator cars is rare and the speed of returning them is greater than in the return of the stock cars. (Record, p. 1508.)

(12) The car mileage cost in the case of refrigerator cars is 1c per mile, and the cost of stock cars where the cars of private car lines are used, is 6 mills per mile. The railroads own a large part of their equipment in which live stock are carried, but the most of them own none of the equipment in which the packing house products and meats are carried, except the Illinois Central.

(13) The terminal expenses and charges are relatively as found by the Commission. (See also, Rec., pp. 1111, 1507.)

(14) Loss and damage claims constitute an item about which the witnesses testified extensively, but the actual figures showing what the actual loss and damage really is on an average, were as follows: C. & N. Ry., 78 cents per car. (Rec., p. 1903.) C. B. & Q. Ry. about 40 cents.

(15) Stock yards expenses were the subject of much testimony and it is rather difficult to determine just what stock yards expenses are for handling livestock. It is quite certain, however, that it is not materially greater than the general station expense of handling the business. We have assumed that Mr. Gardner, General Manager of the Northwestern Ry. Co., stated the expenses high enough to cover this item, at $1.75 per car. (Record, p. 383.)

(16) Return transportation of attendants who go with live stock was the subject of a great deal of evidence and much magnified by many witnesses. It is undoubtedly absurd to charge up as cost the return transportation of passenger fares, as Mr. Stickney

and some others did in their estimates. Mr. Gardner estimated it at 2 cents per mile for ever third car, $3.40. Mr. Ripley considered it of little importance. (Rec., pp. 1130, 1131.)

The Commission found that this item of expense was offset by return loading for stock cars, which it had not computed.

Based on 20 per cent return loading in which 6 mills per mile would otherwise be added, it is clear that the return loading more than offsets any figure at which return of attendant can be placed.

(17) The relative distance of the haul of livestock on an average when hauled upon the same rate as the rates from the Missouri River to Chicago, is of material importance. The 23½c rate on livestock is charged from points within a zone about 125 to 165 miles east of and parallel with the Missouri River (Record pp. 1589-1590), half-way across the State of Iowa. The livestock within that zone moves partly to Chicago and partly to Missouri River. That which is closest to Missouri River naturally moves mostly to those markets, and for the sake of argument, we may assume that the average distance in that zone is at a point 75 miles from Missouri River, in which case the average haul in such case would be 425 miles, on the 23½c rate on livestock to Chicago, while from points of origin east of that zone the rates are less and the distance is less. On the Missouri River basis it may be said that the average haul of dressed meat and packing house products to Chicago is 500 miles, as found by the Commission.

(18) The relative cost of maintenance of cars seems not to be a very fair item of comparison in this case because there is no evidence with respect to the average cost per car mile movement of maintenance of refrigerator cars, because they are principally owned by the private lines. In lieu of owning a car and expense of maintenance, railroads pay 10 mills per car mile as a charge for meats and product which is shipped in cars which belong to other companies, and an allowance of 6 mills per mile as paid in lieu of the ownership and maintenance of stock cars. The relative cost can be best estimated upon that relative basis, for presumptively it is not greater. On the one part Mr. Stickney claimed a very heavy expense in the maintenance of stock

cars, but that cannot be correct, for if so the stock car line would go out of business at 6 mills per mile; on the other hand Mr. Ripley claimed a less expense for the maintenance of stock cars than ordinary cars. (Rec., p. 1132.) Between these two the witnesses varied, and it is safe to assume for the purpose of calculation that the basis on which the Commission made its figures of the allowance per car mile made to the private car line companies is a correct basis.

RELATIVE EARNINGS AND PROFITS.

(1) Gross earnings on dressed meat per car.

(2) Cost of the service and other expenses on dressed meat per car.

(3) Profits on dressed meat per car.

(4) Gross earnings on packing house products per car.

(5) Cost of service and other expenses on packing house products per car.

(6) Net earnings on packing house products per car.

(7) Gross earnings on hogs per car.

(8) Cost of service and other expenses on hogs per car.

(9) Net earnings on hogs per car.

(10) Combined cars of meat and products—earnings per car.

(11) Combined cars of cattle and hogs—earnings per car.

(12) Relative earnings per ton mile on each in detail.

(13) Relative earnings per mile on each in detail.

(14) Relative earnings per train mile on each in detail.

(15) Average freight earnings of each defendant per ton mile.

(16) Average freight earnings of each defendant per car mile.

(17) Average freight earnings of each defendant per train mile.

(18) Average operating expenses per ton mile—per car mile and per train mile.

(9-a) Earnings on cattle at 23,000 pounds per car 54.05

Car mileage; 430 miles haul to Chicago and return $5.16

Terminal and other expenses same as for hogs $3.25

Total.....$8.41

Net earnings on cattle.....$45.64

(10) We must, however, consider the combined average earnings and expenses of dressed or fresh meat and packing house products, because in making the rates they have always been so considered by the defendant railroads, and the Commission so considers it is a proper basis of the uniform rates on the entire product. To do this, we must take into consideration, as a material factor, the relative number of carloads of fresh meat and of packing house product. The definite and reliable evidence as to this factor is that contained in Mahoney's exhibit (Record p. 1392) showing the tonnage of each, east bound. Dividing the fresh meat by 22,000 pounds, it gives for 1902, 1903 and 1904 115,676 carloads of fresh meats, and dividing the packing house products by 29,000 pounds it gives for same period, 60,270 cars of packing house products.

By multiplying the cars of fresh meat by the average gross revenue of $42.35 per car, and the cars of packing house products by average gross revenue of $53.90, and adding the results and divide by the total cars of both, we have as a result $45.90 per car, as the true average combined gross earnings.

This result represents the average revenue per car of fresh meat and packing house products combined, at the average revenue actually received, upon basis of one-half going to Chicago at 20c rate and one-half east at 18½c upon the volume of traffic passing through Mississippi River crossings, which fairly represents the relative amount of each.

Manifestly this is the standard to use when comparing the rates and earnings on the product with rates and earnings on

hogs and cattle. This is so, because the showing is quite different in the relative earnings and expenses of fresh meat compared to packing house product, arising particularly from the heavier loading of packing house products and greater loss and damage to fresh meats.

(11) Combined earnings on hogs and cattle should for the same reason be computed. The rates on each are the same, but the loading of cattle carried on these rates will average 24,000 pounds or more (Record p. 1309), though the minimum weights in the tariffs is 22,000 pounds. Hogs load about an average of 17,400 pounds. (Record, p. 1499), though the minimum weight is 17,000 pounds.

It is estimated that the relative number of cars of cattle and hogs from the territory in dispute coming to Chicago, is 3 of cattle to to 2 of hogs, (See Record, p. ——), averaging net revenue cattle and hogs per car on this basis $40.

(12) to (14) Relative gross earnings per ton per car mile and per train mile on each.

Dressed meat on the 20c rate, per car $44; per mile, 8.8c; per ton mile, 8 mills.

Dressed meat on the 18½c rate, per car $40.70; per car mile, 8.16c; per ton mile, 7.4 mills.

Dressed meat on the average rate, per car $42.35; per car mile, 8.47c; per ton mile, 7.7 mills.

Packing house products on the 20c rate, per car $56; per car mile, 11.2c; per ton mile, 9.8 mills.

Packing house products on the 18½c rate, per car $51.80; per car mile, 10.36c; per ton mile, 9 mills.

Combined Earnings: Hogs, 425-mile haul, 23½c per 17,000 lbs; per car, $39.95; per car mile, 9.4c; per ton mile, 11.4 mills.

Hogs, 500-mile haul, 23½c rate, 17,400 pounds, per car $40.87; per car mile, 8.17c; per ton mile, 9.4 mills.

Cattle, 425-mile haul, 23½c rate, 23,000 pounds, per car $54.05; per car mile, 12.7c; per ton mile, 11 mills.

Combined earnings on cattle and hogs per car $48.41; per car mile, 11.2c; per ton mile, 10.7 mills.

Average train of 30 cars fresh meat (1,980,000 lbs. gross weight), 20c rate, $1,260.00.

Average train of 30 cars packing house product (2,160,000 lbs. gross weight), 20c rate, $1,680.00.

Average train of 30 cars cattle (1,620,000 lbs. gross weight), 23½c rate, $1,621.50.

Average train 30 cars hogs (1,440,000 lbs. gross weight), 23½c rate, $1,226.10.

Average train 25 cars meat (equal weight to 30 cars cattle), $1,100.00.

Per train mile, 500 miles, fresh meat, $2.52.

Per train mile, 500 miles, packing house product, $3.36.

Per train mile, 500 miles, meat 25 cars, $2.20.

Per train mile, 425 miles, cattle, $5.81.

Per train mile, 425 miles, hogs, $2.88.

(15) Average freight earnings of the principal defendants, all freight per ton mile, per car mile, and per train mile, and operating cost for same items, taken from annual reports (Record, pp. 1871, 1691, 1980, 1865, 1690), are as follows:

Year.	ROAD.	Gross earnings per ton mile.	Gross earnings per car mile.	Gross earnings per train mile.
1904	C. B. & Q. Ry.....	8.7 mills.	12.85 cts.	.....
1903	C. G. W. Ry.....	8.7 mills.	11.36 cts.	$2.03
1902	C. R. I. & P. Ry.....	1.04 cts.	....	1.84
1902	C. & N. W. Ry.	8.1 mill.	11.34 cts.	2.03
1902	C. M & St. P. Ry....	8.4 mills.	11.21 cts.	2.13

E.

COMMERCIAL RELATION OF LIVE STOCK AND ITS PRODUCT AND VALUE OF THE SERVICE.

(1) Markets for sale and slaughter, Missouri River and St. Paul.

(2) Markets for sale and slaughter, interior.

(3) Sources of disposition of product.

(4) Growth of Missouri River markets, total receipts.

(5) Growth of Chicago markets, total receipts.

(6) Growth of interior markets, total receipts.

(7) Growth of St. Paul markets, total receipts.

(8) Increase in live stock westbound to Missouri River.

(9) Increase in live stock from Iowa and Minnesota to Chicago.

(10) Difference in price is the difference in rates.

(11) Effect on shippers.

(12) Effect on Chicago market.

(13) Character of the markets compared.

(14) Effect on complainants, the Live Stock Exchange.

(15) Value of hogs and cattle compared to the fresh meat and prepared products.

(16) The percentage of weight of product to weight of live animals. (Record, p. 1573.)

(17) Relative value of the service.

Items (1) to (9) inclusive are not a matter of dispute or conflicting evidence. Items (4) to (8), inclusive, are shown by tables which are not questioned. Item (9) is uncertain, but not in dispute. Item (10) depends upon evidence of witnesses hereafter shown, is naturally indefinite, but not a matter of serious controversy. Items (11), (12) and (14) are in dispute, and the Court finds that the effect of existing relation of rates does not materially injure the shippers and Chicago market. The Commission found to the contrary. Item (13) is not in dispute. Item (15) not in dispute though exact value not shown. Item (16) not materially in dispute. Item (17) while conjectural, not in dispute.

The commercial relation of live stock and the products thereof is such that the lower rates on the products than the live stock, subjects the live stock, the shippers thereof and the market at Chicago to an unreasonable prejudice and disadvantage.

(1) and (2). The markets for the sale and slaughter of live stock originating in the district involved, are principally at Kansas City, St. Joseph, South Omaha, Sioux City, South St. Paul, and interior points, Cedar Rapids, Ottumua, Des Moines, Oscaloosa, Mason City, Marshalltown and other small hog packeries. (Rec., pp. 576-583-554.)

(3) The source of disposition of products are the various consuming markets throughout the country, and for export as found by the Commission. (Rec., pp. 606, 600.)

Q. Is it from their purchases in the other markets that controls their prices here in Chicago, or is it the prices paid in Chicaga that control the other markets?

A. Chicago is recognized as the largest market, as I have testified, and necessarily the prices here would have an effect in controlling and influencing the values of the cattle in other markets.

Q. So it is the price paid for cattle here in Chicago that controls the price in these other markets, as I understand you?

A. To a certain degree, yes.

(14) The effect on the Chicago market of the Missouri packers and the interior packers and those at St. Paul being able to ship the product so much cheaper than the live stock necessarily is to divert the traffic away from Chicago market and to the other places to the extent of their capacity to take care of it, and their disposition to pay for the live stock what could be obtained for it on the Chicago market, less the freight which the shipper would have to pay were he to ship.

(15) The comparison of the size and character of the market shows beyond dispute that Chicago is the controlling market and that prices are fixed as nearly as such prices can ever be fixed by reference to the Chicago market. (See Record, p. 897.)

That the number of buyers and the number of live stock sold are very much greater than at any other market.

Not only is it the market for the sale of live stock, but it is the market for the sale of the product, and as shown by the testimony, the product of the output of the small markets in the interior parts of Iowa is based upon the Chicago prices.

(16) It naturally must result that the Chicago Live Stock Exchange and the members thereof who are selling live stock must suffer in their business in proportion as the number of live stock is diverted in other directions.

We submit, therefore, that the Court erred as specified in assignment No. 12 in holding that the lower rates on products of live stock than on the live stcok, has worked no injury to the shippers of the latter; and as specified in assignment No. 13 in holding that the present rates complained of in these causes are reasonably fair to Chicago and to the shippers of live stock; and as specified in assignment No. 33 in finding as a fact that:

"The welfare of the public, including the shippers, consumers and all localities and markets, does not seem to be materially affected by the present rates."

The commerce of the country and the direction and volume of its movement is quick to respond to advantages to one locality or commodity as compared to a competing locality or commodity. In the multitude of these advantages and disadvantages, and the infinite variety of circumstances and conditions of trade, it is impossible to determine with exactitude or often even approximately the extent to which a manifest preference or advantage affects the volume of traffic or trade of a particular sort as compared with competing articles, or the volume of the business in either or both at competing localities.

In the world of trade and commerce, the law of supply and demand as affecting prices is of first importance, yet a decade has witnessed the stifling of competition to such an extent that prices of important articles of commerce and profits in business of particular sorts or at particular places have been and are controlled more by the artificial advantages and disadvantages produced by powerful agents of commerce than by the law of supply and demand. The advantage, commercially and otherwise, of centralization of capital in great manufacturing concerns, has its tendency to eliminate competition and concentrate in a few hands great business enterprises.

This accomplished, the concentrated force may command the arteries of commerce to give still further advantages, which in turn brings its consequent disadvantage to those adversely affected, however diffused it may be.

In no line of business have these things been more clearly demonstrated than in the meat packing business. The sale of the cattle and hogs of the Iowa farmer must ultimately be to one or more of a few packing concerns or buyers; the capital, industry and business acumen, if not other causes, have naturally given the few buyers a decided advantage over the individual among thousands whose daily labor finds its reward in the price for which he can sell a carload or two of fat cattle or hogs. The packer is a manufact-

urer, a shipper; he buys and slaughters at Missouri River, St. Paul and Chicago, or perchance at St. Louis. He ships the product throughout the world. The buyers of cattle and hogs for butcher and other purposes must come in competition with the packer at the markets of sale; the product must come in competition wherever sold with that of the packer. This being so, it follows that, if to the reasonable and natural advantage of shipping the more concentrated and valuable product by the packers, virtually putting two carloads of live stock in one of product, there be added an advantage of a less rate per 100 pounds, than on the live stock, the packer has the commercial advantage to that extent and the advantage produced from purely artificial cause, viz: the act of the railroads in giving the lower rate. This advantage is due to the power of the packer to command the railroads to so compete for his business as to give the advantage.

The Commision held that whatever the facts may be as to the compulsion, it is an unjust and undue preference and in favor of the packers and subjects the live stock shippers and affected localities to an unjust and unreasonable prejudice and disadvantage. To this the railroads reply that it is not undue or unjust, because they were compelled to reduce the dressed meat and packing house product rate, by the packers, and that therefore the advantage was not undue or unjust, nor the prejudice or disadvantage to the live stock shippers unjust or unreasonable. That the live stock shipper not being in an attitude to command similar competition from the railroads to reduce live stock rates, the disadvantage of the higher rates is just and reasonable to him; while the packer having the power to compel the preference or advantage, the same was due and just. That although it could be relieved against by reducing the live stock rates, yet as that would cause the railroads to make less money out of the live stock shipments, they should not be required to do so. The result of which is that the railroad should be permitted to violate the law by the relative rates they maintain, and justify it upon the ground that by doing so they can make more money; or in other words, that the live stock shipper shall be compelled to pay the price of the preference given to the packer. The Circuit Court took this view; and having done so sought to sustain it by making the declaration

that the shippers of live stock were not materially affected; and in turn sought to sustain this last conclusion by the declaration that shipments had not been diverted from Chicago by the publication of the rates (which are the previous rebated rates); and in turn sought to support this last conclusion by the alleged fact that the volume of the business at Chicago from the affected localtiy, shows no diminution. The actual rate remaining the same, what change could be expected? Yet the fact (as assumed, though not correct), that the amount of business had shown no sudden decline, was proof that the difference in rates was not unjust for the reason that there would have been a change in the direction and volume of the business had the rates affected the shipper; therefore, the shipper must be condemned to pay more than the packer and pay it on a less valuable article, because he did not change the direction of his shipments and volume of business upon the railroads making public in a published tariff the secret rate they had been giving the packers all the time for ten years. And it further results that he who can get an advantage may keep it because he can; he who suffers the disadvantage must continue to do so because he cannot help it; and because he cannot help it, the advantage becomes just as to him, and the preference becomes due to him who can keep it.

F.

EXPENSES OF OPERATION APPLICABLE ALIKE TO ALL TRAFFIC.

MAINTENANCE OF WAY AND STRUCTURES.

(1) Roadway; (2) rails; (3) ties; (4) bridges and culverts; (5) fences, road crossings and cattle guards; (6) buildings and fixtures; (7) docks and wharves; (8) telegraph; (9) stationery and printing.

MAINTENANCE OF EQUIPMENT.

(1) Superintendence; (2) locomotives; (3) passenger cars; (4) freight cars; (5) work cars; (6) shop machinery and tools; (7) stationery and printing; (8) other expenses not enumerated.

CONDUCTING TRANSPORTATION.

(1) Superintendence; (2) engine and roundhouse men; (3) fuel for locomotives; (4) water supply for locomotives; (5) oil, tallow and waste for locomotives; (6) other supplies for locomotives; (7) train service; (8) train supplies and expenses; (9) switchmen, flagmen and watchmen; (10) telegraph expenses; (11) station service; (12) station supplies; (13) switching charges; (14) the use of cars and locomotives—balance; (15) loss and damage; (16) injuries to persons; (17) clearing wrecks; (18) advertising; (19) outside agencies; (20) stock yards and elevators; (21) rents for tracks and terminals—balance; (22) rents of buildings and other property; (23) stationery and printing; (24) other expenses not enumerated.

GENERAL EXPENSES.

(1) Salaries of general officers; (2) salaries of clerks and attendants; (3 general office expenses and supplies; (4) insurance; (5) law expenses; (6) stationery and printing—general offices; (7) other expenses not enumerated.

These are the items of expense required by the general orders of the Interstate Commerce Commission of which the Court takes judicial notice, and are shown in the printed annual reports of the C. M. & St. P. Ry. (Rec., p. 1648) and others of the defendant carriers, in the original record. From this enumeration it is plain that the expenses apply alike to all freight traffic except the following, which may be different, dependent upon the speed: (1) maintenance of locomotives; (2) maintenance of freight cars; (3) fuel for locomotives; (4) train service; and the following items dependent upon the class of traffic: (1) station service; (2) switching charges; (3) use of cars; (4) loss and damage; (5) injuries to persons; (6) stock yards.

The difference, therefore, in operating expenses in the transportation of dressed meats and packing house products on the one part, and live stock on the other, would depend upon the difference only in these items.

The evidence shows that the speed of fresh meat, packing house products and live stock is substantially the same, and that

they are carried on the same trains, hence these items can not be materially different. This is an indisputable fact because the fresh meat packing house products and live stock move in the same trains. (Record of Trains Consists, 1779, 1820, 1798, et seq.)

The train service is paid for by the train mile and there can be no substantial difference, therefore, in that particular.

The relative switching charges or terminal expenses have been elsewhere shown. So also as to the use of cars, locomotives and injuries to persons, and stock yards expenses.

The conclusion which the Court seems to have reached that the expenses of handling the traffic is so much greater than in the case of live stock, dressed meats and packing house products is therefore not of value in the absence of an analysis of the details of expenses of operation and a comparison of those expenses incident, not identical in kind and amount.

It is true, that many witnesses expressed the opinion in conformity to that of the Court on this subject, while others expresed a contrary opinion; yet in each case the correctness of the opinion must depend upon the correct ascertainment of the details of the difference in the expenses. For example, Mr. Crosby, freight traffic manager of the C. B. & Q., testified (Rec. p. 243):

"I believe that we can handle packing house products under the present condition of affairs, for less money than we can live stock. I believe we have less net money when we get through handling our live stock, than we do with the products." * * * * "When you consider the service I think it is less."

On cross-examination (Rec. p. 265), is the following question and answer:

Q. Do you know as a matter of fact, whether it costs you more money or less money per car, to handle live stock which you haul from the Missouri River to Chicago, than the packing house products or the dressed meat which you haul from the Missouri River to Chicago?

A. I don't just know exactly what the difference in cost is.

Again, he says (Rec. p. 266):

Q. On what train do you usually move live stock products?

A. We have a train that handles that business that leaves the Missouri River at 1 o'clock every day.

Q. One o'clock in the afternoon?

A. Yes, sir.

Q. And according to your schedule, what time is that train due in Chicago?

A. I think about 6 o'clock * * * the next afternoon.

And again (Rec. p. 267), the witness testified:

A. At the present time our train schedule from Western Iowa is entirely different from the packing house train. We aim to make here (Chicago) in the morning, and we make that schedule, I don't know exactly what the time is because I have not charged myself with it, but we have a schedule from Western Iowa that enables a man there to load today, for example, and make his market day after tomorrow. I don't know the exact hours to get that, but between stations I am inclined to think that that train must necessarily run a good deal faster than our meat trains do. But the time shown for each is not materially different.

An examination of actual train consists (Rec. pp. 1818 to 1853), shows that more than two-thirds of the trains carrying meat carry also live stock, and so of train consists of other roads.

Later on Mr. Crosby gave a statement of the different items of expenses of the live stock traffic, not involving any expenses of handling the dressed meat, as follows: (Rec., pp. 295-6.)

September 19, 1905.

"What the carrier does and is expected to do in the matter of handling live stock, that is not required or expected in the handling of other traffic:

1. Yards must be built at shipping point so that shipper can pen and load his stock.

2. Attendant is passed in charge to look after the stock.

3. Return pass is given to starting point.

4. Specially equipped caboose car is attached to train for convenience and comfort of attendants, generally provided with sleeping bunks.

5. Where stock is in transit, or liable to be twenty-eight hours or longer, feed yards have to be provided for feeding, watering and resting.

6. In the case of hogs, they are wet down with water at convenient points in transit during hot or warm weather.

7. The carrier is expected, in fact required, to make better time in transit than with ordinary freight, in consequence cannot get maximum use of his power, as faster speed means less tonnage.

8. In case of failure to market, claims for damage are made.

9. In case of delay from any cause, or rough handling, claims for shrinkage are made.

10. If animals injure each other, get crippled or killed in transit, claims are made.

11. Stopping to feed, water and rest, means loss of use of cars and engines for period of five to twelve hours. Means cars have to remain at feeding point, or if moved away, other cars have to be provided which means extra expense not incurred with any other class of freight.

12. Live stock trains are given preference over other freight trains.

13. Injuries to attendants.

14. Requires special class of equipment."

A REVIEW OF THESE ITEMS SHOWS:

(1) Mr. Crosby did not state, but Mr. Gardner, Generel Manager of C. & N. W. Ry., stated that the expense of owning and maintaining stock yards and all service in receiving live stock was, by his estimate, $1.75 per car.

(2), (3), (4) As to cost of returning attendants, the Commission holds that to be offset by return loading of the stock car as compared to no return looking for the refrigerator car.

(5), (6) The watering of hogs is by turning a sprinkler on as the cars pull slowly by a water tank and is practically no expense. (Rec. p. 1295.)

(7) The facts show no greater speed for live stock than the packing house products and dressed meat previously shown herein, and it is conclusively shown that there is greater, rather than less, tonnage per train mile of live stock, as hereinbefore shown.

(8), (9), (10) The loss and damage claims which cover these items are shown to amount to about 40c per car on the Burlington Railroad, and about —- cents per car for the dressed meat and packing house product. (Rec., p. 301.)

(11) If the speed which he states is made, the live stock does not stop for feeding, rest or water. The stopping for feed and unloading results from poor service or from accident.

(12) The live stock trains do not interfere with other traffic more than the meat trains.

(13) Injuries to attendants is embraced in the loss and damage item.

(14) Special class of equipment simply means the 6 mills per mile as compared to the 10 mills per mile for the refrigerator cars.

G.

COMPETITION BETWEEN CARRIERS AS A FACTOR.

(1) The number of railroads from Missouri River points to Chicago.

(2) The competition for the meat and products at the Missouri River.

(3) The competition for the meat and products at St. Paul.

(4) The competition for the meat and products at interior points.

(5) The competition maintains existing rates.

(6) The competition for live stock at Missouri River.

(7) The rates established by concurrence have been maintained for years.

(8) No competition for live stock, affecting rates.

(9) Rates from territory 125 miles east maintained to common line.

(10) Numerous common points of intersection in Iowa.

(11) Chance of competition same as at Missouri River.

(12) Shipment to Gulf only of packing house products, not meats.

(13) Shipments to Gulf inconsequental.

None of these items is in dispute as to the facts; the Court holds that competition for the dressed meat and packing house products justifies the difference in the rates on the same and the rates on the live stock. As we shall see, that is a matter of law.

VI.

COMPETITION.

(1), (2) The defendants whose lines reach Chicago all serve the Missouri River markets at St. Paul, and the intervening territory in Iowa and Wisconsin and Minnesota on their lines respectively, except the C. & N. W. Railway does not reach Kansas City or St. Joseph, and the G. C. W. Ry., C. & N. W. Ry. and C. M. & St. P. Ry. do not go directly over their own rails to St. Joseph. There should be a map in the original record to show these locations of various railroads.

(3) The C. M. & St. P. Ry., C. G. W. Ry., C. B. & Q. Ry., C. & N. W. Ry. are the competing lines from St. Paul, but it is reached by the Minn. & St. Louis Ry. and C. R. I. & P. Ry.

(4) The interior packing points are:

Cedar Rapids, Iowa, served by the C. & N. W. Ry., C. M. & St. P. Ry., Iowa Central Ry. and C. R. I. & P. Ry.

Des Moines, Iowa, served by the C. G. W. Ry., the C. R. I. & P. Ry., C. M. & St. P. Ry. and C. B. & Q. R. R.

Oscaloosa, Iowa, served by the C. R. I. & P. Ry., the C. B. & Q. R. R. and Iowa Central Ry.

Ottumwa, Iowa, served by the C. M. & St. P. Ry., C. B. & Q. R. R. and C. R. I. & P. Ry.

Marshalltown, Iowa, served by the C. & N. W. Ry., C. G. W. Ry. and Iowa Central Ry.

Boone, Iowa, served by the C. & N. W. Ry., C. M. & St. P. Ry., Iowa Central Ry. and C. R. I. & P. Ry.

Iowa Falls, Iowa, served by the Illinois Central Ry., the C. R. I. & P. Ry., the C. & N. W. Ry. and D. M. Ia. F. & N. Ry.

Mason City, Iowa, served by the C. M. & St. P. Ry., C & N. W. Ry., C. G. W. Ry. and Iowa Central Ry.

Austin, Minn., served by the C. G. W. Ry., C. M. & St. P. Ry. and the Iowa Central Ry.

(5) and (6) The connection made by these roads bring them substantially all in competition for all traffic, and their rates are and have for years been made the same from the same locality geographically, as is shown by all the tariffs.

(7) It results that the published rates are and have been uniform on live stock, fresh meats and packing house products for many years. They all join in making and maintaining them because they are competitive.

(8) The competition for live stock including this uniform adjustment arises from the fact that there are numerous junctions of various lines of the principal systems of railway all over Iowa and the zone 125 to 150 miles east of Missouri River as well, as seen by examining the map, but want of space forbids a description here, which the map will more clearly show. The very same uniformity of published live stock and packing house product rates to Chicago from Missouri River and St. Paul has existed for years at the intermediate points. This likewise applies to uniformity in the proportional rates or balances of rates on which live stock originating west of Missouri River and St. Paul move onto Chicago. Every result which comes from competition for local shipments of live stock from Missouri River has always applied and does apply to shipments going to Chicago from points east of Missouri River. It is not true, therefore, that a competition exists between railroads at Missouri River for live stock, which does not exist at intermediate points, and that such competition comes from more railroads. Exactly the reverse is true namely, that the rates being the same on live stock from Omaha, reached by all the carriers to Chicago, as from a station served by one of them only, 20 miles east, therefore there is no competition at Omaha.

No other conclusion can be reached than that competition is eliminated and has been for years on live stock from both the Missouri River and the interior points. It is 23½ cents per 100 pounds from so large a territory, including Missouri River points,

that competition is clearly not a factor, either at Missouri River or intermediate points.

The fact that there exists established balances of the rates or proportional rates on live stock originating west of Missouri River or St. Paul when carried to Chicago, cannot affect the question, except to show the local Missouri River, Chicago rate, because in such cases the through rate via Missouri River to Chicago was from the point of origin west of Missouri River, with privilege of sale at Missouri River, and if not shipped on, then the local rate is paid at Missouri River; if shipped on, it goes at the through rate as from point of origin. If it is an advantage, it is to the shipper from west of Missouri River and cannot by any possibility inure to the advantage of the shipper who drives into Missouri River points or ships from a point east thereof.

COMPETITION IS NOT CONTROLLING.

1. Competition, in the sense in which the term has been used in the several cases decided by the Supreme Court of the United States, has never been regarded as controlling or decisive either as a matter of law or of fact, except that under the fourth section of the Act, where the alleged discrimination and preference arose from the mere fact of charging more for the shorter than for the longer haul in the same service, in the same direction, over the same line, it has been held that competition at the longer distance point which does not exist at the shorter distance point constitutes a dissimilarity of conditions at the two points, and therefore the fourth section is not in such a case violated by the lesser rate to the longer distance point. That is, as applied to that character of discrimination under that section of the statute, the carriers have the right to charge less to the longer than to the shorter distance point. (East Tennessee, Virginia & Georgia Ry. Co. v. Interstate Commerce Commission.)

2. Under the third section of the Act prohibiting undue preferences, etc., as between localities, persons and different classes of traffic, the question of dissimilarity of conditions does not constitute an exception or qualification, no matter whether the dissimilarity is produced by competition or otherwise; for it must

have been contemplated that in all cases of undue preferences as between different classes of traffic and of individuals engaged in it, and of different localities, there must exist a dissimilarity of conditions in the one case as compared with the other, for it is manifest that each different class of traffic and each different locality is dissimilar to the other; hence if the dissimilarity of conditions shall justify a violation of the third section, no violation of that section could ever occur, which, of course, leads to an absurdity. Therefore under the third section it is necessarily to be implied that a dissimilarity exists; and it is a part and parcel of every such case; and the question in each case involving a violation of that section would be whether, considering this dissimilarity, still is the preference or discrimination in the given case an undue or unreasonable one? Competition, be it great or small, has not been by the statute given any greater force than any other circumstance or condition in determining whether a given preference or discrimination is undue and unreasonable, though it may constitute a dissimilarity under the fourth section. It is not a talismanic word, either in law or in fact, and it cannot be held to justify the preference, if under all the circumstances, in the judgment of the tribunal called upon to determine the fact, there is an undue or unreasonable preference or advantage or an unjust discrmination.

3. The competition in this case is not that character of competition which has been held to be controlling in some cases, because in all of those cases where it has been regarded as a controlling factor a state of the case was shown where the carrier, in order to meet the rates made by some methods of transportation independent of the defendants before the Court, was under the duress of the circumstances compelled to make the rate or do without the business. In no case were all the parties who participated in the transportation and who made the rates, and themselves produced the competition, before the Commission or the Court and subject to the order or decree. Here all the carriers making these rates are before the Court, and the order of the Commission, if enforced, therefore, cannot have the effect of depriving any of them of the business. If it did, still it would not be a controlling factor, but simply a matter for the Commission in the first instance to consider.

When analyzed there is nothing to the competition so-called in this case aside from the desire of the carriers for the business; the motive being to make money. Shall the desire to make money, that is the motive which induces the undue or unreasonable preference, be taken as an excuse for the violation of the law? Can the preference and advantage be rendered reasonable simply because the carrier desires to put in effect rates which will produce the preference in order to make money? If so, no rate could ever be unreasonable, and no preference could ever be an undue one, for the carrier could always insist that it was due, that it give such preference if the carrier would be benefited in so doing, regardless of the interest of shippers of the articles discriminated against. Such a rule makes the desire of the carriers the standerd of what is due and reasonable.

4. This case is different from all others reported and referred to in the opinion of the Circuit Court, in the particular that the rates on the meats and other products of live stock were fixed solely by the carriers who are before the Court, and likewise the live stock rates were fixed by the same carriers. At first the actual net charges made for the transportation of the products of live stock were the result of a secret and unlawful combination to give to the shippers of the meat products a rate which was really less than the published rate, which was unlawful. When they were enjoined from this violation of the law, these actual rates were then restored to the published rate without any change in the tariffs. Not being satisfied to require of the shippers of dressed meat the payment of a rate equal to the live stock rate thus made effective, the Chicago Great Western Railway Company made a contract to carry the products of the live stock at the amount of the present published rates, and to so publish its schedules of rates, and thereupon all of the defendants did the same thing. Now, the violation of the law, as held by the Commission, arose, not out of the fact of making a rate on the live stock product less than is reasonable, but because the law prohibited any undue preference or advantage in the making relative rates on different sorts of traffic. There was nothing to prevent these carriers from making a relatively reasonable rate on live stock at the time they made the rate on packing house products and dressed meat. The undue profer-

ence results from not having done so. It can not be disputed that there is competition for the live stock shipments, but whether there is or not is immaterial, for the preference may be as much undue and unreasonable as against the shipper for whose traffic the railroads do not see fit to compete with each other to the point of reducing rates, as where there is the strongest sort of competition. The law does not intend that because the carriers do not consider the competition in live stock traffic as a sufficient inducement to cause them to reduce the rates to the level of the product rates, that therefore they are not liable for producing an undue preference or subjecting a class of traffic to an unreasonable disadvantage. If it did, then the question as to whether or not the action of the carrier in a violation of law would depend entirely upon the will of the carrier, the doing of the thing would be its justification, which is the grossest absurdity.

5. The argument that because a given line of railroad is not bound to apply as low a rate at the shorter distance point as at the longer distance point, in order to avoid violating the third section of the Act, is not sound, because in every case where it was so held, it was based upon the fact of a dissimilarity of conditions, giving the implied statutory right, by virtue of the fourth section, to charge less at the longer distance point, not on a particular kind or class of traffic, but on all traffic; and in such case a preference arising solely from that cause may not be an undue or unreasonable one. (L. & N. Ry. Co. vs. Belmer, 175 U. S., 648.) But that is not the question here at all. The question here is whether the prejudice is undue respecting the particular classes of traffic, the one as compared with the other, and whether in the matter of such preference particular localities are subjected to a disadvantage, not generally, but with respect to the particular classes of traffic. The main point, therefore, is whether, having reduced the rates on one kind of traffic, it gives an unreasonable preference to that class of traffic to the unreasonable prejudice of a competing article in the markets and to the shippers thereof. That every one must be held responsible for the consequences of his own act is a fundamental principle of law. One of the consequences which the carriers must have contemplated was that they must restore the just relation of the rates, although it

might affect the carrier's earnings, because of their inability to do that by advancing the rates on live stock. The whole matter, reduced to its last analysis, is that the carrier may not create the undue preference or advantage and maintain it simply on account of the fact that it would make more money by doing so than by restoring the just relation of the rates, either by reducing the one or advancing the other. Without doubt the Commission correctly so held.

6. A preference may not be given to one article over another where it arises or is given merely to suit the desire of either the shippers of that article or the railroads which haul it, and in determining whether or not the preference is an undue or unreasonable one the desire of the shipper to enjoy it and the carrier to give it as an inadmissible fact when offered to prove that the preference given is a reasonable one. One's desire to do an unreasonable thing cannot make it reasonable. The fact of reasonableness must be determined aside from such desire. The competition, as it is called, in this case, as we have shown, amounts to nothing more nor less than this desire.

If the competition which existed as between the carriers themselves rendered this order of the Commission unlawful, then the bill was subject to demurrer, because the fact of such competition is as fully set forth in the opinion and report of the Commission as it was proven before the Court.

Considerable stress was laid by some of the witnesses upon the point that if you add the rate on the live animals to Missouri River markets to the rate on the product from Missouri River markets to Chicago, or to do the same thing with respect to Cedar Rapids and other interior points, and compare the same to the rate from the point of origin of the live stock direct to Chicago, that the former would be in most cases greater than the latter. Of course that will always depend upon what the point was that was selected. In some cases that would be so, and in other cases it would not, as shown by the tariffs. But conceding that it would be so in all cases, the two services are entirely distinct. The railroad ships the live animals at the expense of the owner. He pays the freight; it is deducted out of his account sales; the packer has nothing to do with it. Shipment of the product may be by way of

Chicago or elsewhere, or the product may be consumed at the Missouri River or points west. If it has been considered, the fault in the argument lies in the fact that if the live stock shipper either drives his live stock in to the Missouri River points or ships them in, he could with as much reason add the rate to that point to the rate from there to Chicago as proving the undue preference, as the packer could. And so with respect to shipments to Cedar Rapids or other interior packing points.

That same contention was made in the Chicago Board of Trade case, decided October 16, 1890 (3 I.C.C. Rep., 233), and the Commission in that case expressly decided that no such method could be made use of for the purpose of showing that a preference was not in fact given, and in so deciding used the following language, after quoting some previous decisions of the Commission:

> "The Commission held that a separate local haul of freight, complete in itself, could not be added to another different and subsequent haul of the same freight as an element in the adjustment of relative rates between the last haul and a haul of similar freight from still another and different point on the same line to the same common destination. Here the haul of live hogs, for example, to Sioux City, is one separate, distinct and complete service for which the carrier is paid its rate. Then the haul of the product from Sioux City to Chicago is another distinct, separate and complete service for which the carrier is paid its rate. Now, is it not fair or lawful to add these two separate and distinct rates thus earned upon different articles together, and then to say that for an equal number of live hogs shipped from the same point in Iowa or one equally distant to Chicago, the Chicago packer or buyer must pay a rate equal to that combined rate first on the live hogs to, and afterwards on the product from Sioux City? There is no element of justice or fairness in it."

The contention was also made in that case, as it is made in this, that a difference in the rate was justified because the establishment of these packing houses furnished the defendants with

more tonnage than if the animals were shipped from that part of the country to Chicago for packing purposes or to Eastern packers or markets, enumerating various items of additional freight that was created for the company by the establishmeat of the packing houses. This point was overruled by the Commission.

The point was also made in that case that there was a shrinkage in the live stock being shipped from the Missouri River with the longer haul, and that, commercially speaking, it was better for them to be slaughtered at the Missouri River. This contention was made by intervenors similarly situated to some of the intervenors in this case. The Commission disposed of that point by saying:

"But it is impossible to conceive upon what principle either or both of these considerations can justify the giving of preferential rates as shown by the intervenors and others similarly situated, and the burdening of buyers and packers at Chicago with the oppressive discrimination shown in this proceeding."

VII.

ERROR OF THE COURT IN OVERRULING THE FINDING OF THE COMMISSION THAT AN UNDUE PREFERENCE EXISTED, AS SET OUT IN ASSIGNMENT OF ERROR 15.

That the Circuit Court did not consider the Commission's conclusions as of any material importance, is evidenced by the following expression in its opinion:

> "The Court also considers the conclusion of the Commission to be the proper conclusion, unless overcome by other testimony produced upon the hearing, although perhaps not required to do so."

The question at last to be determined, was whether the preference and discrimination was undue, unreasonable or unjust, which, though being a question of fact, as held by this Court in Tex. & Pac. Ry. Co. vs. I. C. C., 162 U. S., 197, was one for the Commission's determination in the first instance. It is necessarily a conclusion of fact, and as the Court reached a different conclusion

to the Commission, the correctness of it ought to be and is a matter of judgment rather than of evidence.

It is remarked by the Court, Subdivision 2, that the witnesses for the railroad companies agreed upon certain items of expense, but the Court does not state what the amount of those items were, and it is not shown wherein they differed from the items as found by the Commission. The Court states:

> "All the witnesses agreed in the showing that the cost of service in proportion to the value of both kinds of commodities, was greater in carrying the live stock."

The fact is that the record may be searched in vain for a single item of evidence upon the subject. The Court states that one of the expenses was "providing stock yards at every shipping place, costing from $800 to $1,200 and $1,400." We believe that no witness claimed that every stock yard cost as much as $800, but they claimed various averages of the total detail of all stock yards, including very expensive yards at certain terminal points, as bringing up the average. The value of evidence describing the stock yards showed plainly that they are very meager and inexpensive affairs, worth a few hundred dollars at a large per cent of the stations. (Record, pp. 1039, 1040, 1049, 1065, 1071, 1291-2-3.) The items of the extra cost which the Court points out, as applying to meats and packing house products, were refrigerator cars, terminal charges and heavier cars; as to live stock, carrying attendants, stock yards, damages for delays and wrecks. It is not indicated by the Court that either of the items was proven to be different to that found by the Commission. The evidence does not dispute the Commission's findings on this point.

The Court noted (Para. 3) the fact that the value of the meats and products was nearly twice that of the live stock.

In this same connection the Court stated that:

> "It was also substantially agreed by the witnesses that the risk of carriage, notwithstanding the double value of fresh meat, was not as great in carrying fresh meats and packing house products as in carrying live stock. This is true on account of the damages for delay to live stock and additional damages in cases of wrecks. There

is not much danger of wrecks in either class of business on account of the good condition of the road bed and equipment of the railroad."

The Commission held that the difference in the items of risks—that is loss and damage, was so small as to be unimportant. That finding is not controverted. As elsewhere shown the loss and damage per car as to both the live stock and the dressed meat, is less, and in most cases materially less, than one dollar per car, on an average, including personal injuries to attendants of live stock.

The Court held (Para. 4, Subdivision b):

> "The cost of the service of carriage. This has not been an important factor in the opinion of the railroad companies in the past nor their practice, but in this case all seemed to agree that the cost of service ought to be an important factor in determining the rate. Mr. Stickney was of the opinion that the cost of service arrived at intelligently by a body of experts, would be the proper basis upon which to determine fairly to everybody the rate to be adopted, and this could be mathematically figured out all over the country. The other witnesses stated that the cost could not be obtained at all accurately, only approximately."

The Commission held that the difference in the cost did not justify the discrimination.

In its findings of fact (Para. 3) the Court pointed out that the value of the service was not so important in this case because of the greater risks in carrying live stock; yet the difference is not found as a fact and as elsewhere shown is not material.

In the foreging particulars only, is there even a pretence of disagreement concerning the facts found by the Commission and as proven before or found by the Court, hence argument of questions pertaining thereto should be directed to the disputed points, as we have endeavored to do.

In its Sixth finding the Court said:

> "That the present rates have not materially affected any of the markets, prices or shipments; that they are reasonably fair to Chicago and to the shippers; that the

shipments of live stock from points between Chicago and the Missouri River and St. Paul are as great in proportion to the volume of business as before the present rates were made; that the majority of live stock comes to Chicago from points as near as 150 miles this side of Missouri River and St. Paul, and that the lower rate given to the packers does not seem to directly influence or injure the shippers of live stock."

The Court in paragraph 6 of its opinion found that:

"On fresh meat and packing house products rebates were given making such rates below 18 cents," and the Commission found this to be the case.

In view of these facts, the finding of the Court that the rates had not affected the volume of the traffic, at each market, or the direction of its movement, is of no importance. The commerce moves according to actualities. It could not be doubted that if it is fair that the rates on the live animals and the product should be the same, that giving rebates to the one over the other to make them different in fact, would be an unjust and unreasonable discrimination; yet that was the condition confessedly for many years previous to March, 1902, when the practice was enjoined. Thereupon the actual rates were restored to the published rates, and so remained till the Great Western contract in August, 1902. Therefore, how can the fact that shipments were not affected by the publication of this lower rate on meat and products, August, 1902, as the lawful rate, render the discrimination or preference just and reasonable, when there was no difference in the new rate and amount previously paid? And of what importance can it be that the lower published rate to the packer did not "seem to directly influence or injure the shippers of live stock" when in truth no material change in the relative amount paid was made. The rate was old, the tariff was new, and the cost the same.

Again the Court found (Para. 8):

"That the welfare of the public, including the shippers, consumers and all localities and markets, does not seem to be materially affected by the present rates."

For the reasons just given no change in these particulars could result from the publication of rates to conform to that which the

actual rates had been; and if the Court by the term "present rates" meant the actual rates, those have not been materially changed; and if it meant the present published rates, they are not different to the previous actual relation of rates on these products.

These are substantially the only points of difference between the Court and the Commission, except that the Court held competition to be controlling and to justify the preference. It needs no argument to show that this difference is not due to a difference with respect to the actual facts, but to a "bent of mind." The Commission thought that the welfare of the public and the shippers was to be subserved by securing in these competitive articles an adjustment of rates which would permit the widest commerce in both, and not tend to extend it to the one and restrict it as to the other.

That the higher rates for the live stock and the lower rates for the packing house products and dressed meats has limited and does limit the extent of the commerce in the live stock and extended it in case of the packing house products and dressed meats, seems too plain for argument, in view of the admitted fact that they come in direct competition in the consuming markets of the country. The Commission invoked that principle of public policy to which it has steadfastly adhered as expressed by it in the Board of Trade and the Squires cases cited in its opinion, and reaffirmed in many cases, to-wit:

> "That the rates on raw materials shall not be greater than on the products of the material."

Elaborating which the Commission stated, quoting from the Board of Trade case:

> "A business like that, involving the preparation for and consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it, is too large to be done in a corner."

After this quotation the Commission stated:

> "We think this dictum was true at the time the decision in that case was rendered, and is true now, and that the relations of rates on these highly competitive kinds of traffic should not be adjusted with reference to the interests of any particular market or markets. Rates

> relatively just and reasonable should be established, regardless of results that may ensue, and the live stock should be allowed to go where it will under such circumstances."

The Commission further noted that with the exception of the president of the Chicago Great Western Ry. Co., the officers of the several defendants "expressed the opinion that, as a general proposition the rates on the former traffic (live stock) should not be higher than on the lower, while some of them stated the rates on the manufactured product should be higher than on the raw material."

The Court in its ninth finding of fact said: "That the usual custom is for railroads to charge a higher rate for the finished product than for the raw material, and this rule has been applied to live stock and its finished products."

It seems illogical, therefore, that the Court should have found that the welfare of the public, including the shippers, consumers and all localities and markets, does not seem to be materially affected by the present rates, if the Court meant by that expression the present relation of rates between these commodities.

The Court having stated in its opening statement of the opinion that:

> "The Commission came to certain conclusions as to the facts that are fully set forth in their opinion in the case found in 10 I. C. C. R., 428, which findings of fact the Court assumed in the beginning of this hearing, and in his consideration of the case, to be the real facts in the case as required by statute."

It seems illogical that it should have reached exactly the opposite conclusion as to the main and essential fact as to whether the welfare of the public, shippers, consumers, localities and markets, were affected by the relation of rates involved in the controversy, and to have reached the ultimate conclusion as stated in the concluding paragraph of its opinion, that:

> "The evidence shows that in substantially all cases the factor of competition alone controls the rate. The Supreme Court in all cases has held that competition may be controlling. In only one case (Social Circle) has

> competition as a matter of fact been held not to make a defense to the charge of discrimination or undue preference. When all of the factors are considered together, the conclusion must be reached that the preference and the advantage in question is not undue or unjust, and Section 3 of the Interstate Commerce Act has not been violated. * * * Upon a consideration of all of the evidence, the Court holds that the prima facie case made by the findings of the Commission has been overcome by the evidence offered before the Court."

If we correctly interpret the Court's decision it was based upon the erroneous proposition of law that because there was competition for the dressed meat and packing house product which reduced the rate, therefore the defendants were justified in maintaining the live stock rates, and that to do so would not constitute an unjust or unreasonable preference, and that although the carriers might relieve the undue preference by reducing the live stock rate, they were not bound to do so unless competition for the live stock caused them to do it.

By the recent decision of this Court in Abilene Cotton Oil Co. vs. T. & P. Ry. Co., decided February 25, 1907 (Advance sheets, April 1, 1907, p. 350), the theory of the Act to Regulate Commerce is plainly set forth as requiring that the Commission shall in the first instance decide these matters pertaining to the proper standard of rates in order that there may be uniformity, and that at least the Court should have its best judgment upon the facts. The Commission is more than a mere referee; the Commission is an arm of the government to whose decision should be attached that importance which its position, skill and experience ought to command.

From the review which we have given of the evidence before the Court and the uncontroverted questions of fact, the conclusion is inevitable that in deciding the case the Circuit Court had no different state of facts from which to reach its conclusion, than had the Commission. The Court held, as we have above seen, that certain facts existed not found by the Commission, which needs no repetition here, but at the same time it did not base its decision upon those facts, but came to the conclusion, from the same state

of the case which the Commission considered, so far as material and controlling facts were concerned, that the Commission had not given proper effect to the fact of competition, which is a question of law. (See the Court's Conclusions of Law, Subdivision D.)

DISSIMILARITY UNDER THE LONG AND SHORT HAUL CLAUSE NOT APPLICABLE.

Section 3 of the Act to Regulate Commerce provides:

> "That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or *locality, or any particular description of traffic,* in any respect whatsoever, or to subject any particular person, company, firm, corporation, or *locality, or any particular description of traffic,* to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The Court in its opinion as to the law, Subdivision D, entirely misunderstood the contention of counsel for appellant, which it attempts to state, with respect to the application of the doctrine of competition as applied to the third section of the Act in respect to "a particular description of traffic." Our contention was and is that since Section 3 makes it unlawful to give an undue or unreasonable preference or advantage to a particular description of traffic as against another description of traffic, or to subject a particular description of traffic to an undue or unreasonable prejudice or disadvantage by reason of the preferences given to a competing description of traffic, that the statute declaring the act unlawful, involves as a major premise the proposition that in all such cases a dissimilarity of circumstances and conditions will always exist; and the same proposition precisely with respect to preferences and advantages as between localities. That from this it follows as a logical sequence that the fact of a dissimilarity between two classes of traffic, or a dissimilarity as to the transportation as between the two different classes of traffic, or the dissimilarity with respect to the transportation to or from the different localities, having the preference or which are subject to the disadvantage, can not justify the preference or advantage or make it due or reason-

able when otherwise it would not be so; for that would be to annul Section 3 of the Act declaring such preferences as to such dissimilar localities and dissimilar descriptons of traffic, unlawful.

And here is wherein the Court took an entirely erroneous view of the law and of the application of the exemption in the 4th section, because of dissimilar conditions, and held that the 3rd section was not violated in this case, because of the competition as to meats and packing house products which did not exist as to live stock. The decision was therefore upon a question of law and not of fact. It results that the 40th assignment of error complaining of the decree on this account is well taken.

NOTE:—The questions involved in the facts discussed and points presented in this brief relate alike in principle to the order of the Commission as to interior packing points and South St. Paul, which for convenience has been designated as St. Paul, hence it was deemed unnecessary to go into detail or discussion concerning the particular facts surrounding each of these localities. These interior packing points are on the direct lines from Missouri River to Chicago, and their rates for dressed meats and packing house products were reduced upon the same basis as the Missouri River rates substantially, and the preference is as great in all cases, and in most cases greater than from Missouri River. So of South St. Paul, the local rates on cattle and hogs to Chicago, which are a basis for rates from points for considerable distances on lines of railway between St. Paul and Chicago, on cattle and hogs to Chicago, and are very much higher proportionately than from Missouri River points to Chicago considering the distances, and the rates on the dressed meats and packing house products, which are lower than from Missouri River.

Furthermore, the Chicago Great Western contract does not apply as a condition to the traffic at St. Paul or interior packing points, nor were the conditions as to the matter of competition the same. But in as much as it is our contention that competition can not affect this case, that is not important. That contract and its effect is presented in another brief and not, therefore, referred to here, but it cannot be contended that it caused the existing relation of rates from the interior points or from St. Paul.

CONCLUSION.

Having reviewed the points at issue as developed by the evidence, we find that as to all matters which relate to the relative cost of the service in the transportation of fresh and dressed meats and packing house products on the one part, and cattle and hogs on the other, there was a controversy and extensive conflict in the opinion and expression of witnesses, but there was no disagreement on specific facts between the findings of the Court and those of the Commission; the only difference being that the Court found that it cost more to transport cattle and hogs, but did not treat that as controlling, while the Commission did not find which cost the most but found that the question was not controlling, and that the difference in the cost, whatever it might be, did not justify the discriminations found to exist. (See Para. V, Subdivision B.)

As to the relative earnings and profits the Court made no findings, but the Commission did find the earning per mile of gross tonnage hauled greater in the case of the live stock. (See Subdivision D, Para. V.)

Under said Subdivision D, and under the review of the evidence respecting the relative cost of the service in Para. V, Subdivision B, we have shown that the profits and net earnings are greater in the case of the transportation of the cattle and hogs than in the case of dressed meats and packing house products.

The remaining questions are: The commercial relation of the two classes of commodities, which is presented in Para. VI, herein, and the facts relating to competition and its effect, presented in Para. VII. We have shown that there is no dispute with respect to the facts in these matters, except the conclusion with respect to the effect of the higher rates on live stock upon the shippers; upon Chicago as a market; upon the Chicago Live Stock Exchange, and its effect upon the welfare of the public. As to these matters the Court held that there was no material effect on account of the rates complained of, but as we have shown the preferences and discriminations had existed for years in the form of rebates, and later in the published tariffs, and that the Court was not justified in reaching the conclusion that the disparity in the rates does not affect the shippers and localities mentioned or the welfare of the public. The effect has been a part of the history of these rates

and the traffic covering a period of years, during which time a confessedly great change has taken place.

The Court in its final conclusion holds the preference is not to be undue or unreasonable, or the prejudice or disadvantage undue or unreasonable, and that there is no violation of the third section of the Act, as found by the Commission, which is a mere conclusion of the Court upon substantially the same facts upon which the Commission based its conclusion. Thus the Court set up its judgment against the trained and skilled judgment of the Commission in a case where there is no dispute on the material and controlling question of fact; and in which the Court disagrees with the Commission because it holds that the Commission did not give effect to the fact of competition, which the Court holds to be controlling. It is true, the Court holds the prima facie case made was overcome, but there is no showing that the Commission found a single fact erroneously. Should not the Court have pointed out the facts found by the Commission which was overcome by evidence before the Court? The decree was entered dismissing the bill on entirely a different ground, viz: the effect of competition.

The appellant submits that the decree was erroneous for the reasons hereinbefore submitted, and as set forth in the assignments of error, and prays the Court to reverse the decree and direct the Circuit Court to make such decree as in equity it should have made.

Respectfully submitted,

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Solicitor for the Appellant.

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Of Counsel.

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Assistant Attorney General.

PAGE.

VI. Competition 75
Railroads serving different markets.....75-76
Rate adjustment indicating no competition.....76
Competition is not controlling.....77

VII. Error of Court in overruling finding of Commission that an undue preference existed.....83
Dissimilarity under the long and short haul clause not applicable 90
Conclusion 92

Supreme Court, U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. [redacted] 73.

INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

BRIEF FOR INTERVENOR, T. M. SINCLAIR & COMPANY, LIMITED.

BY CHARLES A. CLARK

Rookery Bldg., Law Printers, 138 Dearborn St., Chicago.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1906.

No. 325.

INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

BRIEF FOR INTERVENOR, T. M. SINCLAIR & COMPANY, LIMITED.

THE FACTS AS TO THIS INTERVENOR.

This intervenor, an Iowa corporation, together with its predecessors in interest, has long been engaged in packing cattle and hogs, principally hogs, at Cedar Rapids, Iowa, a town of about 30,000 people. The investment in its plant is more than $1,000,000; it slaughters about 600,000 hogs annually; the annual miscellaneous tonnage into its plant, exclusive of hogs for slaughter, is 100,000,000 pounds; the tonnage out of its cured meats and products, is about the same. On an average its business requires 800 to 900 employees, giving support to a population of from 2,500 to 3,000 people. (Record, 597-8, 617, 618.)

It purchases hogs principally in the State of Iowa, sometimes at

Sioux City, St. Joseph, and occasionally at Chillicothe, Mo., and south from Kansas City. The purchases outside of Iowa are exceptional. The local freight rates in Iowa are controlled by the Iowa Distance Tariff, promulgated by the Iowa Railroad Commission. (Record, 598-9.)

The interest of this intervenor in this proceeding in questions involved is this:

The average freight rate on live hogs into its packing house is 11 cents per hundred; the rate on its finished product from the packing house to Chicago is 13½ cents per hundred; making a total of 24½ cents from the point of origin of the live animal to the Chicago market for the finished product. (Record, 600.)

On the other hand, the average rate on live hogs from Iowa to Chicago is 20 to 21 cents per hundred (Record, 603), giving the Chicago packer an advantage of from 3½ to 4½ cents per hundred (Record, 600, 603, 604), for it requires no additional shipment of his product in order to market it.

If the average rate on live hogs from Iowa points to Chicago is reduced 3 to 5 cents per hundred, it will give the Chicago packer just that much additional advantage over the local packers in Iowa. (Record, 605.) Raising the rates on cured meats and other packing-house products would obviously have the same effect; nor would that effect be different if the rate on live animals was reduced in part and the rate on packing-house products raised in part. Yet the the order of the Interstate Commerce Commission in controversy, if put into force, will have one or the other of these effects.

The annual hog census of Iowa is about 10,000,000 animals, of which about 1,500,000 are slaughtered in Iowa. (Record, 602.) Practically the entire balance goes to the Chicago market. (Record, 615.) It cannot be claimed, therefore, that Chicago as a locality is discriminated against by the freight rates in force so that it does not get its share of the Iowa hog crop. There are no complaints of the freight rates in force, from the producers and shippers of live animals. (Record, 612.)

Thirty-five per cent. of the product of this intervenor's packing

house is sold in Chicago, or on a basis of local freight rates from Cedar Rapids to Chicago. The balance of its product, or 65 per cent., goes to export trade. (Record, 605.)

The foregoing facts are from the testimony of E. T. Koch, traffic manager of the Cedar Rapids packing house for many years, and are not called in question by the testimony of any other witness.

The result of these conditions is that a change in freight rates such as is called for by the order of the Interstate Commerce Commission would give the Chicago packer a further advantage of 5 cents per hundred over the interior packers of Iowa, and would seriously cripple and cut down their business, if it did not ruin them and drive them out of the field.

As to hogs purchased by this intervenor at Missouri River points, the case is worse. The lowest rates from those points to Cedar Rapids is 15 cents (Record, 600); the average is 16 to 17 cents. (Record, 608.) The local rate from Missouri River points to Chicago is 23½ cents, but by means of through billing the Chicago packers secure the great bulk of their hogs from Missouri River points, and beyond, at 16 to 18 cents per hundred. The case, therefore, stands thus:

Missouri River to Cedar Rapids	17 cents
Finished product, Cedar Rapids to Chicago	13½ "
Total	30½ "
Local rate from Missouri River to Chicago	23½ "
Difference in favor of Chicago	7 "
The freight cost to Cedar Rapids packer as above	30½ "
Hogs from Missouri River on through billing	18 "
Difference in favor of Chicago	12½ "

These facts are supplemented by the following findings of fact by the court below, which cannot be seriously drawn in question:

> "First. That the live stock rates are reasonable in themselves . . . the average Iowa rate is twenty-one cents.

The great weight of evidence indicates that these rates are at least reasonably low.

"Second. That the cost of carrying live stock is greater than that of carrying dressed meat and packing house products.

"Fourth. That the rates in question given to the packers at Missouri river and St. Paul, were the result of competition. . . . There was not competition enough at said points to lower the rate as to live stock. . . .

"Fifth. That the competition in question did not result from agreement of the defendants, but was actual genuine competition.

"Sixth. That the persent rates have not materially affected any of the markets, prices or shipments; that they are reasonably fair to Chicago and to the shippers; that the shipments of live stock from points between Chicago and the Missouri river and St. Paul are as great in proportion to the volume of business as before the present rates were made; that the majority of the live stock comes to Chicago from points as near as 150 miles this side of the Missouri river and St. Paul, and that the lower rate given to the packers does not seem to directly influence or injure the shippers of live stock.

"Seventh. That the rates for carrying packers' products and dressed meats were remunerative. . . .

"Eighth. That the welfare of the public, including the shippers, consumers and all localities and markets, does not seem to be materially affected by the present rates.

"Ninth. . . . There are many commodities where the raw material is charged more for carriage than its finished product. . . . For sixteen years out of twenty-three, between Missouri river points and St. Paul and Chicago, the published rates on live stock were higher than on dressed meats and packing house products."

(See opinion of Judge Bethea, Record, 176-7.)

The cause was tried in the court below on oral testimony. That court saw and heard the witnesses on both sides, observed their appearance and demeanor, and was much better fitted to judge of the weight and effect of their evidence than it could have been from reading the enormous record.

Its findings of fact are entitled to additional weight for that reason.

BRIEF.

I.

Findings of Fact by Court Below.

In an equity suit findings of fact by the Chancellor or a Master are, on appeal, "to be taken as presumptively correct, and, unless some obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence," such findings will be upheld.

Crawford v. *Neal,* 144 U. S., 596.
Barnett v. *Denison,* 145 U. S., 134.
Tilghman v. *Proctor,* 125 U. S., 136.
Kimberly v. *Arms,* 129 U. S., 512.
Evans v. *Bank,* 141 U. S., 107.
Callaghan v. *Myers,* 128 U. S., 666.
Towson v. *Moore,* 173 U. S., 24.

The United States Circuit Courts of Appeals apply the same rule to special findings of fact by the Chancellor, which is applied to the findings of a Master in Chancery, and this is obviously correct.

Snyder v. *Dobson* (8th Circuit), 221 C. C. A., 77, and cases there cited.
Metropolitan Bank v. *Rogers,* 3 U. S. App., 406.

Where the parties and witnesses are before the trial court and the testimony is given orally, this is an additional circumstance of weight in support of special findings of fact by such court.

Wilson v. *Cattle Co.,* 129 Iowa, 20.
Wilcox v. *Swecker,* 129 Iowa, 153.
Trow v. *Berry,* 113 Mass., 148.
Richards v. *Todd,* 127 Mass., 172.

II.

Judicial Notice.

The court will take judicial notice of general and well-known business conditions and usages.

Gibson v. *Stevens*, 8 How., 399.
N. Y. Indians v. *United States*, 170 U. S., 42.
Ohio & Co. v. *Bebolt*, 16 How., 435.
Whitney v. *U. S.*, 167 U. S., 546.
Bank v. *Adams Ex. Co.*, 93 U. S., 185.
Nicol v. *Ames*, 173 U. S., 517.

III.

The Chicago Great Western Railway Contract for Packing House Products.

This contract is found by the court below to have been the result of lawful competition. It can not be annulled or declared void in this suit. There is, as to this, a defect of indispensable parties, viz., the packing houses who are entitled to the benefit of the contract.

Coiron v. *Millaudon*, 10 How., 113.
Caldwell v. *Taggart*, 4 Peters, 190.
Morgan v. *Morgan*, 2 Wheat., 298.
Williams v. *Bankhead*, 19 Wall., 563.
Finlay v. *Bank*, 11 Wheat., 304.
Riddell v. *Mandebille*, 5 Cranch., 322.
Russell v. *Clark*, 7 Cranch., 64.
Connecticut v. *Penn.*, 5 Wheat., 524.
Barney v. *Wall*, 6 Wall., 280.
Bank v. *Carrollton*, 11 Wall., 624.
Traders' Bank v. *Campbell*, 14 Wall., 87.
Ribon v. *Ry. Co.*, 16 Wall., 446.

IV.

No Substantial Injury Shown.

No substantial injury is shown as to the producer and shipper of live animals; none as to the Chicago packer; none as to Chicago as a locality; none as to live animals as a commodity. See sixth, seventh and eighth findings of court below. (Record, 176-7.) The question as to railroad rates on raw material as against rates on the finished product is purely a moot question. This court does not sit to decide moot questions. The mere potentiality of an injury is not enough to induce its action.

Waite v. *Dowley*, 94 U. S., 534.
Williams v. *Hagood*, 98 U. S., 75.
Marye v. *Parsons*, 114 U. S., 330.
Mills v. *Green*, 159 U. S., 653.
Kimball v. *Kimball*, 174 U. S., 161.
Chicago &c. Ry. Co. v. *Denver &c. Ry. Co.*, 143 U. S., 620.
California v. *Railroad*, 149 U. S., 314.

ARGUMENT.

I.

Present Rates Are Fixed by Competition.

It is not designed on behalf of this intervenor to do more than briefly present the questions which directly and immediatly affect its interests and business success or existence. It must have reasonable rates as compared with its competitors in the great packing centers, or it must go out of business, and the city of its location must lose an important industry on which its prosperity depends to a very considerable degree. Its interests are in common with the railroads only to the extent that they deal fairly and justly by it. It is unwilling, however, to be made the victim of a crucifixion even with the railroads as side ornaments. In this proceeding it is struggling for the right of existence and nothing else.

The present rates under which it is able to do a fairly successful and prosperous business are the result of competition among the railroads, and not of any combination between themselves, or between themselves and packers west of Chicago, to deliberately discriminate against Chicago or Chicago packers, or as to the two classes of commerce covered by the bill of complaint. This is established by the facts specially found by the learned court below, and set forth, *supra*.

These facts are, as this court has said, opinion by Mr. Chief Justice Fuller, "to be taken as presumptively correct; and unless some obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence," they are to be upheld.

Crawford v. *Neal*, 144 U. S., 596, and cases cited Division I of brief, *supra*.

It is respectfully submitted that not one of them has been or can be successfully impeached or attacked by appellant.

Many peculiar circumstances enter into and complicate the rates drawn in question, and the question as a first proposition is a practical one, to be solved by the railway from a purely practical standpoint. They cannot control the circumstances; they are largely controlled by the circumstances. When they have taken action and fixed the rates as to commerce for which there is fierce competition, and there is no impeachment of their honesty and good faith as there is none in this case, that practical solution of nice and difficult questions ought to stand unless it involves a violation of the Interstate Commerce Act, which is clear, palpable, and undeniable. Furthermore, the resulting injury to complaining interests should be real, substantial and serious; a merely theoretical or argumentative or potential injury is not sufficient ground for substituting the honest judgment of the Interstate Commerce Commission without practical experience or knowledge, or the honest judgment of the courts without practical experience or knowledge, for the honest judgment of railways with the fullest practical experience and

knowledge. They are, moreover, literally compelled to deal with a pressing and insistent problem, involving not only their own interests, but the interests of their patrons, of the vast industries and investments of their patrons, and of thousands of people directly dependent upon these industries, as well as of many cities and towns and of large populations whose prosperity will be materially affected by their just and wise, or arbitrary and oppressive action, as the case may be. To ask the courts to interfere with established rates which in all substantial particulars deal fairly with these vast interests, which have stood for many years, neither discriminating intentionally or substantially in favor of any interest or point, nor intentionally or substantially against any interest or point, and under which Chicago packers as well as the Missouri River, St. Paul and interior packers of Iowa have all prospered and are prospering, is a startling appeal indeed. So far as the packers are concerned there is no real grievance. The Chicago packers undoubtedly have some advantage as to rates over the interior packers of Iowa, but other circumstances which no court can interfere with or affect afford the interior packer fair remuneration on his capital, and he can live. Shall the courts intervene and establish conditions under which he cannot live, or only survive in a crippled and ineffective state instead of the active and vigorous factor which he now is? There is surely no ground shown, so far as Chicago packers are concerned, requiring this court to intervene in such vast and complicated interests, and in circumstances so complicated, diverse, delicate and difficult to deal with. If it were otherwise the Chicago packers would be the active complaining and prosecuting interest in this proceeding, waging active and open war for their own existence, instead of the prosecution being carried on by commission men who want to make more money by selling more hogs and cattle to the Chicago packers.

Nor can this court in any manner control the circumstances which have fixed existing rates. It cannot lay the weight of its little finger upon one of these circumstances either direct and palpable, or involved, remote and indirect. These will remain and will still press for solution with steady and dynamic force. That solution must

come along the line of least resistance. A court can no more lay down the law for such circumstances than it can for the mighty flood of the Mississippi river. If the railways have diverted their natural course to the injury of others they may be put back in their natural channel and directed along their natural line. That it is apprehended is what is meant when the Interstate Commerce Act gives full force to "circumstances" in the fixing of rates. The carriers and the courts are alike subservient to them, and not masters over them.

> "Any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge."
>
> *Interstate Com. Commiss.* v. *B. & O. Ry.*, 145 U. S., 284.

If we turn from packers to places, no just ground of complaint on behalf of Chicago is shown. It ought to have its rights, but it is not entitled to all the rights there are. Iowa and Iowa cities have some rights in their own products and the manufacture thereof. Chicago is in like manner entitled to rates which will give it hogs for packing—but not all the hogs of the West and Northwest. Iowa is entitled to some of those she grows, and when Chicago gets from 65 to 70 per cent. of the Iowa hog crop, it gets enough, and more than enough.

And what of the oppressed commission man who is back of the complaint in this suit? No doubt if interior packers of Iowa can be broken up and eliminated, he will earn a commission on more Iowa hogs. But is *he* entitled to overturn existing conditions of prosperity for all, and exterminate Iowa industries, to the end that he shall have everything and Iowa nothing? The increase of his revenue will hardly induce the court to make the order prayed for. It is the settled policy of this country to build up local industries. The railways have been praiseworthy in respecting this policy, and in carrying it out. Congress surely never intended to interfere with this wise policy in enacting the Interstate Commerce Act. What it did intend to do was to prevent the building up of some great cities and some great manufacturers at the expense of the country at large and to give local industries a fair chance. The local industries in-

volved in this litigation get nothing more than a fair chance now—hardly that. If the law is to be so administered, where no palpable and intentional discrimination is shown, as to crush them out, instead of having more railway regulation we will very soon have less. It is vain and idle to suppose that the great State of Iowa will see its present industries killed by railroad regulation, and call for any more medicine of that kind. Its industries are not asking to be built up by discriminations in their favor, but they have a very robust belief that there ought not to be further discrimination against them.

II.

The Producer and Shipper.

It may be argued that the Iowa producer and shipper is discriminated against by the present rates on live animals. That question, obviously, cannot be determined by looking at the rates on the finished products of the packing house. These finished products are not commerce or freight of the same type as the live animals, but they are competitive freight with the live animals, as wheat and corn and lumber and iron are competitive freight so far as rates are concerned. Each article and class of commerce seeks the best rate possible. Competition is one very potent factor in determining what that rate shall be. It is quite impossible to say that the rates on live animals are too high merely by comparison with rates on lumber and iron, or corn and wheat, mere dead and inert matter; and it is equally impossible to arrive at the same conclusion by mere comparison with rates on finished packing-house products.

It is undeniable that the competition among railways is active, continuous and intense for the carriage of live animals, and when rates are fixed under the pressure of such sharp competition, the presumption must be that they are reasonable, especially when they have remained in force unquestioned by direct proceedings on the part of shippers and producers to test their fairness. Under these circumstances this intervenor does not understand that there is any

clear showing that the rates on live animals are unreasonable in and of themselves. Indeed, it is hardly to be believed that Iowa producers and shippers would have supinely submitted to such unjust and extortionate rates until the commission men of Chicago discovered their grievances, and intervened to protect them and set them right. Usually the commission men have given them "such protection as vultures give to lambs, covering and devouring them."

In the absence of clear proof, it is assumed that the courts will not intervene upon the ground that the rates on live animals are too high.

In fact, the real gravamen of complaint is that the rates on cured meats are too low. If the bill is sustained upon this ground it will not avail producers, for these rates must presumably go up, rather than the rates on live animals come down. An order which indirectly coerces raising the rates on dressed and cured meats would be startling. Was the object of the Interstate Commerce Act to raise on the necessities of life the freight rates as established among the railway companies under the pressure of competition, and thus to increase the cost of meats or other foods to every consumer in the land? Or does anybody imagine that the Chicago packer would put down the price of meats sufficiently to cover the rise in freight rates? An order having this effect would inflict a great injury upon the consumer, while it would in no manner benefit the producer. Probably nobody connected with this litigation anticipates any benefit to the producer. When the situation is analyzed, it seems clear that while interior packers may be injured, and Chicago packers may be discriminated in favor of, and Chicago commission men given more revenue, yet consumers will suffer and producers will not gain.

The effect, however, on the interior packers, whether the rates on cured meats are raised, or the rates on live animals lowered, or the two rates changed to an intermediate point, will be the same. That is like the negro's coon-trap, "set to catch them when they are coming as well as when they are going."

III.

Collateral Questions.

1. *Seaboard Rates.*—Some attempt was made by the learned counsel for the Government on the cross-examination of Mr. Koch to show that intervenor has an advantage over Chicago packers on export meats. The figures elicited stand as follows:

Rates on finished product Cedar Rapids to Seaboard	39	cents.
Average rate on hogs into Cedar Rapids packing house	11	"
Total	50	"
On finished product Chicago to Seaboard	30	"
Average rate on Iowa hogs into Chicago	21	"
Total	51	"

Showing an apparent advantage in favor of Cedar Rapids packers on export meats of 1 cent per hundred pounds.

Concede that this advantage actually exists, although Mr. Koch's testimony is that 21 cents is a high average rate on Iowa hogs to Chicago, and that this average is nearer 20 than 21 cents. Still the difference of 1 cent per hundred in favor of the Cedar Rapids packer as to this class of cured meats is evidently too inconsiderable to affect general results. The admitted prosperity of the Chicago packer shows this.

Furthermore, the question is a purely collateral one, and cannot in any just sense enter into the controversy over the rates actually drawn in question by the bill exhibited in this litigation. Otherwise, to arrive at a determination of the real question in issue, it would be material to consider all rates on live hogs purchased by Chicago packers outside of Iowa, especially in Illinois. The rates on live hogs for Chicago from Missouri River points shown to go, by means of through billing, at from 16 to 18 cents per hundred, or 5 to 3 cents cheaper than the Iowa rates; also the local rates on all finished products out of Chicago packing houses, as well as the local rates on all finished products out of the Cedar Rapids packing house,

and from this vast mass of details strike a balance and determine where the ultimate and final advantage lies.

To this might be added local conditions, including labor, the cost of coal, salt, and other miscellaneous tonnage into the packing houses, which enter into the final cost of the finished product. Obviously the line of reasoning adopted by the Government as to rates on export meats is therefore fallacious. It is purely collateral matter, which if gone into with other collateral matter of like nature, would involve the court in a morass of details in which the issue tendered would be lost sight of, and as to which no satisfactory conclusion could be arrived at in any event.

So as to special illustrations on export meats from other points than Cedar Rapids. These are clearly collateral and confusing. If, indeed, we take live hogs from Missouri River points going to Chicago by means of through billing at 16 to 18 cents per hundred, this would make the total export rate for the Chicago packer from 46 to 48 cents as against 50 cents for the Cedar Rapids packer; and it is certain that very heavy shipments of hogs from the Missouri River go through to Chicago at the above-mentioned rate.

But the real controversy is, as to this intervenor, the relative rate at which the interior packer of Iowa can reach Chicago with his finished product, as against the rate of the Chicago packer on the same product. If they meet there, in the hog and pork market of the world, with no advantage to the Iowa packer, the court may safely leave them there so far as the alleged discrimination charged in this proceeding is concerned. The Chicago packer, on his own ground, will certainly take care of himself. If the interior packer of Iowa cannot do so, when the rates into Chicago are fairly adjusted as to him, then it is his fault in going to Chicago, and he must "seek fresh fields and pastures new." Prior to the present adjustment, he was absolutely shut out of Chicago, as shown by the testimony of Mr. Koch in no manner contradicted, by a combination of rates which were nothing less than prohibitory. (Record, 614.) It can serve no public interest, or good purpose, to restore that condition, as it is sought to do by this suit.

2. *Shrinkage in Curing.*—It is shown that there is a net shrinkage of 12 per centum in slaughtering *and curing* the live hog. The gross shrinkage of 30 per cent. in slaughtering is not the true test. Of course the Chicago packer pays a higher freight rate on this lost and eliminated matter than the interior packer of Iowa. This view is purely collateral, inhering in local conditions, and may well be left to take care of itself in considering the question of discrimination against the Chicago packer. It may safely be assumed that on live hogs for Chicago where the freight is less than 21 cents, the average rate on Iowa hogs, the Chicago packer gets sufficient advantage to wholly recoup himself over the interior Iowa packer as to freight on this 12 per cent. shrinkage. Take, for instance, the hogs from Missouri River points which he receives at 16 and 18 cents per hundred; there his finished product will stand at that figure, as against the finished product of the Iowa interior packer at 24½ cents per hundred. So of all hogs purchased in Illinois and elsewhere where the rate into Chicago on the live animal is less than 21 cents. The matter is not serious in any aspect.

While twelve per centum of the freight rate on Iowa hogs is lost by the Chicago packer, the same percentage of the smaller freight rate is lost by the Cedar Rapids packer. The test by figures is this:

The Chicago packer, .21x.12=.02,52 freight on shrinkage.
Cedar Rapids packer, .11x.12=.01,32 freight on shrinkage.

Balance against Chicago packer, .01,2

A difference, in other words, of only one cent and two mills per hundred against the Chicago packer, which difference, it may be safely assumed, does not exist at all, taking the entire output of packing house products at Chicago. Furthermore, this difference in a collateral matter, if it did exist, like the difference in the other collateral question of export meats, must be more than counterbalanced by the enhanced cost to the Cedar Rapids packer on the miscellaneous tonnage into his packing house, which equals, as shown by the testimony of Mr. Koch, his tonnage on the output of

finished product, as compared with freight paid by the Chicago packer on the same miscellaneous tonnage for his packing house. It requires no proof that this miscellaneous tonnage enters into the finished product in both cases. It can have no other conceivable purpose. It must include salt for curing meats, iron, lumber, glass, etc., for packages, with other matters of like character. Nor does it require proof that freight rates to Cedar Rapids on this miscellaneous tonnage taken as a whole are much higher than freight rates on the same into Chicago. That is a matter of general notoriety in commercial affairs, of which the court should take judicial notice.

Gibson v. *Stevens*, 8 How., 399, and cases *infra*, p. 6.

Thus we have abundant illustrations of how one collateral matter of this character counterbalances another if we enter upon that field, and a clear showing of the utter futility of assuming to determine the real issue upon considerations of this character.

3. *The Chicago Great Western Contract.*—It seems to be *assumed* by the learned counsel for the Government, in spite of the express finding to the contrary by the court below, that the Chicago Great Western Railway contract for carrying packing house products from Missouri river points to Chicago, and not competition, is what fixes the rates complained of on packing house products. Upon this theory it is further assumed that such contract may be assailed in this proceeding, rather by collateral suggestion than collateral attack.

It is clear that no decree can be rendered in this case which will bind the parties to that contract. If a direct collateral attack were made upon it and by the bill itself, as to this it would clearly fall within the familiar principle of equity practice, of the absence of an indispensable party without whose presence the court could not proceed.

Coiron v. *Millaudon*, 10 How., 113.
Caldwell v. *Taggart*, 4 Peters, 190.
Morgan v. *Morgan*, 2 Wheat., 298.
Williams v. *Bankhead*, 19 Wall., 563.

Finlay v. *Bank*, 11 Wheat., 304.
Riddell v. *Mandeville*, 5 Cranch., 322.
Russell v. *Clark*, 7 Cranch., 64.
Connecticut v. *Penn.*, 5 Wheat., 524.
Barney v. *Wall*, 6 Wall., 280.
Bank v. *Carrollton*, 11 Wall., 624.
Traders' Bank v. *Campbell*, 14 Wall., 87.
Ribon v. *Ry. Co.*, 16 Wall., 446.

The other party or parties to the contract are so clearly necessary in passing upon it, that the bill as to this would be dismissed on demurrer under the above decisions, and many others which might be cited. The Government can hardly escape the operation of this rule by proving the contract itself, and then attacking it by collateral suggestion. That seems too clear for argument. If this court should declare the contract void, nobody would be bound in subsequent litigation over it.

Under such a declaration by this court, enjoining the Railway Company in effect from carrying the contract out, if that company obeyed the mandate and thus broke its contract, on a suit for damages against it for such breach, it could not successfully plead the action of this court as a defense. The question would still remain for determination regardless of what this court declared outside of the pleadings and in the absence of an indispensable party. That means a party *to the bill*, where a distinct issue is framed as to the contract, and issue taken thereon. If, for instance, the Chicago Great Western were the only party defendant, and it pleaded its contract as to packing house products, and the absence of an indispensable party, this court never could proceed to overturn that contract and coerce new rates as to the parties to it, without having them brought in and giving them their day in court. The fact that there are other defendatns does not change this plain proposition and principle.

But concede for the argument that the question may be raised and passed upon in this case. The contract could have come from

nothing but competition. And see fourth and fifth findings of Judge Bethea. If the Chicago Great Western had been the only line at the points covered by the contract, having the packers at its mercy, it may as well be conceded on both sides that so low a rate would not have been made. And it may safely be assumed, under the actual conditions shown, that what competition did at a jump by this contract, it would have done by like reduction of rates without the contract. Under the same sharp competition, and other like conditions, the same causes would have inevitably produced the same effect in different form. Do the courts sit, then, to abolish competition, and deprive, not only shippers, but the great mass of consumers of the benefit of it, or was that the object of the Interstate Commerce Act? Competition is not against public policy; it is highly in the interest of a sound public policy and favored by it. Does public policy forbid competition, lawful and desirable in itself, because moving along lawful lines, and by lawful steps, it establishes rates which are relatively lower on one article of commerce than on another competitive article? As to the competitive article, the most that can be said is that it suffers from the lawful result of a lawful and indispensable factor in commerce, taking lawful steps one after another. Such injury is purely consequential, therefore, resulting from what is strictly lawful and not only lawful but highly beneficial to the people and the public. No action of any kind was ever yet maintained in any court for such consequential injury. It is *damnum absque injuria*. This is so as to places and packers no less than as to the article of commerce itself. Competition will ultimately regulate the slight inequalities complained of if they exist, which as to this intervenor is not made out. The railway defendants have no interest in injuring Chicago; they are all deeply interested in that city. It is far safer to leave competition to do its work, than to project a foreign body, either commission or court, into that domain, the indirect effect of whose orders must be vastly greater, and vastly more far-reaching, than their direct effect upon a matter where no substantial grievance is shown. The increase of rates on cured meats, for instance, as already pointed out,

will injuriously affect all consumers; it will not help the producer of hogs and cattle. It may aid the Chicago packer to kill his competitors, and thus deprive Iowa of that industry and put the public at large at his mercy. But does public policy require the court to go that far in abrogating contracts or rates, lawful in themselves, because their consequential effect, in a vast field, is a possible injury (no stronger term can be used), to some interest, place, corporation, or individual? If so, the best club ever turned out will be placed at once in the hands of the opponents of railway regulation.

IV.

Raw Material and Finished Product.

It is not the intention on behalf of this intervenor to discuss at length the abstract question as to the relative freight rate which should be charged against raw material as compared with the finished product. It will be assumed that the relative rates involved in this case may be safely left where they are, a matter of vital concern in working out practical results. There is as fierce competition among the railways for the raw material as for the finished product so far as live animals and packing-house products are concerned.

On its face the proposition is in the last degree improbable that the railway defendants will fix these relative rates, so that they will divert cattle and hogs from Chicago for the purpose of securing the *smaller* tonnage of the interior packers of Iowa, or the packers west and northwest of Chicago in general; or that they will injure the producer of hogs and cattle, the larger tonnage, by charging them a rate too high, and charging the packers with smaller tonnage, a rate too low. It is the experience in all business affairs that the larger customer receives special consideration if anybody gets it.

Starting from this point, it is again submitted that the Government has not made out a clear or satisfactory showing that the rate on live animals is too high, or the rate on the finished product is too low. The findings of Judge Bethea on this behalf are not successfully attacked. And these matters ought not to be left to conjecture

when it is proposed to control by judicial decree the vast interests involved in the litigation at bar.

More than this; it has already been pointed out that no interest has been shown to suffer a substantial injury from existing rates. (See findings of court below.) As to the raiser of hogs and cattle, it is not conceivable that he will be benefited by raising the rates on dressed meats. Indeed he is not a party to this litigation, and all that is said concerning his rights or interests is collateral matter simply illustrating the situation of the real parties.

It is not of course denied that the Government, in a sense, represents all interests embraced in the interstate commerce questions in controversy, but none the less the producer is not an active factor on either side of the issues.

As no substantial injury is in fact shown, and the court below expressly so found, the question as to relative rates on raw material as against the finished products, is purely a moot question. The Federal Courts do not sit to decide such moot questions where there is not a real and substantial present and existing injury shown. The mere potentiality of an injury is not enough to set their machinery in motion.

Waite v. *Dowley*, 94 U. S., 534.
Williams v. *Hagood*, 98 U. S., 75.
Marye v. *Parsons*, 114 U. S., 330.
Mills v. *Green*, 159 U. S., 653.
Kimball v. *Kimball*, 174 U. S., 161.
Chicago &c. Ry. Co. v. *Denver &c. Ry. Co.*, 143 U. S., 620.
California v. *Railroad*, 149 U. S., 314.

Whether one type of this commerce, therefore, ought to bear a higher rate, or as high a rate as the other type, does not present itself for judicial determination and solution. Whatever the court may think on that question as an abstract proposition, it will be time to formulate a decree based thereon when a grievance which ought to be remedied is shown.

It may be remarked that the same question is involved in the

milling in transit rate which has stood unquestioned for many years. Under that rate wheat is shipped into the great mills of Minneapolis, manufactured into flour, and sent on to Chicago at one through rate, viz., the rate from the point of original shipment of the wheat to Chicago, or other point where the flour is delivered.

So far as the interior packer of Iowa is concerned the present rates approximate in principle the milling in transit rates. Mr. Koch testified that he was careful to see that each railway got the same per cent. of tonnage of the finished product, as the per cent. of the total tonnage on live animals it shipped into the packing house.

This court will undoubtedly take judicial notice of the milling in transit rates which have been so long in force and are a matter of general notoriety.

Gibson v. *Stevens*, 8 How., 399.
New York Indians v. *United States*, 170 U. S., 42.
Ohio & Co. v. *Bebolt*, 16 How., 435.
Whitney v. *U. S.*, 167 U. S., 546.
Bank v. *Adams Ex. Co.*, 93 U. S., 185.
Nicol v. *Ames*, 173 U. S., 517.

When the Government shall have succeeded, therefore, in establishing its contention in this case as to rates on finished products and raw material, it will have a far better case against the milling in transit rates. What the effect of overturning those rates as an illegal discrimination under the Interstate Commerce Act will be, both upon the milling industries of Minnesota, and of every mill west of Chicago, as well as upon the flour consumers of the whole country, will be readily apprehended by the court without enlargement in argument.

The results sought to be accomplished in this suit are too stupendous and too far-reaching in their general injurious effect upon the public, to be undertaken by any court except under the stress of a correspondingly great public injury, necessity and duty, none of which have been established or made out.

Finally it is submitted that if the State of Iowa cannot manufac-

ture its own raw material, it cannot manufacture anything. This intervenor feels that the courts will hesitate long before they take from Iowa the facilities and opportunities for slaughtering and packing 35 per centum of its own hogs.

Respectfully submitted,

CHAS. A. CLARK.

Office Supreme Court, U. S.
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CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 73.

INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., RESPONDENTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF OF RESPONDENT CHICAGO GREAT WESTERN RAILWAY COMPANY.

CORDENIO A. SEVERANCE,
FRANK B. KELLOGG,
ROBERT E. OLDS,
Solicitors for Respondent Chicago Great Western Ry. Co.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 26152

POINTS DISCUSSED.

I.

Page.

Findings of fact by the circuit court should be accepted on appeal as witnesses testified in open court..... 2

Authorities.

Halsell *v.* Renfrow, 202 U. S., 291.
Shappiro *v.* Goldberg, 192 U. S., 240.
Byer *v.* Le Fevre, 186 U. S., 119.
Stuart *v.* Hayden, 169 U. S., 14.
Warren *v.* Keep, 155 U. S., 267.
Crawford *v.* Neal, 144 U. S., 596.
Evans *v.* Bank, 141 U. S., 107.

II.

The contract between respondent Chicago Great Western Railway Company and various packers was proper exercise of its right to compete for business..... 3

Authorities.

Cotting *v.* Godard, 183 U. S., 79.
Hopkins *v.* United States, 171 U. S., 600.
Delaware, Lackawanna & Western R'y Co. *v.* Kutter, 147 Fed., 51.
Interstate Com. Com. *v.* B. & O. R'y Co., 43 Fed., 37.
Whitwell *v.* Continental Tobacco Co., 125 Fed., 454.

III.

The rate on live-stock products brought about by the Chicago Great Western contract did not involve an undue preference or unjust discrimination within the meaning of the Interstate Commerce law..... 10

Authorities.

Interstate Com. Com. *v.* B. & O. R'y Co., 145 U. S., 276.
East Tenn., V. & G. R'y Co. *v.* Interstate Com. Com., 181 U. S., 1.
Texas & Pacific R'y Co. *v.* Interstate Com. Com., 162 U. S., 197.

Page

Interstate Com. Com. *v.* Alabama Midland R'y Co., 168 U. S., 144.
Louisville & Nashville R'y Co. *v.* Behlmer, 175 U. S., 648.
Interstate Com. Com. *v.* Louisville & Nashville R'y Co., 190 U. S., 273.
D., L. & W. R'y Co. *v.* Kutter, 147 Fed., 51.
Interstate Com. Com. *v.* B. & O. R'y Co., 43 Fed., 37.
Platt *v.* Le Cocq, 150 Fed., 391.
Interstate Com. Com. *v.* Western & Atlantic R'y Co., 93 Fed., 83.
Judson on Interstate Com., secs. 175 to 183.

IV.

Neither the Commission nor the court had the right to ignore the relative cost of the service in determining whether the apparent discrimination was undue or unreasonable.. 24

Authority.

Squire *v.* Michigan Central R'y Co., 3 I. C. C. R., 521.

V.

The Commission, previous to the amendment of the law in 1906, had no power to fix rates, and hence no power to establish the relation between rates..... 27

Authorities.

Cincinnati, N. O. & Tex. Pac. R'y Co. *v.* Interstate Com. Com., 162 U. S., 184.
Interstate Com. Com. *v.* C., N. O. & Tex. Pac. R'y Co., 167 U. S., 479.
Interstate Com. Com. *v.* Alabama Midland R'y Co., 168 U. S., 145.
Southern Pacific Co. *v.* Colorado Fuel & Iron Co., 101 Fed. Rep., 779.

VI.

Findings of fact of the lower court, from which the conclusion necessarily followed that respondents have a decree in their favor, was abundantly supported by the testimony and the law..... 28

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 352.

INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL., RESPONDENTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF OF RESPONDENT CHICAGO GREAT WESTERN RAILWAY COMPANY.

Preliminary Statement.

In the analysis of the testimony, which we print separately and file herewith, we have shown that the findings of fact made by the trial court are amply justified by the evidence. This brief will be devoted to a consideration of such questions of law as we conceive to arise upon the facts thus determined, and it will not be here necessary to advert, except in a most general way, to the evidence. As stated

at the conclusion of our analysis of the testimony, we believe that if the findings of fact are correct, the decree of the court below must be affirmed. There are, however, certain legal propositions applicable to the facts, and to these we desire to direct attention.

I.

FINDINGS OF FACT BY THE CIRCUIT COURT IN A CASE WHERE THE WITNESSES WERE PRODUCED AND GAVE THEIR TESTIMONY IN THE PRESENCE OF THE COURT ARE PRESUMPTIVELY CORRECT, AND ITS VIEW SHOULD BE ACCEPTED UPON APPEAL, UNLESS IT CLEARLY APPEARS THAT IT ERRED AS TO THE EFFECT OF THE EVIDENCE.

The circuit court in this case had the same opportunity of observing the demeanor of the witnesses and their apparent candor or lack of candor in testifying that a master has in an ordinary case referred to a master to report conclusions. We have shown in our analysis of the testimony that the findings are well supported by the evidence. The great weight of the testimony upon all important questions in the case is with the respondent. It is clear that the conclusions of the trial court upon the facts should not be set aside.

Halsell v. Renfrow, 202 U. S., 291.
Shappiro v. Goldberg, 192 U. S., 240.
Byer v. Le Fevre, 186 U. S., 119.
Stuart v. Hayden, 169 U. S., 14.
Warren v. Keep, 155 U. S., 267.
Crawford v. Neal, 144 U. S., 596.
Evans v. Bank, 141 U. S., 107.

II.

THE CONTRACT ENTERED INTO BY THE RESPONDENT CHICAGO GREAT WESTERN RAILWAY COMPANY WAS A PROPER EXERCISE OF ITS RIGHT TO COMPETE FOR BUSINESS.

At pages 61 *et seq.* of the Analysis of the Testimony we have directed attention to the contract made in August, 1902, between the Chicago Great Western Railway Company and the various packers doing business at Missouri River points, and have called attention to the circumstances under which the same was made and the conditions that justified the contract.

The first feature to take into consideration in connection with this contract is that it did not mark the beginning of competition among the respondents for the business of hauling packing-house products. It was itself an act of competition on the part of the Chicago Great Western Railway Company. For years prior to the time when it was made, the field had been fiercely competitive, so much so that unlawful methods had been resorted to generally by the various roads interested for the purpose of getting the business. A vicious system of giving rebates had grown up and had been dealt with by the writ of injunction. About the time that the contract was entered into, this respondent, operating as it did the longest line between Missouri River points and Chicago, came to the conclusion that it was not securing its just share of the business, and accordingly adopted the most proper and legitimate means within its power to get it, namely, by a contract to carry the products for a period of years at a rate lower than that which then prevailed. It is fair to say, therefore, that the contract in question was actually induced by competition. Its sole purpose was to get the business away from other roads by an offer of more advantageous rates and facilities.

It also offered to the packers the distinctive advantage of stability of rates, so that their business might be adjusted for a number of years with an absolute certainty of the expense of getting their product to market.

The right to make such a contract cannot be seriously contested. To deny it would be to place a burdensome limitation upon the forces of competition, contrary to the very letter and spirit of the Interstate Commerce laws. It has never been understood that an arrangement of this character was in any sense improper or illegal. In the very recent case of *Delaware, Lackawanna & Western Ry. Co. v. Kutter*, 147 Fed., 51, the Circuit Court of Appeals for the Second Circuit had under consideration a contract made to secure traffic for a term of years.

The contract involved in that case was one made by the railway company with one Westcott, by which he undertook to use his best endeavors to build up, develop, increase, facilitate, and conduct the business of transportation of "milk" over defendant's railroad, holding himself responsible for the milk so transported, and saving the railroad harmless from claims of a certain class arising from the milk business, together with certain other stipulations on his part. He was to collect the rates for the transportation of milk and pay over to the railroad company 80 per cent. of all charges so collected, retaining 20 per cent. in full compensation for his own services, the railroad company agreeing to receive and transport all the milk so furnished for transportation and agreeing that it would not permit any of its agents to do any act to interfere with the building up of the milk business of Westcott, and would grant him the exclusive privilege of transporting milk over its lines so far as it was permitted to do so by law, and furnish sufficient depot accommodations for the conduct of the milk business, and in addition agreed to furnish certain other facilities in connection with the carrying on of the same.

Judge Wallace, speaking for the court, said:

"The contract doubtless contemplated such a business relation and arrangement between the parties as followed its execution. Its purpose, so far as the defendant was concerned, was to enable the defendant to acquire a traffic which would have to be created, and which could not satisfactorily be built up and developed by the ordinary agencies of the defendant, and which the defendant conceived required the cooperation of Westcott. The peculiar conditions of the undertaking necessitated risks and responsibilities which the defendant was unwilling to assume, and the traffic could not be successfully developed and retained unless it was conducted with such a just regard to the interests of shippers as to be advantageous to them as well as to the defendant. In order to obtain this traffic without investing its own resources, and to carry it on with a minimum of inconvenience, expense, and risk to itself, the defendant saw fit to engage Westcott, and to put him in practically exclusive charge of the whole undertaking, upon terms and conditions which would be likely to be mutually advantageous to both parties. All this was in furtherance of its own business; and the remuneration Westcott was to receive, and the duration of the arrangment, were matters which concerned none but the parties to the agreement and which they were at liberty to settle between themselves. It cannot be questioned that railroad companies may lawfully make all necessary arrangements for increasing their own business and for expeditiously and economically carrying it on (United States *v.* D., L. & W. R. R. Co. (C. C.), 40 Fed., 101; Barney *v.* Steamboat Co., 67 N. Y., 301; 23 Am. Rep., 115). It is certainly competent for a railroad company to employ a traffic manager, and give him exclusive charge of that branch of the business to which his duty relates, and to contract with him for a specified period of service, and pay him a commission by way of compensation. It is likewise competent for a railroad company, in the absence of any legislative prohibition, to make an agreement with the producer or shipper of a particular class of shipments, for good and sufficient

> reasons, to carry them on any terms which the company may deem reasonable (Fitchburg R. R. Co. *v.* Gage, 12 Gray (Mass.), 393). As was said by the Supreme Court of Ohio in a case where the contract was to carry for a manufacturer at a fixed rate for a term of 10 years:
>
> "'We have a right to assume that the contract was to the mutual advantage of both parties, that it was made in good faith, and that its performance for the whole term would not have been injurious to the interests of the stockholders, or in any way suspend or abridge the powers conferred on the corporation to discharge the duties owed to the public as a common carrier for all on equal terms' (Railroad Co. *v.* Furnace Co., 37 Ohio St., 321; 41 Am. Rep., 509)."

The Chicago Great Western contract was concededly made in good faith. It was mutually advantageous to the parties concerned; otherwise it would not have been entered into. By its terms, particularly the reduced rate, the railway company sought to and did overcome many of the disadvantages under which it had hitherto labored in the struggle against its competitors for the business. This reduced rate was lawfully published and filed with the Interstate Commerce Commission and all shippers enjoy its advantage to the same extent as the parties to the contract. The making of a reduced rate, whether by contract or otherwise, is a typical and proper act of strenuous competition. This contract means nothing more nor less than that.

In *Interstate Commerce Commission v. Baltimore & Ohio R. Co.*, 43 Fed., 37, Judge Jackson, in sustaining the issuance of "party-rate tickets," said (page 44):

> "The act to regulate commerce does not undertake to deal with the subject of rates for transportation services, or with the business considerations which may influence common carriers in so adjusting them as fairly to increase their revenue, which paying due regard to the convenience of the public, any further than to declare the general principle that such rates

shall be reasonable and just, shall be free from unjust discrimination, and shall confer no undue or unreasonable preference or advantage, nor impose any undue or unreasonable prejudice or disadvantage. Subject to these conditions and limitations, the act does not, and was not intended to, restrict the common-law right and power of common carriers to make special contracts, or adjust their rates with reference to existing wants and circumstances, so as to promote their own interests, while affording all proper and reasonable facilities and conveniences to the public. Subject to the above conditions, the act intended to leave the adjustment of rates as absolutely and completely in the discretion of the carrier as it existed at common law, which never questioned or denied to common carriers the right to give or make lower rates, based on increased quantity or amount of service."

* * * * * * *

(Pages 50-51:)

"Subject to the two leading prohibitions that their charges shall not be unjust and unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage, or subject to undue preference or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are recognized as sound and adopted in other trades and pursuits."

This case was affirmed, under the same title, in 145 U. S., 263.

In the case of Cotting *v.* Godard, 183 U. S., 79, this court recognized this right of carriers to contract with parties as to rates by quoting approvingly from Louisville, E. & St. L. R. Co. *v.* Wilson, 119 Ind., 352, the following language:

> "The law makes it the duty of every common carrier to receive and carry all goods * * * and authorizes a reasonable reward to be charged for the service. The amount to be paid is in a measure subject to the agreement of the parties; but when the amount is not fixed by contract, the law implies that the carrier shall have a reasonable reward, which is to be ascertained by the amount commonly, or customarily, paid for other like services."

It is claimed by appellant that this contract is void, because in restraint of trade. We do not see how this suggestion can be seriously urged. The making of the contract was an act of competition. If to procure a contract of this character is a violation of section 2 of the Sherman anti-trust act, on the ground that it tends to monopoly, then any act of competition by which a person engaged in trade secures business for himself at the expense of other parties engaged in the same line of business would be a violation of the act. It will be recalled that the evidence shows that the Chicago Great Western Railway Company made this contract to secure for itself, as against all the other roads, a certain amount of this traffic. There was no combination between the Great Western and other railway companies. It was an independent act of that corporation. If counsel's position that this tends to monopoly is correct, then every act of competition tends to monopoly, because it secures to the successful bidder for business a monopoly of the particular amount of trade which he is able to procure for himself as against his competitors. The anti-trust law has never been so construed, and cannot be so construed without defeating its very end. It would necessarily be a law for the destruction of competition if so construed. In the case of Hopkins *v.* United States, 171 U. S., 600, this court said, with reference to the Sherman act:

> "An act of Congress must have a reasonable construction, or else there would scarcely be an agree-

ment or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and, possibly, to restrain it."

And in the case of Whitwell *v.* Continental Tobacco Co., 125 Fed. Rep., 454, the learned Court of Appeals of the Eighth Circuit, in determining a suit brought to recover damages under the act to restrain commerce by a person who complained that the defendant refused to sell goods to him, clearly indicated the proper construction of section 2 of the Sherman act in the following language:

"It is contended, however, that this selection by the defendant of customers who refrained from selling goods of their competitors, violated section 2 of the anti-trust act because it was an attempt to monopolize * * * part of the trade or commerce among the several States. It is admitted that the practice of the defendants was not only an attempt, but a successful attempt, to monopolize a part of this commerce. But is every attempt to monopolize any part of interstate commerce made unlawful and punishable by section 2 of the act of July 2, 1890, chapter 647, 26 Stat., 209 (U. S. Comp. St., 1901, p. 3200)? If so, no interstate commerce has ever been lawfully conducted since that act became a law, because every sale and *every transportation* of an article which is subject to interstate commerce is a successful attempt to monopolize that part of this commerce which concerns that sale *or transportation*. An attempt by each competitor to monopolize a part of interstate commerce is the very root of all competition therein. Eradicate it, and competition necessarily ceases—dies. Every person engaged in interstate commerce necessarily attempts to draw to himself, and to exclude others from a part of that trade; and if he may not do this, he may not compete with his rivals. All other persons and corporations must cease to secure for themselves any part of the commerce among the States, and some single corporation or person must be permitted to receive and control it, all in one huge monopoly.

> * * * It is an interpretation which fosters the mischief it was passed to remedy, and destroys the remedy provided to abate the evil, while a sound construction would tend to abate the mischief and promote the remedy. It cannot, therefore, be the true meaning of the second section of this law that every attempt to monopolize any part of interstate commerce is illegal. The act must, as the Supreme Court has twice declared (Hopkins *v.* U. S., 171 U. S., 578, 600; U. S. *v.* Joint Traffic Ass'n, 171 U. S., 505, 568), have a reasonable construction. The purpose of the second section is the same as that of the first—to prevent the restriction of competition—and the two sections ought to receive similar interpretations." (The italics are ours.)

It would seem as though this opinion leaves nothing more to say upon this branch of the case.

III.

THE RATE ON LIVE-STOCK PRODUCTS BROUGHT ABOUT BY THE CHICAGO GREAT WESTERN CONTRACT DID NOT INVOLVE AN UNDUE PREFERENCE OR UNJUST DISCRIMINATION WITHIN THE MEANING OF THE INTERSTATE COMMERCE LAWS.

The proceedings from which this appeal has been taken were brought under section 3 of the Interstate Commerce act, and also under section 3 of the Elkins law. These sections are as follows:

Interstate Commerce act:

> "SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Elkins act:

> "SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction," etc.

It will be observed that section 3 of the Elkins law adds nothing, so far as our purposes here are concerned, to the provisions of the Interstate Commerce act, and the sole question presented is whether these rates upon live-stock products constitute any undue or unreasonable preference or unjust discrimination in violation of section 3 of the Interstate Commerce act.

There is no doubt that when we come to compare the rates published on live-stock products with those upon live stock, there is an apparent discrimination in favor of the former and against the latter. We have already, in the analysis of the testimony, demonstrated that the one class of rates is not unreasonably low, and that the other is not unreasonably high. The question now before us is simply whether this apparent discrimination between the two classes of traffic is such a discrimination or preference as was intended to be covered by the law. On this subject the authorities, as we shall show, are entirely harmonious. The act was never designed to prohibit every discrimination or preference, and it may be confidently asserted that where a rate is established as the result of competition the objection that it is discriminatory or preferential is without merit. The Interstate Commerce law and cognate acts were all intended to encourage competition, and their provisions cannot be construed so as to hinder in any way the full exercise of all of the rights of competition which theretofore

existed. In *Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.*, 145 U. S., 276, this court said:

> "The principal objects of the Interstate Commerce act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights. It was not designed, however, to prevent competition between different roads. * * * It is not all discriminations or preferences that fall within the inhibition of the statute; only such as are unjust or unreasonable. * * * Indeed, the possibility of just discriminations and reasonable preferences is recognized by these sections, in declaring what shall be deemed unjust."

Again:

> "In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike under the same conditions and circumstances, and that any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge."

In the case from which these quotations are made, known as the *Party Rate case*, the court held that the making of party rates for the transportation of ten or more persons at a rate less than that charged to a single individual for a like transportation on the same trip did not constitute an unjust and unreasonable charge against the individual or an unjust or unreasonable preference or advantage to the purchasers of the party-rate ticket, within the meaning of the act.

A very recent decision by this court along the same line is *East Tennessee, Virginia & Georgia Ry. Co. v. Interstate*

Commerce Commission, 181 U. S., 1. There the complaint was that the through rates from New York to Nashville, Tennessee, were materially less than the through rates from New York to Chattanooga, although the latter point was, by the defendant's lines, nearer to New York than Nashville by about 150 miles. The Nashville rates were lower than the Chattanooga rates in some instances by the full amount of the local rate back to Chattanooga. There could be no doubt on these facts of the existence of a substantial preference in favor of the traffic going to Nashville and a substantial discrimination against Chattanooga. The evidence showed, however, that the Nashville rates were fixed by competition with other lines which did not pass through Chattanooga. The court accordingly held that the preference and prejudice were not "undue or unreasonable" within the meaning of the act. Mr. Justice White, writing the opinion of the court, said:

> "In a supposed case when, in the first instance, upon an issue as to a violation of the fourth section of the act, it is conceded or established that the rates charged to the shorter-distance point are just and reasonable in and of themselves, and it is also shown that the lesser rate charged for the longer haul is not wholly unremunerative and has been forced upon the carriers by competition at the longer-distance point, it must result that a discrimination springing alone from a disparity in rates cannot be held, in legal effect, to be the voluntary act of the defendant carriers, and as a consequence the provisions of the third section of the act, forbidding the making or giving of an undue or unreasonable preference or advantage, will not apply. *The prohibition of the third section, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the voluntary and wrongful act of the carriers complained of as having given undue preference, and does not relate to acts the result of conditions wholly beyond the control of such carriers.* And special attention was

> directed to this view in the *Behlmer* case in the passage which we have previously excerpted. To otherwise construe the statute would involve a departure from its plain language, and would be to confound cause with effect. For, if the preference occasioned in favor of a particular place by competition there gives rise to the right to charge the lesser rate to that point, it cannot be that the availing of this right is the cause of the preference, and especially is this made clear in the case supposed, since it is manifest that forbidding the carrier to meet the competition would not remove the discrimination."

Here was a definite and emphatic holding that a discriminatory or preferential rate established under conditions of competition was not inhibited by the provisions of the act. Manifestly a preference or discrimination with respect to localities can stand on no different footing from one with respect to individuals or classes and kinds of traffic.

We direct attention next to the case of *Texas & Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 197. Here it appeared that the railway company was making a higher charge upon inland traffic originating at New Orleans and carried to San Francisco than was made for carrying the same class of freight between the same points when it originated at Liverpool and participated in through rates from Liverpool to San Francisco via New Orleans. It was held that this did not constitute an undue or unreasonable preference or prejudice, inasmuch as the through rates from Liverpool to San Francisco were effectually controlled by the competition of sailing vessels for the entire distance, by steamships and sailing vessels operated in connection with railroads across the isthmus of Panama, and by steamships and sailing vessels operated in connection with the Canadian railways. In other words, the discrimination or preference was the result of competition, and therefore could not be considered to be "undue or unreasonable." Comment-

ing upon the meaning of the third section of the Interstate Commerce law, the court said:

> "The third section forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation or locality; and as there is nothing in the act which defines what shall be held to be due or undue, reasonable or unreasonable, such questions are questions not of law but of fact. The mere circumstance that there is, in a given case, a preference or an advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act. Hence it follows that before the Commission can adjudge a common carrier to have acted unlawfully, it must ascertain the facts; and here again we think it evident that those facts and matters which carriers, apart from any question arising under the statute, would treat as calling, in given cases, for a preference or advantage, are facts and matters which must be considered by the Commission in forming its judgment whether such preference or advantage is undue or unreasonable."

The applicability of this decision to the case now before the court is obvious. The preference, such as it is, in favor of the traffic in live-stock products and against the traffic in live stock is clearly as much a result of competition as was the preference given to the import business between New Orleans and San Francisco in the *Texas and Pacific Railway* case.

The same principles were laid down in *Interstate Commerce Commission v. Alabama Midland Ry.*, 168 U. S., 144. This was another complaint similar to that made in the case in 181 U. S., above referred to. The rate for the longer distance was materially lower than that for the shorter, but the former was forced upon the carrier by competition with other roads which did not run through the other point. The court laid down the rule as follows:

> "In construing statutory provisions forbidding railway companies from giving any undue or unreason-

> able preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatever, the English courts have held, after full consideration, that competition between rival lines is a fact to be considered, and that a preference or advantage thence arising is not necessarily undue or unreasonable."

The court went on to say that "the question whether competition as affecting rates is an element for the Commission and the courts to consider in applying the provisions of the act to regulate commerce is not an open question in this court."

In *Louisville & Nashville Railroad Co. v. Behlmer,* 175 U. S., 648, this court again announced the principle that the effect of competition must be taken into consideration in dealing with the question whether the statute has been violated. This case involved the rates upon hay from Memphis, Tennessee, to Summerville and Charleston, South Carolina, the rate to Summerville being materially higher than the rate to Memphis, although the distance was 20 miles shorter. The Charleston rate was fixed and controlled by competition of rival lines which did not pass through Summerville. It was held that the preference was not "undue or unreasonable." Both the Commission and the circuit court had held in this case, as a matter of law, that competition, however material, arising from carriers who were subject to the Interstate Commerce act could not be taken into consideration, and, furthermore, that all competition, however substantial, not originating at the original point of traffic was equally, as a matter of law, to be excluded from view. This court held that the construction thus placed upon the law was erroneous, and that under the fourth section of the act, relating to the long and short haul, all competition having a substantial and material effect upon traffic and rates was proper to be taken into consideration as the producing cause of dissimilarity of circumstances and con-

ditions warranting a lower rate. The rule governing the carrier in this regard was thus laid down:

> "It follows that whilst the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First. The absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about, though, in the nature of things, this latter consideration may in many cases be involved in the determination of whether competition was such as created a substantial dissimilarity of condition. Second. That the competition relied upon be not artificial or merely conjectural, *but material and substantial,* thereby operating upon the question of traffic and rate-making the right in every event to be only enjoyed with a due regard to the interest of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered."

It will be borne in mind that the court below found as a fact that the competition in this case was material and substantial, and that the rates complained of were the actual result of such competition. (See 4th and 5th findings of fact.) In this connection it is worthy of notice that the question whether competition is controlling in any given case is not a question of law, but of fact (Texas & Pacific Ry. Co. *v.* Interstate Commerce Commission, *supra;* Judson on Interstate Commerce, section 177, and authorities there cited).

In *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.,* 190 U. S., 273, the long-and-short-haul clause was again under consideration, and the principle was reiterated that, when competition which controls rates prevails at a given point, a dissimilarity of circumstances and conditions is created justifying a carrier in charging a lesser rate to such point (it being the longer distance) than it

exacts to a shorter distance and non-competitive point on the same line.

The recent case of *Delaware, Lackawanna & Western Ry. v. Kutter*, cited *supra*, decided by the Circuit Court of Appeals of the Second Circuit, involved the validity of a contract between the railway company and one Westcott, whereby, as we have shown, the latter undertook, upon certain terms, to build up the business of transportation of milk over the company's line. Among other things, Westcott agreed that he would not charge for transportation "rates in excess of those charged by competitive railroads for similar services." He was to have full charge of such business, receiving as compensation a percentage of the freights earned, and was to have the exclusive privilege of transporting milk over the company's lines "so far as it was permitted to do so by law." Among other contentions urged by the company was the one that the contract contravened the provisions of section 3 of the Interstate Commerce act, because it gave an undue and unreasonable preference to Westcott in the business of transporting milk. The court dealt with this argument as follows:

> "That act deals with the effects or results of contracts, and has no operation directly upon the contracts themselves; but, assuming that the contract is void, if the contention that it gave an undue and unreasonable preference is sound, the case is not one where any such preference was given. The wrong prohibited by the section is a discrimination between shippers. It was designed to compel every carrier to give equal rights to all shippers over its own road, and to forbid it by any device to enforce higher charges against one than another (*Wight v. United States*, 167 U. S., 516; 17 Sup. Ct., 822; 42 L. Ed., 258). The mere circumstance that there is, in a given case, a preference or advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act (*Texas & Pacific R. R. Co. v. Interstate Commerce Com.*,

> 162 U. S., 219, 220; 16 Sup. Ct., 666; 40 L. Ed., 940). To come within the inhibition of the act, 'the positions of the respective persons or classes between whom differences in charges are made must be compared with each other, and there must be found to exist substantial identity of situation and service, accompanied by irregularity and partiality resulting in undue advantage to one, or undue disadvantage to the other' (*Interstate Commerce Com. v. B. & O. R. R.*, 145 U. S., 263, 282; 12 Sup. Ct., 844; 36 L. Ed., 699). Subject to the two leading prohibitions that their charges shall not be unjust and unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the Interstate Commerce act 'leaves common carriers as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits' (*Interstate Commerce Com. v. Alabama Mid. R. R. Co.*, 74 Fed., 715; 21 C. C. A., 51; 41 U. S. App., 453; *Id.*, 168 U. S., 144, 173; 18 Sup. Ct., 45; 42 L. Ed., 414)."

In Judge Jackson's opinion in the "party-rate case" in the court below, 43 Fed., 37, the proper construction to be placed upon the Interstate Commerce act was very clearly stated. He said:

> "Subject to the requirement of section 1, that all charges made for any service rendered in the transportation of passengers or property shall be reasonable and just, the language of section 2 clearly recognizes and implies that there may be discriminations which are not unjust and not prohibited. So, too, the language employed in section 3, declaring it unlawful to make or give any 'undue or unreasonable preference or advantage' to any particular per-

son, etc., or to subject the same to any 'undue or unreasonable prejudice or disadvantage,' clearly implies that there may be a preference or advantage on the one hand, or a prejudice or disadvantage on the other, which is not undue or unreasonable, and therefore not in contravention of the law. To be within the statute the discrimination must be 'unjust' and the preference or prejudice must be 'undue' or 'unreasonable.' "

* * * * * * *

"Persons in like situations, requiring or desiring like and contemporaneous service on the part of carriers, were to be treated, in the matter of rates, impartially. This is expressed both affirmatively and negatively in the language of section 3. The carrier shall not give any undue or unreasonable preference or advantage to or in favor of any particular person, company, or traffic, nor subject any particular person, company, or traffic to any undue or unreasonable prejudice or disadvantage. These words necessarily involve the idea or element of comparison of one service or traffic with another similarly situated and circumstanced, and require that, to be undue and unreasonable, the preference or prejudice must relate and have reference to competing parties, producing between them unfairness and an unjust inequality in the rates charged them respectively for contemporaneous service under substantially the same circumstances and conditions. In determining the question whether rates give an undue preference or impose an undue prejudice or disadvantage, consideration must be had to the relation which the persons or traffic affected bear to each other and to the carrier. When so long as their relations are similar or 'substantially' so, the carrier is prohibited from dealing differently with them in the matter of charges for a like and contemporaneous service."

* * * * * * *

"Under the flexible and elastic rule prescribed by said sections, construed in the light of section 1, a difference in charges, while an element in the proper

> definition of unjust discrimination or undue preference, is by no means the sole or controlling factor. To come within the inhibition of said sections the differences must be made under like conditions; that is, there must be contemporaneous service in the transportation of like kinds of traffic, under substantially the same circumstances and conditions."

After an exhaustive review of the English decisions bearing upon the act from which our law was copied, the learned judge said:

> "The English cases referred to above, and others that might be cited, establish the rule that, in passing upon the question of undue or unreasonable preference or disadvantage, it is not only legitimate but proper to take into consideration, besides the mere differences in charges, various elements, such as the convenience of the public, the fair interest of the carrier, the relative quantities of volume of the traffic involved, the relative cost of the service and profit to the company, and the situation and circumstances of the respective customers with reference to each other, as competitive or otherwise."

It is interesting to observe that in the very recent case of Platt *v.* Le Cocq, 150 Fed. Rep., 391, the learned circuit court held that a statute of South Dakota reading, "It shall be unlawful for any common carrier subject to the provisions of this article to make or give any preference or advantage to any particular person, firm, company, corporation or locality, or any particular description of traffic, in any respect whatever, or to subject any particular description of traffic to any prejudice or disadvantage in any respect whatever," must be construed to prohibit only undue and unreasonable prejudice or advantage. The court said (at page 397):

> "The court is of the opinion that the language of the statute referred to must be construed as only prohibiting the subjection of any particular person, company, firm, corporation, or any particular de-

scription of traffic to an unreasonable prejudice or disadvantage. The Board of Railroad Commissioners seems to have put this construction upon the law as appears from their findings and conclusions, and the court is of the opinion that this view of the law is correct, as the legislature could not have intended a literal enforcement of the statute, because that would leave the express company no discretion in the conduct of its business, whatever, and if the law could be construed as prohibiting any prejudice or disadvantage, the validity of the law would be in danger. A similar clause in the act of Congress known as the Interstate Commerce act, contains the words 'undue and unreasonable,' and the court believes that the present law should be interpreted as though these words were in the law."

In *Interstate Commerce Commission v. Western & Atlantic Ry. Co.*, 93 Fed., 83, the Court of Appeals for the Fifth Circuit had before it a case of apparent discrimination as to localities under the long-and-short-haul clause. It appeared that the rates complained of were the outcome of competition, and it was accordingly held that there was not, within the inhibition of the third section of the law, any undue or unreasonable preference or advantage given in favor of the competitive point, or any unreasonable prejudice or disadvantage against the intermediate point where the higher rate prevailed.

It will be observed that many of the cases above dealt with relate primarily to section 4 of the Interstate Commerce act, containing the long-and-short-haul clause. It was contended in the court below that the principle of competition does not apply where section 3 is involved. An examination of the authorities, however, will show that in practically every instance the question of the effect of section 3 was also raised. This was especially true of the case of *East Tennessee, Va. & Ga. Ry. Co. v. Interstate Commerce Com., supra*, where it was said that the prohibition of the third section was directed against unjust discrimination or undue preferences

arising from the voluntary or wrongful act of the carrier complained of, and does not relate to acts which are the results of conditions wholly beyond the control of such carrier. The court went on to consider the facts with reference to competition, and held that where competition was controlling, the preference was not undue or the discrimination unjust. See also—

Interstate Commerce Com. *v.* Alabama Midland Ry. Co., *supra.*

Interstate Commerce Com. *v.* Clyde Steamship Co., 93 Fed., 83.

Judson on Interstate Commerce, sections 175 to 183.

SECTION 2 OF THE INTERSTATE COMMERCE ACT HAS NO APPLICATION TO THIS CASE.

This section reads as follows:

> "That if any common carrier subject to the provisions of this act shall directly, or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect or receive from any person, or persons, a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this act than it charges, demands, collects or receives from any other person, or persons, for doing for him, or for them, a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited, and declared to be unlawful."

We have shown in our analysis of the testimony in this case—and it would almost seem apparent at a glance—that live stock and packing-house products are not "a like kind of traffic;" nor is there performed in the transportation of these two classes of traffic "a like and contemporaneous service." There are many points of dissimilarity, both in the

kind of traffic and in the service. Cattle and hogs are alive, and subject to all classes of hazards and risks that apply to live animals. They are transported in a particular kind of cars, with particular ventilation. Stock yards are maintained for loading them into the cars, and for feeding and watering them en route. Trains carrying them are run upon such schedules as to reach certain markets; otherwise railroads are penalized and obliged to pay claims for damages. Persons in charge of the stock are carried free to the market, and thence back to their homes. On the other hand, the service performed in the transportation of dressed meats and packing-house products is that which pertains to dead freight shipped under refrigeration. It is more nearly like the transportation of fruit. The stock yards and feeding yards required in the case of live stock are not needed. No persons receive passes to accompany and look after these shipments. It is not necessary that they be taken through on any particular schedule of time. No damages are asserted or collected for delay. As a matter of fact, we cannot think of any two kinds of traffic more dissimilar, and clearly there is not even an approach to similarity in the kind of service required and rendered; therefore there can be no substantial argument made that the second section of the act has any application whatever to this case.

IV.

NEITHER THE COMMISSION NOR THE COURT HAD THE RIGHT TO IGNORE THE RELATIVE COST OF THE SERVICE IN DETERMINING WHETHER THE APPARENT DISCRIMINATION WAS UNDUE OR UNREASONABLE.

The testimony, which has been fully considered in the analysis submitted herewith, clearly shows that the expense of handling live-stock traffic is much greater than the cost of transporting the products of live stock. The court below

found this to be the fact upon the evidence. Upon that ground alone the difference in rates is justified. The appellant, to maintain its contention, must insist that this element of cost be disregarded. We have shown in our comments upon the testimony that, in so far as the live-stock movement from Missouri River points and St. Paul is concerned, the proportional rate, which is less on the average than the rate upon the product, is the rate that is applied. Therefore, as was practically conceded in the argument in the court below, the only question left for consideration was as to the relation between the rates on the product from the western packing-house centers to Chicago and the rate from the zone east of the Missouri river and south of St. Paul, where the rates on live stock which are questioned apply. It was developed, and the court found, that the rates from that zone were in and of themselves reasonable. It was also established that the cost of moving this traffic was much greater than the expense of moving the product from these various market towns to Chicago. Therefore it must necessarily be claimed by appellant that commercial considerations alone demand that these rates be readjusted without reference to the cost of conducting the business. We have shown by the testimony, and the court below has found, that the movement of the traffic is not affected by the rates. It was demonstrated that in spite of the fact that the live stock raised in the country naturally tributary to Chicago has decreased, the shipments to that market have increased. The Interstate Commerce Commission itself, in the case of Squire & Co. *v.* Michigan Central Railroad Co., 3 I. C. C. R., 521, specifically held in a similar case that this theory, which must be relied upon by appellant, is fallacious. In its opinion in that case the Commission said:

> "The complainants have advanced the theory that the Commission in fixing these relative rates should be governed by commercial considerations wholly independent of the cost of carriage. It was said by Mr. Squire, one of the complainants, in his testimony

that railroads should make just, relative rates so that both parties could live, and that 'the product rate should be higher than the live-hog rate, even if the cost of transporting the two articles be the same, which is not the case.' It is to this theory that the complainants have very largely directed the attention of the Commission. A rate which is based upon this theory would have to vary in the case of the live hogs with every change in the market price of the animals in the western markets. Rates for the transportation of property should be arrived at, and based so far as practicable, upon permanently continuing fixed facts. The conditions and fluctuations of the markets of the country are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate which ought to remain substantially permanent through all fluctuations. Upon this point, so strenuously urged by the complainants, that carriers should adjust their rates in a way to produce equality between the competitors in all the markets, it must be apparent that it would be a useless task for the Commission, even if it had the power, to attempt such a result. It would involve a careful research into all the circumstances surrounding the business of each locality, as questions of rent, rates of taxation, cost of labor, and many other things which suggest themselves. The evident result would be that there would have to be as many differently constructed rates as there were different localities. * * * We are of the opinion that in the fixing of relative rates upon articles strictly competitive, as these are, the proper relation should be determined from the cost of the service; and if the difference in this respect between two competitive articles can be ascertained, such rate should be fixed to each as corresponds to the cost of service."

Applying the rule thus laid down by the Commission, of which Judge Cooley was then the chairman, the decree of the court below must be affirmed, even if we concede that

the Commission had any right to make relative rates, or to consider the relation of one class of traffic with another.

V.

The Commission previous to the amendment of the law in 1906 had no power to fix rates, and hence no power to establish the relation between rates.

In Cincinnati, N. O. & Tex. Pac. Ry. Co. *v.* Interstate Commerce Commission, 162 U. S., 184, this court held that the Interstate Commerce Commission had no power to fix rates. After permitting the question to be fully reargued, the court reaffirmed its conclusion in the case of Interstate Commerce Commission *v.* Cincinnati, N. O. & Tex. Pac. Ry. Co., 167 U. S., 479, and again in Interstate Commerce Commission *v.* Alabama Midland Ry. Co., 168 U. S., 145.

In the case of Southern Pacific Co. *v.* Colorado Fuel & Iron Co., 101 Fed. Rep., 779, the Court of Appeals of the Eighth Circuit, following the decisions above quoted, held void an order of the Commission that the rate from Pueblo, Colorado, to San Francisco, California, should be only a certain percentage of the rate fom Chicago to San Francisco.

Judge Thayer in the opinion said:

> "Prescribing a rate from Pueblo, Colorado, to San Francisco, California, by reference to a rate that had theretofore been established by carriers between Chicago and San Francisco, involved the exercise of legislative functions to the same extent as fixing the rate between the former points on an independent consideration of what would be a reasonable compensation for the service. In either event far-reaching questions of public policy arise, and many circumstances and conditions affect the question to be solved, so that it cannot be said that the problem of fixing a reasonable rate from Colorado points to the Pacific slope became a simple one, involving no exercise of legislative discretion, when it appeared that the carriers had established a rate from Chicago to Pacific

> Coast points. * * * We feel constrained to hold that the Commission exceeded its authority in this part of the order, and that it had no more power to fix a rate from Pueblo to San Francisco by relation to the theretofore existing rate from Chicago to San Francisco than it had to fix the former rate upon an independent consideration of what would be a reasonable charge."

In the case under consideration the railroads have established a rate upon dressed meat and packing-house products which was determined by competition and fixed for the period of the Great Western contract. It was attempted by the order to make a rate on live stock which should be the same as that upon the product. This was clearly beyond the power of the Commission at the time the order was made.

VI.

THE FINDINGS OF FACT OF THE LOWER COURT, FROM WHICH THE CONCLUSION NECESSARILY FOLLOWED THAT RESPONDENTS HAVE A DECREE IN THEIR FAVOR, WAS ABUNDANTLY SUPPORTED BY THE TESTIMONY AND THE LAW.

We ask the court to give full effect to the conclusions of the trial court on the disputed questions of fact in this case, and invite its consideration to the authorities cited by the learned trial court in support of the various propositions announced by it. The findings were abundantly justified by the testimony, and the legal conclusions naturally followed under the repeated decisions of this court.

Respectfully submitted,

CORDENIO A. SEVERANCE,
FRANK B. KELLOGG,
ROBERT E. OLDS,
Solicitors for Respondent
Chicago Great Western Ry. Co.

Office Supreme Court, U. S.
FILED.
APR 12 1907
JAMES H. McKENNEY,
CLERK.

In The

Supreme Court of the United States

INTERSTATE COMMERCE COMMISSION,

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY, ET AL.

No. [redacted] 73.

OCTOBER TERM, 1906.

BRIEF ON BEHALF OF ST. JOSEPH STOCK YARDS COMPANY OF ST. JOSEPH MISSOURI, INTERVENOR.

STEPHEN S. BROWN,
JOHN E. DOLMAN,
Solicitors.

In The

Supreme Court of the United States

INTERSTATE COMMERCE COMMISSION,

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY, ET AL.

No. 352.

OCTOBER TERM, 1906.

BRIEF ON BEHALF OF ST. JOSEPH STOCK YARDS COMPANY OF ST. JOSEPH MISSOURI, INTERVENOR.

STATEMENT.

The Chicago Live Stock Association is an incorporated company without capital stock, the object of which, as stated in its charter, is

> "To establish and maintain a commercial exchange; to promote uniformity in the customs

and usages of merchants; to provide for the speedy adjustment of all business disputes between its members; to facilitate the receiving and distributing of live stock, as well as to provide for and maintain a rigid inspection thereof, thereby guarding against the sale or use of unsound or unhealthy meats; and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate rights."

On April 5, 1902, it complained by petition to the Interstate Commerce Commission; 1st, that the rates charged and received by the defendant railroad companies for the transportation of live stock, in carloads, from points in Iowa, Missouri, Minnesota and Wisconsin, to Chicago, were in and of themselves, and relatively in comparison with their rates on the products of live stock, unjust and unreasonable, in violation of section 1 of the act to regulate commerce; 2nd, that the raisers of live stock in those states were subjected to an undue and unreasonable prejudice and disadvantage by reason of the rates charged, collected and received by them for the transportation of the products of live stock from Kansas City, South St. Joseph, South Omaha, Sioux City and South St. Paul, to Chicago and points east thereof, in violation of section 3 of the act to regulate commerce; and, 3rd, that the rates charged, collected and received for the transportation of the product of live stock from the same points to Chicago and points east thereof, and those charged, collected and received for the transportation of live stock from the same markets and intermediate points in Iowa, Missouri, Wisconsin and Minnesota, to Chicago, subjected the City of Chicago and the complainant to an undue and unreasonable prejudice or disadvantage,

in violation of section 3 of said act.

The stock yards companies at Kansas City, St. Joseph, Omaha and Sioux City, representing all the live stock markets on the Missouri river, intervened in this proceeding. A hearing was had in November, 1902. Evidence was introduced from which the Commission found the following facts:

On December 1, 1894, all the railroads engaged in the traffic made a rate of 23½ cents per 100 pounds on cattle and hogs and their products from the Missouri River points to Chicago. This remained practically unchanged until January 1st, 1902, when they made what they called a proportional rate of 18½ cents on the Missouri River live stock product destined to points east of the Indiana-Illinois state line. This adjustment remained in force until the filing of the complaint referred to.

> "Since all or nearly all the live stock carried easterly from the Missouri River is shipped there in the first instance from other points, practically no shipments are made from the river to Chicago upon the local rates in force between those points, and such rates are therefore important, principally, because of their effect upon intermediate points."

During the pendency of said proceeding on August 8th, 1902, the defendant Chicago Great Western Railway Company made a contract with all packers doing business at Missouri River points, by which the railroad company was, for a period of seven years, to transport a given percentage of the entire product of their Missouri River plants and of the plant at South St. Paul, Minnesota, upon a rate of 20 cents local to Chicago and a proportional rate of 18½ cents on the product destined to points east of the Indiana-Illinois state line.

This contract of course compelled all the railroads participating in this business to publish the same rates, and the hearing was had with reference to the conditions thereby created. This contract has been a controlling influence in the honest maintenance of these rates ever since.

The condition of things at St. Joseph and other Missouri River points was then as follows: A proportional rate on cattle and hogs of 18½ cents per hundred pounds to Chicago was in force upon which all stock transported from those points was carried. A similar proportional rate of 18½ cents from these points to Chicago was in force on packing house products, including fresh meat, destined for points east of the Indiana-Illinois state line, and a straight 20 cent local rate on all products of live stock from these points to Chicago. A local rate of 23½ cents on live stock from these points to Chicago, was also in force, the only effect of which was to fix the minimum rate from intervening stations by operation of Section 4 of the Interstate Commerce Act, thus creating what was called the 23½ cent zone, extending perhaps 100 miles east from the river. Even from this zone much the larger part of the live stock goes to Chicago for market. All the railroads participating in this traffic at St. Joseph, except the Chicago Great Western, had lines west of the Missouri river serving territory in which immense quantities of live stock were produced. This made it to their interest, of course, that live stock coming over their lines should be retained by them for the long haul, as it was called, to Chicago. If it should be stopped in St. Joseph for manufacture, the Chicago Great Western would get its share of the product destined locally to Chicago, which is the destination of practically all live stock reaching that place from the West. To avoid this it will be seen that the proportional live stock rate to Chicago was made 1½ cents

cheaper than the local rate of the product to the same point. This difference in favor of live stock to Chicago was stretched at various points where the competition would bear it. This is interestingly shown in a little table of Rock Island rates to, from and through St. Joseph, on page 753 of the record, in which Steinauer. Nebraska, an important live stock station served only by that company, is given the inducement of a 17 cent proportional from St. Joseph to Chicago. The further manipulation of these rates to secure the haul to Chicago is nicely illustrated by the same table. Princeton, for instance, on the road from St. Joseph to Chicago, 105 miles from St. Joseph and 393 from Chicago, has a cattle rate of 22 cents. This would entitle it on a mileage basis to a rate to St. Joseph of 6 1-10 cents, while the actual rate charged it is 11½ cents. On the basis of the St. Joseph rate, its Chicago rate should be 43 cents. On hogs the Princeton rate to St. Joseph is 13½ cents. Upon a mileage basis founded upon this rate the Chicago rate should be 50 cents, while in fact it is 23½ cents, or less than half that amount. Founded upon the Chicago rate the St. Joseph rate should be 6¼ cents, which is less than half of what it actually is.

It will be seen from the foregoing statement, which, with the exception of the reference to the table of the Rock Island rates, which is admittedly correct, is taken from the findings of the commission, that the only practical object of that proceeding was to compel a readjustment of the live stock rates at local stations lying between St. Joseph and the other Missouri River points and Chicago, so as to further compel the shipping of live stock from that territory to Chicago for manufacture. The decision of the Interstate Commerce Commission in Chicago Board of Trade vs. Chicago and Alton Railroad Company, 4 I. C. C. Rep., and Squire & Co. vs. Michigan Central Railroad Company, 4 I. C. C. Rep.

611, in which the commission in effect held that it was among its duties to hold for Chicago the meat manufacturing business which that city had taken from Cincinnati, furnished the pretext and fostered the hope that this could be done.

The commission stood by its former ruling and made an order as follows:

> "This case being at issue upon complaint and answers on file, and being duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having on the date hereof made and filed a report and opinion containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:
>
> "It is ordered that in accordance with said report and opinion the present relation of rates maintained and enforced by defendants * * * * * * whereby their rates for transportation are higher upon live cattle and live hogs than upon dressed or prepared products of cattle and hogs on shipments thereof to Chicago in the State of Illinois from points on the Missouri river, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri river or South St. Paul and Chicago, constitutes a wrongful prejudice and discrimination in violation of the act to regulate commerce and that said defendants be, and each of them is hereby, notified and required to cease and desist on or before the 15th day of

February, 1905, from maintaining or enforcing the said unlawful relation of rates and from further continuing said unlawful prejudice and discrimination." (Page 48).

There was no finding that the local live stock rate was an unreasonable one.

This suit was instituted by the commission under Section 16 of the Interstate Commerce Act to enforce this order. Apparently from abundant caution the commission also filed in the same court its petition under Section 3 of the Elkins Act, which gives it the right to so proceed in cases where the carriers shall transport traffic at less than its published rates on file, or commit discrimination forbidden by law. This section has no reference to unreasonable rates, and the commission so construing it confined itself in its petition to the same matter of prejudice and discrimination mentioned in its order, so that the reasonableness of the local live stock rates between Missouri River points and Chicago is not, and cannot under the jurisdiction granted by the acts, be in issue here, although the Circuit Court has properly found these rates to be reasonable.

The order can be as well complied with by raising the rate on product as by lowering it on live stock.

ARGUMENT.

It will be seen from the foregoing statement that the defendant railroad companies have only an incidental interest in this controversy. The City of Chicago, which the original complainant assumes to represent, is the real party on the one hand, and the Missouri River cities constituting its live stock markets, the population of which has been principally acquired and is now largely sustained by the manufacturing industries incidental to these markets, are the parties on the other side. These two communities are competitors for the growth and prosperity incident to the manufacture of the products of western farms and pastures.

The people on the Missouri River believe that the ideal place for any manufacture is where its raw material can be assembled with the greatest ease and expedition and the least cost; that in case of live stock it is creditable to take into consideration the same humanitarian reasons that have already induced congress to pass laws for the protection of these animals from unnecessary suffering while undergoing transportation which is cruel at its best; that they ought not to be required to uselessly transport offal for long distances and at great expense; that they ought not to have to submit to the burden of a thousand miles of useless travel with its consequent absence from their families and business whenever it is necessary for them to attend the markets in which the products of their labor is sold; and that they have the right to take advantage of all the elements of competi-

tion in transportation which are open and free and equally available to all business localities similarly situated, to enable them to obtain these advantages.

It is on the other hand contended by the Interstate Commerce Commission representing those who claim to represent Chicago that the act creating it has given it a supervisory control over the development of the country through the manipulation of transportation, which is a controlling factor in such development; that competition in transportation should be restrained rather than encouraged, lest the industrial development in its western march should outstrip some of its neighbors, and that whenever a danger of this kind occurs they ought to sit down with pencil and paper and such information as they can obtain from interested persons claiming to be experts, and figure out mathematically to the very cent how far these natural forces should be permitted to exert themselves. If we believed such powers to be conferred by the act of Congress invoked in this case we should greatly fear that a jurisdiction had been given this commission far more dangerous than all the abuses the act creating it was designed to correct.

The first section of the Act to Regulate Commerce provides in substance that all charges made for services rendered in connection with transportation shall be reasonable and just. In the form which this case has assumed there is no claim that any unreasonable or unjust charge is involved. The finding of the Circuit Court to this effect is conclusively sustained by the evidence, so the real charge is that the defendant railroad company in the interest of the communities represented by the intervenors, has made its charges upon a species of traffic in which they are interested unduly and unreasonably low. It also appears that this low rate was brought about by the very kind of competition which the act in question, as well as the anti-trust act, was designed to

protect, foster and encourage—the desire of one of the carriers involved, by making this rate, to get his share of the business, which the control of the traffic in its inception by his competitors that span the Missouri river, prevented him from otherwise obtaining. The contention that he must either now violate his contract or pay a penalty out of his reasonable receipts on other traffic for having obeyed these laws in their letter and spirit.

The second section is directed against demanding, collecting or receiving in any manner whatever a greater or less compensation for a service rendered in connection with transportation than is collected, demanded, or received from another for a like and contemporaneous service in the transportation of like traffic under substantially similar circumstances and conditions. The act here denounced is characterized as unjust and made unlawful. Upon first reading this act we were impressed that the provisions of the two sections already referred to, together with the long and short haul provision of section 4, constituted the entire expression of Congress with reference to the manipulation of rates, and that the undue preferences and advantages referred to in section 3 included only matters relating to the use of the facilities which it was the duty of the carriers to afford, such as the prompt furnishing of cars, the service of coal mines loading by tipple, and a thousand other things absolutely necessary to enable the public to enjoy the advantages of this class of transportation; but in this case it is unnecessary to consider this question, for the preference or advantage referred to must be undue and unreasonable, and it cannot be that advantages in open rates necessary to procure the business in the face of legitimate and controlling competition can be considered unjust and unreasonable in the face of laws which jealously protect such competition by forbidding the acquisition or control of competing lines, the pooling of busi-

ness, and agreements and combinations in restraint of trade or commerce, and otherwise fostering such competition.

We do not wish to be understood as making these suggestions from the standpoint of the defendant railroad companies, which are no doubt perfectly able to take care of themselves in this court. The market which we represent, which practically means the city of St Joseph, in which it is situated, and of which it constitutes the principal interest, has the right to the very competition which exists in this case, and which constitutes its controlling element.

In *Hozier vs. Caledonian Railway*, 70 Sess. Cas. (2d Series, 302, S. C. Nev. & Macn. Railway Cases 27), quoted with approval by this court in *Interstate Commerce Commission vs B. & O. Railway Co.*, 145 U. S. 263-283, complaint was made by one who had frequent occasion to travel that passengers from an intermediate station between Glasgow and Edinburgh were charged much greater rates to those places than were charged to other through passengers between these termini, contrary to the provisions of the English Traffic Act of 1854, which contains a clause similar to section 3 of the Interstate Commerce Act. The Scotch Court of Session, in holding that the petitioner had shown no title to maintain the proceeding, his only complaint being that he did not want parties going from Edinburgh to Glasgow to have a cheaper rate than he himself could enjoy from intermediate stations, said:

> "It provides for giving undue preference to parties *pari passu* in the matter, but you must bring them into competition in order to give them an interest to complain."

This court, after quoting many other cases to the

same effect, said:

> "In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike under the same conditions and circumstances, and that any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge."

The parties buying cattle in Chicago which have been transported from the western plains may be in direct business competition with the manufacturers on the Missouri river, who ship their product to Chicago, but to say that they are competitors as shippers of the product or that they occupy any relation to each other except as open competitors in the same business of manufacture, each having, by the untrammeled exercise of his own judgment, cast his lot in a different part of the country surrounded by different market and transportation conditions, and that their relations are subject to the beneficent control of the Interstate Commerce Commission, is carrying the idea of fraternal government farther than it has yet gone.

The case of *East Tennessee, Virginia & Georgia Railway Co. vs. Interstate Commerce Commission* is instructive on this question. In that case the classification of railroads carrying from the Atlantic seaboard to points north of the Ohio river made lower rates generally than the classification prevailing over the Southern lines to points south of that river. The northern classification was for some reason applied to Nashville, reached from Cincinnati by the Louisville & Nashville Railroad, making the rate lower than that of the East Tennessee line to Chattanooga, through which it passed to Nashville. To meet the competition of the Louisville & Nash-

ville Company the East Tennessee Company made the same rate to Nashville via Chattanooga, thereby carrying the traffic at a less rate for the longer distance than for the shorter. The commission held that this was unjust to Chattanooga and should be stopped, but this court thought differently, and held that the East Tennessee Company had the right to meet the lower rate, and that Chattanooga could not complain because it was not permitted to participate. While the facts in that case differ from those in this case the principle seems to be the same. Nashville had the right to the competitive rate, and its rival, Chattanooga, could not complain so long as its rate was reasonable.

We repeat that we have not made these suggestions by the way of an argument of the many points involved, but simply for the purpose of giving emphasis to the position which the city of St. Joseph and the Stock Yards Company, which constitutes its market, occupies in this case.

STEPHEN S. BROWN,

JOHN E. DOLMAN,

Solicitors for St. Joseph Stock Yards Company.

Supreme Court of the United States.

INTERSTATE COMMERCE COMMISSION,
vs.
CHICAGO GREAT WESTERN RAILWAY COMPANY, ET AL.

No. 352.

October Term 1906.

Brief on Behalf of Union Stock Yards Company of Omaha, (Limited) Intervener.

STATEMENT OF THE INTERVENERS' POSITION IN THE CASE.

The basis of this action is an order made by the Interstate Commerce Commission in a case brought on April 5th, 1902, before it on the complaint of the Chicago Live Stock Exchange against the defendant railroad companies under the 13th section of the Act to Regulate Commerce, alleging violations of sections 1 and 3 of that Act by different railroad companies, in this that the rates exacted by the railroad companies for transporting live stock and product thereof in carload lots to Chicago from South St. Paul, Sioux City, South Omaha, St. Joseph and Kansas City are unreasonable *per se*, and relatively unreasonable compared with the rates exacted for transporting product of live stock from these points to Chicago; that this adjustment of rates subjected the locality of Chicago

and shippers of live stock in the states of Iowa, Missouri, Minnesota and Wisconsin to unreasonable prejudice and disadvantage.

When the case came on for hearing before the Commission the Union Stock Yards Company of Omaha (Limited) appeared and obtained permission to intervene and be made a party to the proceedings, as did also the St. Paul Union Stock Yards Company, the St. Joseph Union Stock Yards Company and the Sioux City Union Stock Yards Company. The Minneosta Railroad & Warehouse Commissioners were likewise made parties, as was also T. M. St. Clair & Company doing a packing business at Cedar Rapids, Iowa. The hearing before the Commission resulted in the opinion found on pages 28-47 of the printed record, and in the order in accordince with the opinion on pages 48-9.

When the action at bar was commenced in the Circuit Court to enforce the order of the Interstate Commerce Commission these stock yards companies on the Missouri River and at St. Paul and St. Clair & Comapny at Cedar Rapids were not made parties, nor were the Minnesota Railroad & Warehouse Commissioners made parties to the action, but each of these appeared and on application were permitted to intervene and were made parties.

The issue as to whether the 23½ cent rate on live stock from Missouri River points and the rate from South St. Paul were in themselves unreasonable or relatively unreasonable compared with the rates on the product of live stock, was one mainly between the complainant, the Interstate Commerce Commission and the comman carriers, defendant. The contention of the interveners was that the rates into South St. Paul intermediate between Chicago and South St. Paul and the rates from Iowa and Missouri into Sioux City, South Omaha, St. Joseph and Kansas City were properly adjusted

to the through rate of 23½ cents on live stock from Missouri River points and to the through rate from South St. Paul, and in fact that the adjustment was so manifestly favorable to Chicago as to constitute an unjust and unfair discrimination in favor of Chicago, and that a lowering of the through rates would work a dislocation of the adjustment of the rates tributary to South St. Paul and Missouri River points. The contention of the interior packers at Cedar Rapids was that similar unjust discrimination existed in favor of Chicago and against them.

The relief asked for by the interveners through their petitions of intervention was that if the through live stock rate should be ordered lowered by the Court, or if the railroad companies should in compiying with any order or decree made by the Court, reduce the live stock rate from Missouri River and intermediate points to Chicago, then that corresponding reductions be decreed to be made on rates from Missouri and Iowa points into Missouri River points and from points intermediate between South St. Paul and Chicago into South St. Paul wherever the rates were interstate rates. The interior packers at Cedar Rapids prayed for similar relief.

The opinion of the Commission upon this branch of the controversy contained the following conclusion as shown on pages 46 and 47 of the printed record:

> "The defendants operating between South St. Paul and Chicago contended that if the rates on live stock from points in Minnesota intermediate between South St. Paul and Chicago are reduced to Chicago, the Minnesota Commission will make corresponding reductions from such Minnesota points to South St. Paul. This contention was supported by the testimony of a member of that Commission, who stated that in his opinion the present adjustment of live stock rates, as between South St. Paul and

Chicago is fair, and that, therefore, any reduction to Chicago, unless followed by a corresponding reduction to South St. Paul, would make the relation unequal. If such relation is now just (concerning which we express no opinion) and in complying with any order that may be made in this case, these defendants reduce the rates to Chicago, corresponding reductions to South St. Paul should, of course, be made. This also applies to similar contentions of the interveners representing interests at points on the Missouri River."

The Circuit Court having found against the Interstate Commerce Commission and dismissed its bill, no mention is made in the opinion as to the position of the interveners in the case nor of their interest in the questions litigated.

The Union Stock Yards Company of Omaha (Limited) operating stock yards in South Omaha makes the following claims under the pleadings and evidence:

1. That the rates on live stock to Missouri River points from points in Missouri and Iowa are properly and fairly adjusted to the through rate of 23½ cents from the Missouri River and intermediate points to Chicago. In fact that the adjustment constitutes a favorable discrimination to Chicago.

2. That under this adjustment live stock moves on these rates to Chicago and Missouri River points from territory east of the Missouri River from 100 to 150 miles, and in which the 23½ cent rate is applied, showing the adjustment is proper and fair, if indeed not favorable to Chicago.

3. That a reduction of the 23½ cent rate will work a dislocation of this adjustment between this through rate and rates from points in Iowa and Missouri into Missouri River points to the disadvantage of the business of stock yard companies doing business on the Missouri River and to those localities as well as to persons doing business there, including the

shippers of live stock from the points mentioned in Iowa and Missouri tributary to South Omaha.

4. That if decree should be ordered herein reducing the 23½ cent live stock rate mentioned, corresponding reductions should be ordered of all live stock rates from Iowa and Missouri points into South Omaha and other Missouri River points.

The Evidence and Argument Sustaining These Propositions.

That these rates mentioned above are not only more than fairly adjusted as to Chicago's interest but that facilities in the way of trains and train schedules for shipping to Chicago from the Missouri River and intermediate points in Iowa and Missouri are more favorable than those afforded for shipment to Missouri River points, see the testimony of Mr. Crosby, Freight Traffic Manager of the Chicago, Burlington & Quincy Railway Company, Vol. 1, pages 314-318.

See also testimony of Mark D. Flower, President and General Manager of the St. Paul Union Stock Yards Company, as to effect of reduction of through rate and arrangement of trains and train schedules favorable to Chicago, Vol. 1, pages 774-778.

That all railroads entering Council Bluffs have running arrangements over the Union Pacific bridge and its tracks to South Omaha and that rates are made from Western Iowa to South Omaha, see the testimony of J. H. Highland, 3rd Vice-President of the Chicago, Milwaukee & St. Paul Ry. Company, Vol. 1, pages 521-525.

Exhibit 3 to the testimony of Henry Gower, Assistant Freight Traffic Manager of the Chicago, Rock Island & Pacific Ry. Co., shows the rate on cattle and hogs on that road to

Chicago from each intermediate point between St. Paul and Missouri River points on one hand and to Chicago on the other. Vol. 1, pages 726-749.

The testimony of Mr. McCulloch, 3rd Vice-President of the Chicago & Northwestern Ry. Co. (Vol. 1, page 948), shows that the rates from Iowa points into South Omaha and other Missouri River points are now adjusted so as to work discrimination in favor of Chicago and that a reduction of the 23½ cent rate would make them still more favorable to Chicago. One of the exhibits Mr. McCulloch refers to is found at top of page 943, Vol. 1. This table shows the rate from stations east of South Omaha to Chicago and to South Omaha. The distances from four stations to Chicago are given with the rate to Chicago; the distances from the same stations to South Omaha and the rate to South Omaha is given. An inspection of this testimony will show how the rates are adjusted in favor of Chicago.

Mr. McCulloch says on page 956, Vol. 1:

"If the live stock tariff on our road (C. & N. W. Ry.) for the remaining three months of this year continues as it has in the past nine months we will have moved over our road 100,000 cars of live stock. If the live stock continues to follow that channel for the next few months that it has for the last nine months, of those 100,000 cars of live stock, 70,000, or 70 per cent, will be transported to the Union Stock Yards at Chicago, leaving 30 per cent to be moved to St. Paul, Sioux City, South Omaha, Marshalltown, Des Moines and Cedar Rapids to the packing houses at those points, and we are without a single complaint. There are thousands of people who are shipping their live stock over our road on these rates that our Company is charging without a complaint on a single car."

Mr. Stickney, testifying for the defendants (Vol. 1, page

634), shows that about 65 per cent of stock on his road (Chicago Great Western) from the 23½ cent zone go to Chicago and about 35 per cent goes to St. Paul and the Missouri River points.

From this exhibit on page 943, Vol. 1, it is shown that the rate from Missouri Valley, Iowa, to Chicago, a distance of 467 miles, on cattle is 23½ cents and on hogs 23½ cents, while from the same place to South Omaha, a distance of only 27 miles, the rate on cattle is 8.52 cents and on hogs 9.29 cents.

From Dunlap, Iowa, to Chicago, a distance of 441 miles, the rate on cattle and hogs is 23½ cents each, while to South Omaha, a distance of only 54 miles, the cattle rate is 10.49 cents and the hog rate is 10.96 cents.

From Vail, Iowa, a distance of 415 miles from Chicago, the cattle and hog rate is 23½ cents each, while to South Omaha, a distance of only 80 miles, the cattle rate is 11.81 cents and the hog rate is 12.45 cents.

From Glidden, Iowa, to Chicago is 389 miles. The cattle and hog rate is 23½ cents each, while from the same place to South Omaha the cattle rate is 13.13 cents and the hog rate is 13.25 cents.

By reference to the testimony of William A. Gorman, Chief Traffic Clerk for the C., M. & St. P. Ry., commencing on page 967, Vol. 1, of the printed record, the rates tributary to South Omaha, Kansas City, Sioux City and South St. Paul are shown to be favorable to Chicago as compared to rates for similar distances from Chicago in territory tributary to Chicago. Mr. Gorman presented the exhibit found on page 969 of Vol. 1 as part of his testimony. That table sets out the rates from certain stations to Chicago, giving the distance of each station from Chicago, and also sets out the names of stations in Nebraska, Kansas, South Dakota and Minnesota, all about

the same distance from the Missouri River and St. Paul markets. We cite only a few of the rates shown here, commencing with the exhibit page 969.

The first station is Deerfield, Illinois, which is 23 miles from Chicago; the cattle rate is 5½ cents and the hog rate is 6½ cents.

South Bend, Nebraska, is 27.5 miles from South Omaha and the rate on cattle is 7 cents and on hogs 9½ cents.

DeSota, Kansas, is 24 miles from Kansas City and the rate on cattle is 6 cents and on hogs 8 cents.

Elk Point, S. D., is 20.9 miles from Sioux City and the cattle rate is 7.11 cents and the hog rate is 7.33 cents.

Castle Rock, Minn., is 26.1 miles from South St. Paul and the cattle rate is 7½ cents and the hog rate is the same.

Fox Lake is 49.6 miles from Chicago and the cattle rate is 6 cents, while the hog rate is 8 cents.

From Ames, Nebraska, to South Omaha is 49 miles and the cattle rate is 9 cents and the hog rate 12 cents.

Lecompton, Kansas, is 51 miles from Kansas City and the cattle rate is 8 cents and the hog rate 10½ cents.

Gayville, S. D., is 49.8 miles from Sioux City and the cattle rate is 11 cents, the hog rate 13 cents.

Plato, Minnesota, is 51.9 miles from South St. Paul and the cattle rate is 9½ cents, the hog rate the same.

The rates here shown by this table are uniformly higher to the Missouri River points and to South St. Paul than the rates charged for similar distances into Chicago.

Mr. Gorman speaking of these tables in Exhibit 1, commencing on page 969, says:

> "The statement shows the local rates on the main line of the C., M. & St. P. Ry. between St. Paul and Chicago

and on the main line of the C., M. & St. P. Ry. between Omaha and Chicago on cattle and hogs to Chicago for distances from 25 miles to 500 miles at intervals of 25 miles. It also shows the rates for the same distances into South Omaha, Kansas City, Sioux City and South St. Paul.

There are 166 comparisons, and of those 166 comparisons 153 of the rates into South Omaha, Kansas City, Sioux City and South St. Paul are higher than the rates for the same distance into Chicago on cattle and hogs; 13 of the rates into South Omaha, Kansas City, Sioux City and South St. Paul are lower than into Chicago."

The same adjustment of rates and arrangement of train schedules favorable to Chicago exist on all of the railroad common carrier defendants traversing the 23½ cent zone as are shown to exist on the two roads whose rates are referred to in the testimony cited—the Chicago & Northwestern Ry. and the Chicago, Milwaukee & St. Paul Ry.

The importance of the rates from Iowa and Missouri points to Missouri River stock yards and from Missouri River points to points in Iowa is shown by the testimony of Mr. Kenyon, General Manager of the Union Stock Yards Company of Omaha, found on pages 998-1033, Vol. 1.

Especial attention is called to exhibits following page 1016 of his testimony and embracing pages 1016-1022, Vol. 1. This statement shows the origin of all cattle, hogs, sheep, horses and mules received at seven western markets from all points in the United States, viz.: Chicago, Kansas City, Omaha, Sioux City, St. Joseph, St. Louis and St. Paul. Among these facts is shown the number of head of cattle and hogs received at Omaha from Iowa and Missouri points in the 23½ cent zone for the first seven months in 1905 and for all of 1904, all of 1903, all of 1902 and all of 1901.

Mr. Kenyon analyzes this exhibit on pages 991-1000, Vol.

1, and we make special reference to his testimony and that exhibit.

The testimony of Mr. Kenyon and exhibit found on pages 1016-1022 shows the number of cattle and hogs received at these western markets during the time the live stock rate and product rate complained of have been in effect and shows that Chicago has not suffered because of these rates.

An examination of these exhibits and Mr. Kenyon's testimony will show that there was a decrease at the Chicago yards in 1904 over 1903 of 4 per cent in cattle and hogs. This decrease, however, is explained by the Chicago Stock Yards Company in its published report for the year 1904, and this explanation is found on pages 3-9 of that report. The report itself is not printed in the record, but will be found on page 2500 of the record. That part of the report to which we desire to call special attention is as follows:

> "Owing to the long series of strikes at the packing houses during the summer of 1904, the receipts of live stock at the Union Stock Yards for the year show a decrease of 173,301 cattle, 4244 calves, 87,177 hogs and 78,130 sheep, with a general decrease of 16,042 cars in the total receipts, being a loss of about 5 per cent as compared with 1903 and a gain of 4 per cent as compared with 1902. *That above decrease was due entirely to the strike* is shown by the fact that on the horse market, which was not affected by the strike, there was an increase in receipts of 5346 horses." (Page 3 of the report.)
>
> "Receipts of hogs for 1904 show a decrease in numbers, the shortage being 87,177 head, or about 1¼ per cent; also a decrease of 6 lbs. per head in average weight as compared with 1903. The total decrease equaled about 63,000,000 pounds of pork or 285,000 hogs. *The strike was responsible for shortage in number and the scarcity of corn explains shrinkage in weight.*" (Page 9.)

The complaint originally before the Interstate Commerce Commission was that these rates on live stock and product from the 23½ cent zone caused a decrease of receipts at the Chicago yards, but the testimony in this case taken from the Chicago Stock Yards' own reports shows that there has been a decrease in only one year and that is accounted for as shown by the report quoted above. Thus it is shown conclusively that the live stock rate between the Missouri River and intermediate points and Chicago was not responsible for the decrease in 1904.

Mr. Kenyon's testimony and exhibits mentioned will show there has been a general increase in receipts of cattle and hogs at the Chicago Stock Yards during the years mentioned in the exhibits. Whatever discrimination there may be in the live stock rates and in the product rates, the rate on live stock has so far resulted in benefit to Chicago interests as reported by the Live Stock Exchange and the Chicago Stock Yards Company, but the contention and complaint now seems to be not that there is a decrease in receipts of cattle and hogs at Chicago, nor that there is not an increase, *but that the increase is not sufficiently large to satisfy the commission men at Chicago who made the original complaint in this action.*

The Interior Iowa Packers.

The fact that Chicago is favored in all rates with reference to packing house product and live stock is shown in the testimony given on behalf of the interior packers in Iowa by Mr. E. T. Koch, General Traffic Manager for T. M. St. Clair & Company of Cedar Ripds, Iowa, whose testimony is found at page 597, Vol. 1 of the printed record. This shows that St. Clair & Company are engaged in purchasing, not at Cedar Rapids, but at different stations in Iowa and Missouri, hogs, and carrying them at their own expense to Cedar Rapids to

be slaughtered. He shows that the rate on the hogs from the stations where they are compelled to purchase them, added to the product rate from Cedar Rapids to Chicago exceeds the live stock rate and makes a difference in favor of Chicago packers of 3½ cents. His testimony shows that St. Clair & Company are extensive packers of hogs and that rates are so established as to constitute an unjust discrimination against Cedar Rapids and in favor of the City of Chicago.

Mr. Thomas D. Foster, testifying on behalf of defendants, shows the situation of packers at Ottumwa, Iowa. His testimony is found on page 641, Vol. 1, of the printed record.

Effect of Reduction of Rate on Live Stock as Prayed for by the Complainant.

It is most likely that *increased receipts* at Chicago might work to the injury of the live stock raiser and shipper, for the more live stock received in the Chicago market the greater the supply and necessarily the lower the price. According to the testimony of the complainant and many of the other witnesses, the Chicago market controls the price of live stock in the western markets. To give Chicago a monopoly in the live stock market will not result in benefit to the live stock raiser or shipper nor to the public at large. The number of cattle received at Chicago affect the price the owner of the live stock receives, but in no wise affects the price received by the members of the Live Stock Exchange for the services its members render the live stock raiser and shipper in selling live stock on the Chicago market. The commissions received by the members of the Live Stock Exchange always remain the same. These commissions are not affected by any conditions whatever except the rules of the Live Stock Exchange. It is therefore submitted that the benefits resulting to the members of

the Live Stock Exchange would not justify the court in ordering an injunction as prayed in the complaint's bill. The injunction could hardly be based upon such narrow grounds.

But suppose the decree is made against defendants, enjoining them to cease from maintaining the difference between the present rates on live stock and packing house product and dressed meats from the Missouri River points, and St. Paul and the only way for the defendants to cease this discrimination under the circumstances of this case is for them to reduce the rate on live stock say to 20 cents; that reduction was contended for by the complainant before the commission; and suppose that the decree makes no provision about the rates from what is now the 23½ cent zone into the western markets. How will this affect the raiser and shipper of live stock from that zone? Manifestly he will be induced to ship to Chicago, and instead of 70% of the live stock going from this zone to Chicago practically all of the live stock in that zone will go to Chicago. Certainly all those who ship to Chicago on present rates will continue to ship to Chicago on the reduced rates, and just as certain it is that those who have been shipping to Missouri River points on the present adjustment of rates will see in the reduction of rates to Chicago and the maintaining of the present rates to the Missouri River points, inducement to ship to Chicago. We think this is true and will follow as a natural consequence of such a decree, notwithstanding the statement of Mr. Peabody that a reduction of 23½ cent rate would not result in a single additional car of live stock going to Chicago. Mr. Peabody's opinion was based upon the presumption that there was in the zone a certain number of cattle and that they would be moved out of that zone, and that the reduction in the rate could not increase the number of cattle in the zone. But all of the cattle from that zone have not heretofore gone to Chicago; a por-

tion of them, 30%, have gone to the Missouri River points and to St. Paul.

Over three thousand cars of live stock were carried out of this zone to Missouri River points and to St. Paul over the Great Western, according to Mr. Stickney's testimony. Thirty-five hundred cars were carried out of this zone to the same points on the Northwestern road, according to Mr. McCullogh, third vice president Chicago & N. W. R. Co.

The other roads carried perhaps about the same number from their portion of the zone to western markets. So that the number of head represented by the 30% or 35% shipped from this zone to western markets is very large.

To transfer this whole supply to Chicago would naturally increase the receipts at that place to such an extent as to have an effect upon the price of live stock in the Chicago market.

All the testimony shows, and it is a well-known fact, that the price of cattle in the Chicago market is fixed by competition and by the law of supply and demand, and the increasing of the supply by such a large number of cattle in one year would certainly have the effect to lower the general level of prices of live stock in the Chicago yards. The live stock raiser and shipper in the now 23½ cent zone would find prices of his live stock decreasing, but he would save about $7.70 a car in freight. He would have to stand the usual shrinkage, which is greater for a long distance than for a short distance. He would be compelled to be longer away from home on expense than if he went to the nearby market; hence he could not hope to bring home with him any more money than he gets now for his live stock, if ineed he would receive as much; for the people who buy live stock on the Chicago market look first at the number of head, and they are quick to seize on a large supply to press down the price. This, in our judgment, would be

the effect on the interest of raisers and shippers of live stock if the decree ordered a reduction of the 23½ cent rate only and no corresponding reductions were made in the rates into the western markets.

Again, it is admitted that if the price at the Chicago market is 25 cents higher than the price in the western markets a reduction of 3½ cents from Missouri River to Chicago would not justify the live stock shipper in preferring the Chicago market to the Missouri River markets. That is, if the difference in price is only 25 cents, the shipper would get more money by selling to the western market. But we have seen from the testimony that the live stock raiser and shipper in the 23½ cent zone ships 65% to 70% of his cattle to Chicago and that he is induced to make this shipment by reason of sentiment; that is, sentiment accounts for shipping the long distance under the present adjustment of rates.

While there probably is some weight to be given to this statement there is still another reason why the live stock raiser and shipper in the 23½ cent zone ships to Chicago. That reason is found in the excellent facilities offered to him to ship to Chicago, such as the train schedules upon which he can always depend, whereas there is no such inducement offered to ship to the western markets. The Chicago market makes the price not only in that market, but in the western markets. This is the evidence in the case. Then can it be said that it is to the interest of the live stock raiser and shipper to increase the number of live stock on the Chicago market? By increasing the supply he necessarily lowers the general level of prices. As long as Chicago controls the price, why not withhold some of the supply and thereby put up the price for the benefit of the raiser and shipper of live stock? *This case is a proceeding paraded as being in the interest of the live stock raiser and shipper, and has for its object to increase the num-*

ber of live stock received at a market which controls the price of live stock in all the other markets, and which will result in lowering the price at the controlling point, and thereby the price at all other markets from St. Louis to St. Paul at the same time.

As an economic proposition affecting all owners and shippers of live stock in the west, and for that matter in the country, this is most novel.

It must be plain that this action is not prosecuted in the interest of the live stock owner and shipper, and that it will not, if judgment should be entered as prayed by complainant, result in his benefit, but will benefit only the Chicago Live Stock Exchange, the Chicago stock yards and the buyers on the Chicago market.

If this is a correct conclusion then the live stock owners and shippers would find little consolation in the fact that they had succeeded in making the rates on product as high as the rate on live stock. Competition between the live animal and the product of the live animal would be on a fair basis as to each article, according to the theory of the plaintiff in this case, and the live stock raisers and shippers would be getting less for their stock than they get now. *The members of the Live Stock Exchange would be getting more money.* This would be a very satisfactory result to some people but not to the raisers and shippers of live stock. So if this matter is looked at in the proper way we submit the conclusion must be reached that on the present adjustment of rates, the extraordinary favorable facilities offered to shippers to Chicago from the 23½ cent zone is such a discrimination in favor of Chicago that the difference between the live stock rate and the product rate of 3½ cents is completely wiped out and is not in any sense a discrimination in favor of the western markets or against the live stock owner.

There is not by the adjustment, when these facilities are considered, any undue or unjust discrimination given to the owner of product over the owner of the live animal. Mr. Tomlinson, testifying for complainant, said one result of the difference in rates between live stock and product was to enable the western packer to bid barely enough to prevent the owner of live stock from shipping to Chicago. If this is true then the live stock owner gets some benefits from this difference in rates. But if the rates are put on the prayed for basis then presumably the packer in the western market will not bid up as before and in such case the owner would not get as good a price as formerly. So that we would have prices of live stock falling at both the eastern and western markets.

This Court and the Circuit Court Has Power to Order a Decree That Will Protect the Interveners if the Judgment of the Circuit Court Should be Reversed.

If the 23½ cent rate should be reduced and the local rates into the Missouri River points and South St. Paul should remain as they are, more cattle would move from the 23½ cent zone into the Chicago market, but if there should be proportionate reductions made of the rates into the western markets then it is presumed that the live stock would move out of this 23½ cent zone to Chicago and to the Missouri River points in the same proportion that it now moves, for the adjustment of the rates would be the same as they are now. This fact would not accomplish the result intended by the prosecution of this suit, but would really defeat it, and this is the reason complainant's counsel do not join with the interveners in praying for such relative reductions.

The complainant's counsel contended below that the cir-

cuit court has no authority to make such an order, because they contend that the court can only determine whether the order of the Commission can be enforced in the words and terms it was made by the Commission. We have pointed out that the interveners were parties to the proceeding before the commission and the protection of their rights was provided for in the opinion, and we think this court can properly consider them as parties to this proceeding and the order as properly potecting them and providing for reductions in their favor in case the reduction is made as to the 23½ cent rate.

We do not think that it is necessary for the court to determine that in order to protect the interveners there must be a modification of the order. The order certainly is broad enough to require the defendants to cease the discrimination complained of and found undue and unreasonable by the Commission, and broad enough to justify the protection of the interests of the Missouri River points and South St. Paul if this court agrees with the finding of the Commission. But if the court should be of the opinion that the order is not such as we claim it to be, still we contend that the court can modify the order and make such an order herein as will protect the Missouri River points and South St. Paul wherever the rates are interstate rates.

The act to further regulate commerce with foreign nations and among the states was passed February 19th, 1903. Section 2 of that act reads as follows:

> "That in any proceeding for the enforcement of the provision of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any Circuit Court of the United States, it shall be lawful to include as parties in addition to the carriers, all persons interested in or affected by the rate, regulation,

or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers."

There was cited by complainants counsel in the lower court on the oral argument the opinion in the case of *Interstate Commerce Commission vs. Lake Shore & M. S. Ry. Company, et al.*, decided in the Circuit Court for the Northern District of Ohio, January 27th, 1905, and found in the 134 Federal Reporter at page 942.

We submit that what was decided in that case was clearly stated in the head notes to the case:

"That in a proceeding in the Circuit Court under section 16 of the Interstate Commerce Act to enforce an order of the Interstate Commerce Commission, the court has no power to amend or modify such order or to sever from the remainder a part which is illegal, but must enforce the same, if at all, in its entirety as made by the Commission."

This is simply a construction of the Act to Regulate Commerce, and nowhere in the opinion was section 2 of the Act of February 19th, 1903, referred to. Certainly the provisions of the act quoted above gives this court plenary power to make such order in the premises as shall be right and proper, and so as to protect the interest of all the parties to be affected by the order, and especially those parties who are before the court.

We have no doubt that section 2 quoted was enacted for the very reason that the Federal courts had decided the question just as was decided in the case cited and was enacted for the purpose of conferring upon the courts ample authority to make such orders as could upon the evidence be considered right and proper. If that was not the intention of Congress by

the enactment of section 2 it is difficult to understand why that section was inserted. It is certain that the court deciding the case heretofore referred to did not refer to setcion 2 of the act of February 19, 1903, and it cannot be contended that the language of that section has been construed by that decision. We think in view of the language of that act this court has full power to make such order as will protect the interest of the interveners in this case.

The Interests to be Affected by a Disturbance of the Present Rates as Prayed for by the Complainants.

This suit is an attempt to make the intesests of six or seven hundred men organized as the Chicago Live Stock Exchange without capital, outweigh the interests of the following:

All western stock yards on the Missouri River and at South St. Paul.

All markets on the Missouri River and at South St. Paul.

The interests of more than 250,000 people directly supported through employment of heads of families at those markets.

All the packing industries located there.

The farmer and stock raiser in the Missouri and Trans-Missouri country as well as at South St. Paul and territory south and west of South St. Paul and tributary to that place.

In determining what the proper decision of this contention shall be we think the court should first look at the parties to the contention, the interest they represent and how they will be affected by the final judgment; the zone in which the disturbance will be made by an order or judgment of this court

and how the order will finally affect the public. We therefore invite the court's attention to the Live Stock Exchange which is the real complainant in this case, it having been the complainant before the Interstate Commerce Commission upon whose complaint the order in this case was made.

This Exchange is a voluntary association of six or seven hundred men without capital stock, and having as an association no assets whatever. It was formed for the declared purpose, as shown by its Articles of Association, "To establish and maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to provide for the speedy adjustment of all business disputes between its members; to facilitate the receiving and distributing of live stock, as well as to provide for and maintain a rigid inspection thereof, thereby guarding against the sale or use of unsound or unhealthy meats, and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits."

It is under this wording of their Articles of Association that they pretend to act in making the complaint before the Interstate Commerce Commission, but it is submitted that this Association, so far as the evidence in this case shows, is not doing anything to promote uniformity in the customs and usages of merchants, nor to provide for inspection of meat or aiding in the inspection of live stock and meat products. If it is doing anything under the authority thereby conferred in making the complaint it is under the last clause, which authorizes them to do everything to secure to its members the benefits of co-operation. The evidence shows that the only function this Live Stock Exchange, or rather its members, perform in connection with interstate commerce is to act as the agents of others at the stocks yards in Chicago in receiving consignments of live stock from the owners and shippers thereof and selling the same on the market at the rate fixed

by the Exchange of about $12 a car for selling cattle and $6 for selling hogs. These live stock agents, it is admitted, occupy a legitimate place in the carrying on of the commerce in live stock; against them and their proper discharge of their duty within their legitimate sphere we make no contention. We recognize them and their calling as perfectly proper, but we insist that they are simply an incident to the commerce carried on in live stock. They have no interest whatever in the ownership of live stock. We think it was demonstrated on the trial of this case that the members of the Live Stock Exchange are not themselves or any considerable number of them, or even a small part of them, engaged in the raising and shipping of live stock to Chicago market from states other than Illinois.

The Chicago Live Stock Exchange had but one object in filing this complain and that was to increase the number of cattle to be received at the Chicago stock yards. They allege in their complaint that the discrimination complained of was to the disadvantage of the live stock raiser and shipper, but they were not authorized to act for nor was the complaint made in the interest of that class. It is not believed that the live stock raisers and shippers would voluntarily place themselves under the guardianship of the Chicago Live Stock Exchange. Wherever the live stock raisers see any necessity for action they take it in their own name and on their own account. *Stripped of every disguise, this proceeding, so far as the Chicago Live Stock Exchange is concerned, has for its object the increase of commissions for the members of the Live Stock Exchange, by forcing, through a reduction of rates, a greater number of cattle to be shipped to the stock yards in Chicago.* We think what we have said in regard to this Chicago Live Stock Exchange and its members corrrectly sets

out their interest in the matter and how any order made as prayed for by them would affect them and their interests.

On the other hand are the railroad companies who have introduced a large amount of testimony in the case showing the cost of carrying live stock as compared with the cost of carrying product, and containing a vast number of facts incidental to the question of freight rates generally. It is admitted that these railway carriers have a great interest in the order to be made in this case, and that they will be affected to the extent of whatever reduction in the live stock rate shall be made by them in complying with any order of the court in adjusting their rates from the Missouri River and intermediate points to Chicago.

To what extent any such reduction would amount to in money we have no means of approximating, but it is to be presumed the amount would be quite large, and they are vitally interested in protecting their interests in the contention.

The live stock raisers and shippers in the zone in which it is sought to make disturbance of rates and change the live stock rates would be affected, individually, in very small amounts, but in the aggregate the amount would be equal to the reduction made in the revenue of the carriers. We must therefore consider whether it is right, in view of all the testimony, as to whether this live stock rate is too high or too low, in determining whether the small amount per car which the claimed reduction would amount to shall be taken from the railroad companies and delivered over in small amounts to the large number of live stock raisers and shippers in the zone sought to be disturbed as to the rates.

Another factor to be considered is the public and the market towns on the Missouri River and at St. Paul. These market towns are the home and nearby markets for all the

live stock raisers in the Missouri Valley and the territory west of there, and St. Paul and the territory west of that place.

We do not mean to claim that it is necessary to look only at how the packing industries at these market towns will be in and of themselves affected financially but how the territory tributary to these points will be affected as a public depending upon these markets for marketing live stock in competition with other live stock markets such as Chicago. These large industries on the Missouri River have been built up at an immense cost as we will point out further on, but if this were the only interest to be affected it might not be entitled to greater consideration than the other interests. What we contend is that the market towns which the people have a right to, are to be maintained in the interests of the public. This is what we think Commissioner Knapp had in mind when he wrote his protesting concurrence to the order made by the Commission wherein he said that *it was not altogether clear to him that any order which the Commission had authority to make would likely on the whole, promote the public advantage.*

For the purpose of showing the magnitude of the interests on the Missouri River and at St. Paul we desire to call attention to the exhibit introduced as part of Mr. Kenyon's testimony and known as a general exhibit. This exhibit was compiled from the last United States census. From this testimony it appears that the packing houses at Omaha, Kansas City, St. Joseph, Sioux City and St. Paul have an investment in lands, buildings, etc., amounting to..... $110,362,717
They have salaried officers to the number of.... 6,920
Amount paid for salaries and clerks..... 6,913,158
They employ ordinary wage earners to the number of..... 45,190
They pay a total annual wage of..... 22,101,647

They pay out in miscellaneous expenses	18,079,449
The cost of material used by them is	415,465,961
Value of product	477,366,604
Chicago has invested in buildings, lands, etc.	67,137,569
It has salaried officers to the number of	4,010
It pays in salaries	4,233,994
Number of wage earners employed	25,345
Total wages paid	12,875,676
It has miscellaneous expenses of	13,829,825
Cost of material used	218,241,331
Value of product	256,527,949

From this testimony it appears that the live stock product made on the Missouri River is nearly twice as much as that made in the City of Chicago; that the amount invested in the Missouri River and St. Paul points is about 75 per cent more than is invested in Chicago; that the number of wage earners employed on the Missouri River and St. Paul is nearly twice as great as the number employed in Chicago. We have made no such calculations as to the interior packing points in Iowa and Minnesota, but an investigation in that regard would show that their financial interests are represented by very large amounts.

The officers, clerks and men employed at the western packing plants on the Missouri River and at St. Paul number more than 50,000 men. These men have their homes and their families there. Rating five to a family there will be a total of about 250,000 people directly affected by any injury that is done to the packing industries and the live stock interests at these markets. This represents the number of people who do the labor and carry on the industry and this calculation does not include the capital invested nor the number of people employed in the stock yards at the several packing points on the Missouri River and at St. Paul. Thus a capital of more than $110,000,000, producing a product valued at nearly $500,000,000 annually, and 250,000 people have pitted against

them in this proceeding the claims of six or seven hundred commission men at the stock yards in Chicago who have no capital stock nor money whatever invested in live stock. Not only are these 250,000 people vitally interested in maintaining the home market but every farmer and every stock raiser and every resident or the Missouri Valley and the territory west of there and west of St. Paul are also equally interested in maintaining a market as near their places of residence as possible.

The people of the west where the live stock is raised have certainly as great a right to a nearby market for their live stock as Chicago or any other eastern point has to have the live stock moved on the railroads from the place where it is raised to make a market for live stock in the east. Thus in properly deciding this contention we must consider:

The Chicago Live Stock Exchange and its interest;

The railroad companies and their interest;

The western markets and their interest;

The stock raiser, the farmer, the number of people directly depending on the packing industries in the west and at Chicago;

And the effect any disturbance of rates in the 23½ cent zone will have on each of these interests and finally,

Whether on the whole any order can be made that will "promote the public advantage."

The stock yards on the Missouri River and at South St. Paul represent an investment exceeding in value the investment at the Chicago yards. There was very little slaughtering of live stock carried on in the western markets when these western stock yards were first established. They served more for feeding and resting places for live stock than for any other

purpose, as the live stock was in those times all traveling east. But in time packing plants were established near the western yards, and at once those places became markets for the sale and purchase of live stock, until now the packing industries are represented by the investments of capital, and have depending on them for direct employment the large number of people and the farmers and live stock raisers in the Missouri and Trans-Missouri territory, as has heretofore been pointed out. The stock yards in the west intervened here for the purpose of protecting their interests. But it must be manifest that in doing this they at the same time protect the vast interest represented by the employes at the packing plants and the general stock raising public of the west. The statement made at the hearing that the interveners represented a greater interest than all other parties to this proceeding combined was justified. The disturbance of such a far-reaching industry as the western packing interests on the Missouri River and at St. Paul might result in vast injury to those carrying on those enterprises, but this injury would be small compared to the injury that would result to the stock raising population and the public generally.

The intervener's contention here is not to maintain arbitrarily an acquired status, but, on the contrary, is a contention that natural causes shall not be circumvented so as to prevent the natural development of the western country.

Herein their contention differs from the contention in favor of Chicago and the eastern markets. These latter seek the aid of the government to maintain the *status quo*. The western interests seek to prevent the government's interference with natural causes and their results. Pittsburg, Cincinnati, Indianapolis and Louisville saw this western development transfer the packing industry to Chicago. Chicago must be reconciled to see that same movement transfer the

packing industry to the corn belt among the people who grow the corn, raise and fatten the live stock and sell it in the nearby home market.

While private interests are to be affected by and are represented in this proceeding, these must be subresvient to public intrest and public welfare. Chicago, no doubt, will long remain a live stock market, but it will not, except by circumvention of the natural movement westward, be the only market. The western markets will continue to grow in importance, and they will be in competition with the Chicago market, and this must eventually benefit the stock raiser and the public.

One witness said he was not sure but that it would be better for the people in the stock raising country to become purely an agricultural and grazing community, but we submit that that is carrying the exploitation of the western interests a little too far.

Now if it should appear to the court upon a comprehensive view of the situation that any order that the court may make will simply have the effect to transfer live stock commissions from the live stock agents on the Missouri River to live stock agents at Chicago; or of taking from the carriers a large amount of money and permitting it to be distributed among a large number of people without regard to whether the rate on live stock is too high or too low; or that it will have a tendency to build up one market for all live stock, thereby creating a monopoly which would be to the injury and damage of the owners of live stock; or that will injure the industries now existing on the Missouri River and at St. Paul; or that will injure or damage the people owning and populating the live stock territory; or will generally have the effect of lowering the general level of live stock prices without a corres-

ponding lowering of the prices of meat products, then no order should be made and the bill was properly dismissed. It is upon these considerations we think the case should be disposed of and we most respectfully urge this view upon the attention of the court.

The Interstate Commerce Commission Has Ignored the Development of the Country as a Factor in its Decisions With Reference to the Relation That Should Exist Between Rates on Raw Material and Rates on the Manufactured Product, Especially in Making the Order Upon Which This Suit is Based.

We do not desire in the least to say anything disparaging of the Commission nor to unfairly criticise its decision. The Commission, however, has laid down a principle and followed a theory in regard to the relation that should exist between the rates on raw material and the rates on man..factured product which we think should not be applied in this case.

We respectfully submit that this principle laid down by the ommission with reference to the proper relation that should exist between the rates on raw material and rates on product should not be made a hard and fast rule. The rule while it might be admitted to be proper and to be properly enforced in some cases should be made to bend to the conditions and necessities shown in each case. The Commission, however, seems to have taken a general view of the situation as to the manufacturies in the country at the date of the passage of the act to regulate commerce and the date of the organization of that body under the law, and upon this view conceived it to be the duty of the Commission under the act to maintain the situa-

tion in the country just as they found it. This was conceding that though the population would increase and the center of poulation continually move westward, that development of the country would continue westward, and while the status as to these would certainly change, the status of the manufacturing interests was to remain the same and in the same place as it was before. The Commission, therefore, seeing that the market for the product of the west was in the east and the manufacturers were in the east have applied this principle in regard to rates on raw material and manufactured products to the situation, not in the first place, however, as a protection to the western owner of the raw material, but for the purpose of maintaining the eastern manufacturer.

The Commission shows a solicitude for the eastern packer and not for the western owner of the live animal. The packers east of Chicago invoked the principle in order to maintain themselves in their business as packers against the Chicago packers, that is, to maintain the *status quo* as to themselves. Now that packing industries have been built up on the Missouri River it is proposed by Chicago to invoke the same principle between their interests and the interests on the Missouri River; but in all this there is nothing of benefit to the owner of live stock in the west. This principle was not discovered and declared in any desire to benefit the owner of live stock. It was discovered in the contest between a market in Chicago and the markets east of Chicago. The packer east of Chicago found that product could be made and was being shipped into the market that he served, cheaper than the live animals which he was purchasing at the Chicago market could be and were carried to his packing house in the east. He therefore cast about for some means of changing this for he claimed that he could not under such circumstances compete

with the Chicago packers in the eastern market where he had been selling his product manufactured at his packing plant in the east. The western packer sold cheaper in the eastern markets than the eastern packer could sell. This condition was beneficial to the consumer but that individual does not seem to have been considered by the eastern packer when he was seeking some way and means to so arrange matters that his price might be maintained. Either the matter must be so arranged that the eastern packer could meet the prices of the western packer or that the western packer must come to the price of the eastern packer. So the Interstate Commerce Commission was applied to by the eastern packer, and in all that followed the live stock raiser and the consumer of live stock product were not considered. The contention was not made with a view to benefitting these or either of them. What was sought was to maintain the status as it formerly existed, and it did not matter if the live stock raiser and the consumer of meat products were exploited as a result of this contention. The *finale* of this was the discovery of this principle in the act to regulate commerce with reference to the relation of rates on raw material and manufactured products; the principle was applied so as to maintain the former status, and the result has not been beneficial to the owner of the live animal, and has been detrimental to the consumer of the meat products in the east, so it may be said these two latter individuals have been exploited for the benefit of the eastern packer by maintaining the *status quo*.

The Commission failed to give consideration to facts that ought to be evident. The population and development of the country was not referred to and not considered. The interest and desirability of slaughtering live animals at points as near the place of raising them was not considered; at least no weight was given to any such fact. The right of the stock

raiser in the west to nearby markets was not recognized so as to give them the fair and square deal now admitted to be the due of every one. The fact that market towns are a natural result of the settlement and improvement of the west was a matter of no concern, for had there not been long before this settlement and development market towns established in the east that had served the public there, and had they not a right to continue to serve as market towns in the future? And that, too, though all the animals to be slaughtered in the eastern market were bought out of the west, while not a single animal was brought from the territory within 500 miles of the packing establishments in the east.

Formerly there were many cattle and hogs raised and marketed at these eastern markets but as the country became densely populated around these centers the raising of live animals for slaughtering moved westward and left the eastern markets without animals to slaughter and convert into meat products. The establishment of markets in the west resulted from this movement but under the theory of the Interstate Commerce Commission that the *status quo* must be maintained, the power of the government is to be laid on this commerce and freight rates are to be arranged so as to maintain these eastern packers in their places just as they were maintained before, although the country tributary to them has ceased to be a live stock raising territory.

We submit that the application of this principle with reference to the relative rates on live stock and live stock product to the situation was erroneous and proceeded upon false theories and resulted from a failure to take the proper view that the situation in this country presented. *Instead of considering how it would affect the public or how it would affect the owner of the live stock, how it would tend toward monopoly and to the stifling of the western markets, instead of tak-*

ing into consideration the rights of the people to a home market in their own district and how a deprivation of this right would hamper and impede the prosperity of that district, how upon sanitary and humanitarian grounds it would be better to let the natural results follow the settlement and development of the country, the Commission came right down to the consideration of how the principle would be beneficial to one interest and that interest the eastern packer.

The Census Bureau investigating this subject of live stock and live stock markets and packing industries seems to have taken a broader view of the subject and we reproduce what is said in the Census of 1900 and which was introduced in evidence in this case as follows:

> "It is obvious to even the most casual observer that an industry putting out a product in a single year of over $785,000,000 is of the utmost importance to the people of the United States. It is essentially western in its location and growth. The largest establishments are located in the Mississippi Valley. The states leading in the production of live stock for slaughtering are west of the Mississippi. Indeed, a large part of the industrial welfare of the west may be said to be based upon the live stock industry. The territory devoted to the raising of hogs on a large scale is co-extensive with the corn belt. The corn crop is the foundation upon which depends the live stock industry, and this industry is coming more and more to be a question of corn supply. Of this western stock raising territory the movement is northward and eastward to Chicago, Kansas City, South Omaha, St. Louis, South St. Joseph, and the other great slaughtering centers. The geographical movement of the slaughtering and packing area furnishes a view of the settlement and development of the west. The advantages of transportation facilities possessed by Chicago, backed

with the wide area devoted to stock raising, spreading westward from Lake Michigan to the Rocky Mountains, give that city the lead in this industry. *The tendency, however, is for the slaughtering centers to move still nearer the corn belt.* The rise within recent years of Kansas City and South Omaha, and, more lately, of South St. Joseph, may be traced directly to this factor, and to the improved railroad facilities that follow any enlargement of the territory devoted to corn production. Another comparatively new development is the extension of the feeding in fattening operations for market. The conversion of the surplus corn into beef, pork and mutton, yields a large profit to the feeder." (Vol. 10, designated "Manufacturers," part 3, page 417, United States Census for 1900.)

Here is a recognition of the facts that we contend for by one of the highest governmental authorities, and that authority specially appointed for the purpose of investigating such matters. This authority recognizes that in the natural development of the country the slaughtering indusry will be near the corn belt, and points to the fact that these industries are being located west of Chicago. Progress will continue westward not in opposition to the laws of trade and competition in the open market, but naturally and in harmony with the laws of commerce. No one is damaged by it nor is his property injured by it, and the public generally is benefitted by it.

We have not dealt with the question of cost nor with the technical and expert testimony. We appreciate the value of that evidence as furnishing information entirely proper to be considered. It will no doubt serve to avoid many errors that otherwise might be fallen into. Aside from such use the great volume of evidence introduced will serve no useful purpose. The case cannot be decided upon such testimony. The ques-

tion of transportation rates is too big to be decided upon such facts. Transportation questions vitally affect the public. It will not do to let the common carriers and their customers in contention among themselves control the question of rates, for the public is the great interest to be subserved. The public eventually pays the transportation rates and the cost and profit on all aricles carried.

Respectfully submitted,

FRANK T. RANSOM,

Solicitor for Union Stock Yards of Omaha (Limited).

SUBJECTS DISCUSSED.

	Page.
Statement of case and issues	1
Rates in force on live stock are not unreasonably high	12
The cost of carrying live stock is greater than that of carrying dressed meats and packing-house products	33
The rates given packers from Missouri river and St. Paul are the result of genuine competition	61
The rates on live stock have not materially affected any of the markets, prices, or shipments; they are reasonably fair to Chicago and to the shippers; the shipments of live stock between Chicago and the Missouri river and St. Paul are as great in proportion to the volume of business as before the present rates were made; the majority of the live stock comes to Chicago from points as near as 150 miles this side of the Missouri river and St. Paul, and the lower rate given to packers does not seem to directly influence or injure shippers of live stock	73
The rates for carrying packers' products and dressed meats were remunerative; they did not pay any portion of the fixed charges and interest of the railroad companies nor its full share of the operating expenses, but they did pay more than its cost of movement and leave something to apply on operating expenses	88
The welfare of the public, including the shippers, consumers, and all localities and markets, does not seem to be materially affected by the present rates	88
While it is the usual custom for railroads to charge a higher rate for the finished product than for the raw material, that rule is not universal, and for sixteen years out of twenty-three between Missouri River points and St. Paul and Chicago the published rates on live stock were higher than on dressed meats and on packing-house products	93

Supreme Court of the United States.

OCTOBER TERM, 1906.

352.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

CHICAGO GREAT WESTERN RAILWAY COMPANY, ET AL.,
Respondents.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ANALYSIS OF THE TESTIMONY.

The appellant Interstate Commerce Commission brought two actions in the United States Circuit Court for the Eastern Division of the Northern District of Illinois against sundry railroad companies whose lines of railway run from Chicago southwest and west to the Missouri River, and northwest to St. Paul. One of these causes was brought to en-

force an order of the said Commission dated January 7th, 1905, made pursuant to a report in writing filed on said date, in which it was found that the "relation of rates maintained and enforced by the defendants, * * * whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago in the state of Illinois, from points on the Missouri River, Sioux City in the State of Iowa to Kansas City in the state of Missouri, inclusive, and from South St. Paul in the state of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago constitutes wrongful prejudice and discrimination in violation of the provisions of the Act to Regulate Commerce." The order to desist from the maintenance of said rates or relation of rates having been disregarded, suit was brought by the Commission to compel observance of said order. The report and order of the Commission will be found set forth in full in the transcript of the record, Volume 1, pages 28 to 49 inclusive. This report and order of the Commission was made pursuant to a complaint filed with the Commission by the Chicago Livestock Exchange, an association of commission merchants in Chicago, which association complained that the Chicago market in livestock was being unduly discriminated against by reason of the fact that lower rates obtained from the Missouri River and South St. Paul to Chicago upon packing

house products and fresh meat than upon livestock, by reason of which it was asserted, livestock was diverted to markets along the Missouri River and to South St. Paul, which should go through to Chicago. It was further set forth in the complaint that the rates upon livestock were unreasonable in and of themselves, so that there was presented to the Commission the question as to whether the said rates violated Section 1 of the Interstate Commerce Act by reason of being unreasonably high and also whether they were in violation of Section 3 of the Act, because of the alleged undue prejudice and discrimination in favor of the product of livestock. A perusal of the report will show that the ruling was against the carriers upon the *latter ground only*, but in its petition for the enforcement of its order the Commission alleges in subdivision 9, (see transcript, pgs. 7 and 8), not only that the relation maintained by the defendants between the rates on live cattle and on live hogs on the one hand, and on the dressed or prepared products of such cattle and hogs on the other hand, and the fact that the rates on the former are higher than on the latter creates an undue and unreasonable prejudice, and operates as an unjust discrimination, but also says "and further results in unjust and unreasonable rate charges on live cattle and live hogs in violation of Section 1 of said Act"; that is, in spite of the fact that when there was presented to the Commission a direct issue as to the reasonableness of the rate, and it, after a full hearing, failed to find that the rate was per se un-

reasonable, but only that it was discriminatory as compared with the products of livestock, still when it comes into court to enforce its own order based upon such findings it alleges that the rate is unreasonable in and of itself. The Chicago Great Western Railway Company answered this petition, and after certain formal allegations and denials averred that the rates for the transportation of live cattle and hogs from Missouri River points and intermediate points and from South St. Paul and intermediate points to Chicago, were, at the time of the filing of the complaint, and at all times since, had been very low, and should not be reduced, and that no complaint as to the same had at any time been made by a shipper; and second, that the rates charged for the transportation of dressed or prepared products of cattle and hogs on shipments thereof to Chicago from points on the Missouri River, and from South St. Paul in the state of Minnesota, or from points in the territory between the Missouri River and South St. Paul and Chicago, which were covered by the order of the Commission, were and have been very low, but that the said rates were forced by extreme competitive conditions existing at said Missouri River points and said South St. Paul in respect to the transportation of such products, and were made in order to meet rates put in force by its competitors in the transportation of such products. It was further alleged in the answer that the effect of the order of the Commission seeking to compel the defendant to make the same rate or charge for the transportation of such pro-

ducts, would be to compel a lowering of the rates and charges for transportation of live cattle and live hogs, so that it was equivalent to an order directing the defendant to lower its rates and charges on live cattle and hogs, although the same were and had been at all times extremely low, and had not been made the subject of complaint by any shipper. (See transcript, pgs. 53, 54). It was further alleged that the transportation of the dressed products of cattle and hogs from Missouri River points to Chicago and points east of Chicago was, at the time of the filing of the complaint, the subject of very strong and controlling competition, not only between the railroads leading to Chicago, but between such roads and the railroads leading to the Gulf of Mexico to the lake ports and other markets; and it was further averred that at the time of filing the complaint there were in existence, and ever since have been in existence, proportional rates on livestock originating west of the Missouri River and moving to Chicago and the east which were no higher than the rates on the products of livestock, and that substantially all of the live cattle and hogs shipped from the Missouri River to Chicago and points east of Chicago are shipped on such proportional rates. (Transcript, pg. 54). It was also alleged in the answer that by reason of the fact that the rates on livestock are not unreasonably high and cannot be reduced without making the same unremunerative, and in view of the existing competitive conditions creating the rates on the products, that the order of the Commission could

not be complied with without forcing the defendant to transport livestock at rates which would be so low as to deprive the defendant of its property without due process of law in violation of the Constitution. (Transcript, pg. 55). The answer also averred the fact to be that Kansas City and St. Joseph in the state of Missouri, Omaha and South Omaha in the state of Nebraska, Sioux City in the state of Iowa, and St. Paul in the state of Minnesota, and other points in the general territory covered by the complaint, had become large market towns, and the natural markets for a great part of the livestock raised in the states west of the Missouri river and in the country around about and adjacent to said towns; that large stockyards and packing houses for the killing and dressing of meats and the manufacture of other products out of cattle and hogs had grown up at such places, furnished with all the facilities required for the sale and handling of cattle and hogs, and that the growth and development of such market towns was of great value and advantage to stock growers throughout the territory in question, furnishing them a near market for their livestock, as compared with the disadvantage of shipping their livestock to Chicago and more distant markets, and that those market towns have substantially as good railroad facilities as Chicago, with railroads extending to the Gulf of Mexico, and to the lake ports, as well as to other markets through St. Louis and Chicago, whereby there had grown up and developed at each of said points a home market

for the handling and sale of livestock, from which the country west of the Missouri river and around and adjacent to said cities had derived very great advantages. (Transcript, p. 55.) It was further alleged that it was for the advantage of the west to maintain these other markets, and that the only persons complaining were those constituting a combination and association under the name of the Chicago Livestock Exchange, who were mere brokers, and had no interest in the subject matter, except in the commissions exacted by them for the sale of such cattle and hogs on the Chicago market; while on the other hand, stock growers and all persons interested in the maintenance and development of the said market towns, and in the growth of home markets throughout the territory, were protesting against any change being made in the relation between said rates; and, in conclusion, it was averred that the conditions which surrounded the transportation of live cattle and hogs differ so materially from the conditions surrounding the transportation of dressed products of such cattle and hogs that the rates and charges for transportation thereof should not be compared one with the other, nor should the rates and charges for the transportation of the one be made the basis of the rates and charges for the transportation af the other. (Transcript, p. 56.) The other defendants interposed similar answers, and also alleged (see answer C. St. P. M. & O. Ry. Co., Transcript, p. 61), that on or about the 8th of August, 1902, one of the competitors

of said defendant entered into a contract with certain shippers handling and controlling the shipment of the dressed or prepared products of cattle and hogs from said Missouri river points to Chicago for a long term of years, by which it agreed to carry during said term said dressed or prepared products of cattle and hogs from said Missouri river points to Chicago for a rate of 20 cents per hundred pounds, and said defendant, in order to obtain any portion of said traffic, and to perform the services demanded of it by its customers in respect to such traffic, was compelled to put in force similar rates upon such products between said points, or desist entirely from the carriage thereof from said Missouri river points to the city of Chicago; that the putting in force, therefore, of said rates on said products by the defendant was and is caused and is the result of conditions wholly beyond the control of said defendant. It was further alleged that it would not be possible to establish such parity between its charges for the transportation of live cattle and live hogs on the one hand, and its charges for the transportation of the said products of such cattle and hogs on the other hand, as it was ordered to do by the Interstate Commerce Commission, except by the lowering of its rates and charges between said points for the transportation of live cattle and live hogs; and it was further alleged that, so long as its rates and charges for the transportation of live cattle and live hogs between said points were reasonable, it could not lawfully be compelled to trans-

port and carry said live cattle and live hogs between said points at an unreasonably low rate, because it had been compelled by force of the competition aforesaid, to carry the dressed products of such cattle and hogs between said points, in order to meet said competitive rates on said dressed products of said livestock, at a lower rate than the rate and charge exacted by it for the transportatian of said live cattle and live hogs, and undue prejudice and disadvantage was denied. It is unnecessary to call attention specifically to the answers of the other carriers, as they are in substance the same as the answer of the Chicago, St. Paul, Minneapolis & Omaha Ry. Co., to which reference has just been made. The contract to carry the products of livestock for a period of years, referred to in said answer as having been made by one of the competitors of the Omaha road, was made by the defendant Chicago Great Western Railway Company, and was brought about by stress of competition, as is alleged in the answer of said Chicago Great Western Ry. Company, and as was developed in the proof to which we will hereafter call attention. From this brief reference to the pleadings it will be seen that in the first case here under consideration, the question to be decided is as to whether the order of the commission, above referred to, shall be enforced either by reason of the fact that the rate on live cattle and live hogs between the points mentioned is unreasonably high per se (although, as we have shown, the commission in its report and order did

not find the facts to be as alleged by it in its petition for the enforcement of the order in that regard); and, second, whether, by reason of the rate on livestock being higher than the rate on the product either that traffic or the Chicago market are subject to undue prejudice or discrimination.

In addition to the railroad defendants, certain other parties were permitted to intervene and join with the defendants in opposing the granting of the relief prayed for, to-wit, the Union Stockyards Co. of Omaha, Ltd., whose intervening petition appears at pages 155 to 159; T. M. Sinclair & Co., Ltd., petition, pages 160 to 161; St. Joseph Stockyards Co., petition, pages 162 to 165; St. Paul Union Stockyards Co., petition, pages 166 to 168; Sioux City Stockyards Co., petition, pages 169 to 172; and the Railroad and Warehouse Commissioners of the state of Minnesota, petition, pages 172 to 177. This latter petition, after setting forth the provisions of the Minnesota statutes creating such commission and defining its powers, and stating that it had also appeared at the hearing before the Interstate Commerce Commission resulting in the order in controversy, denied that the rates in question created an undue and unreasonable prejudice, and operated as an unjust discriminatian in violation of section 2 and 3 of the Act to Regulate Commerce, or otherwise, and denied that said charges resulted in unjust and unreasonable rate charges on live cattle and live hogs, in violation of section 1 of said Act to Regulate Commerce, whether as alleged in the complaint or otherwise; and further alleged, among other things, that stock

growers and other persons interested in the maintenance and development of South St. Paul, and interested in the growth of home markets throughout all the said territory, had protested and were protesting, and on their behalf the said railroad commission protested against any change being made in the relation between the said rates upon livestock and upon the product thereof.

In addition to the suit to enforce the order of the commission, another action was brought by the Interstate Commerce Commission, under Section 3 of the Elkins Act, so called, in which latter suit the issues raised were substantially the same, and by order of court the two suits were consolidated and tried together. As will be seen by the record, the testimony presented was voluminous. The court, after giving full consideration to the same, filed an elaborate opinion, which is inserted in the transcript of the record between pages 176 and 177 thereof, an inspection of which will show that the court found all the issues in favor of the defendants, and dismissed the suits, deciding first that the rates complained of were in and of themselves reasonable and just; and, second, that neither by reason of the rates in force upon packing house products and fresh meats, or otherwise, did the said rates result in undue prejudice or discrimination against said other traffic, or against the Chicago market. For the convenience af this court, it is proposed to analyze the testimony as briefly as possible, for the purpose of demonstrating that the conclusions of the court were justified by the testimony.

FIRST, THAT THE RATES IN FORCE UPON LIVESTOCK ARE NOT UNREASONABLY HIGH PER SE.

In spite of the allegation in the complaint to the effect that the said rates are unreasonable, it is interesting to observe that the Commission used the following language in its report: "Complainant also introduced considerable evidence tending to show that the rates exacted by defendants for transporting livestock to Chicago from points in the states of Iowa, Missouri, Wisconsin and Minnesota, are unreasonable per se, but the testimony upon that point is unsatisfactory, and we do not feel justified in making a finding in relation thereto." The larger part of the testimony was addressed to shipments from the Missouri river and intermediate points to Chicago, owing to the fact that the movement of that class of freight is much heavier from Missouri river points than from St. Paul and the territory beyond. Mr. Stickney, the president of the Chicago Great Western Company, explains in his testimony, at pages 622 and 623, that the rate of 23½c per hundred pounds upon livestock from the Missouri river to Chicago, should not be used either for the purpose of comparison or in determining whether rates at present are unreasonably high, for the reason that the cattle and hogs that move from the points along the Missouri river to Chicago originate beyond the river, and are brought to the Missouri river gateway by the different lines of road reaching out to the west, and railways like the Chicago Great West-

ern Railway, the Chicago, Milwaukee & St. Paul, the Illinois Central and the Chicago & Alton, which terminate at the river, are necessarily obliged to accept for the transportation of livestock through to Chicago, a proportion of the through rate from the western points to Chicago. This is what is commonly known as a proportional rate. It is a matter of common knowledge that all railroad rates must include expenses of two terminals. This is so, whether the haul is long or short, and that accounts for the fact that the short haul is more expensive per ton per mile than the long haul. The terminal facilities have to be furnished in any event. Starting with that proposition, Mr. Stickney explains, at page 622, how the rates are made up, including the proportional rates before mentioned. We quote from his testimony:

> "For exemple, from Gretna, a station on the Chicago Great Western road, 26 miles west af Chicago, the nearest station from which any livestock was shipped in the year 1905, the rate on cattle is 6½c to Chicago. This rate is gradually built up until it reaches 23½c at Council Bluffs, on the Missouri river, 500 miles west of Chicago. * * * Then this 23½c rate is gradually built up on the Union Pacific road, to, say, Elkhorn, Nebraska, 28 miles west of the river, where the rate to Chicago is 27½c. As the Union Pacific has no road east of the river, it presents the problem of how the Union Pacific can ship livestock from Elkhorn to Chicago at the rate of 27½c. If the Union Pacific hauls it to the Missouri river, and pays the railway east of the river its local, 23½c rate, it only leaves 4 cents for the use of the Union Pacific facilities at Elkhorn, the use of its cars, and terminal work,

plus the cost of the haul, 28 miles long, which is inadequate.

"On the other hand, if the Union Pacific makes a rate between Elkhorn and Chicago, say 6½c above the 23½c rate from Council Bluffs to Chicago, the tax imposed upon the producer of the cattle at Elkhorn, and upon the producers of cattle in all the territory west of the Missouri river for transporting their products to Chicago, is altogether too much, compared with the tax imposed upon the producer at Council Bluffs and the territory east of the Missouri river, and would not give the producers at Elkhorn, and the territory west the advantage of location to which they are entitled in respect to the distance to market. The point presents the necessity of making through rates from Missouri river markets to Chicago lower than the local rate, to prevent discrimination between producers and localities. In fact, the through rate from the Missouri river to Chicago cannot in a proper sense be regarded as a rate. It is simply a division af the actual or local rate as between the railway companies east and west of the river. All companies east of the river admit the principle that the companies west of the river are entitled to a larger rate in proportion to the distance hauled, and therefore accept a proportion of the rate which is less than their local rates from the Missouri river to Chicago. The rate on the product of live animals from the packing houses on the Missouri river to Chicago is essentially the same. A division as between the railway companies of the rate in effect, allowing to the lines west of the river practically their local rates for bringing to the packing houses the live animals and accepting the balance of the rate for hauling the product to Chicago."

It will, of course, be seen that this proportional rate which the lines east of the Missouri river

receive, varies with the point of origin, so that the entire haul being considered as a unit, and divided between the western lines and the eastern lines at the Missouri river, the further west the stock originates the less will be the proportional accruing to the lines east of the river, as the rate per ton per mile necessarily decreases in order to enable the producer in the far west to reach the market. See Mr. Stickney's testimony, page 623. He testifies that the division of the rate accruing to the lines east of Chicago on cattle ranges from 14c to 22c, and on hogs from 16½ to 22c, while on packing-house products and fresh meats it is 20c. He further explains that if shipments are destined to points east of Chicago, the rate is made on the so-called Mississippi river basis, which reduces the proportional rate from the Missouri river points on all commodities, cattle and hogs, as well as packing house products and fresh meats, about 1½c per hundred weight. It will be seen that the average rate on livestock is 18c per hundred weight on cattle, and 19¼c per hundred weight on hogs, to Chicago; and to points east of Chicago, on cattle 16¼c, and on hogs 17¾c. Mr. Crosby, traffic manager of the C. B. & Q., at page 251, also explains the existence of the proportional rate on livestock originating beyond the Missouri river, and states that Chicago gets the benefit of that. A striking example of a law proportional rate appears in the testimony of Mr. Calkins, assistant general freight agent of the Chicago, Milwaukee & St. Paul Railway Company, at page 545, where

he shows that the rate into St. Paul over his road for a distance of 200 miles is greater than the proportional rate from St. Paul to Chicago, a distance of 400 miles. He further states, on that page, that he has no knowledge of any livestock being moved from South St. Paul (the point at which the St. Paul stockyards are located) on any other basis than the proportional rate, as no livestock originates at that point, but it all comes in from points beyond, and he states that in many cases where the shipments come from somewhat remote points on the northern lines, the proportional received by the lines between St. Paul and Chicago is as low as 13c.

Mr. Ripley, the president of the Atchison, Topeka & Santa Fe Railway Company, testified on cross-examination, at page 1120, that most of the livestock that was carried to Chicago from Kansas City was carried on a proportional rate, and that that proportional rate was considerably less than 20c. In the opinion of the court below, which is inserted between pages 176 and 177, is a table showing the rates on packing house products and fresh meats to Chicago from Missouri river points to be 20c, and from St. Paul, 15 7-10c and 17c, respectively. It appearing from the testimony that livestock moves from Missouri river points to Chicago and from St. Paul to Chicago on the proportional rates, rather than on the local rate; and it further appearing that this proportional rate is less than the rate that is charged and collected upon packing house products and fresh meat, it is clear that

there can be no complaint of any discrimination against livestock moving between these terminal points. Therefore, that question must necessarily be considered as out of the case. The only places from which the 23½c rate complained of applies are points intermediate in the zone over which that rate is spread, which extends about 150 miles east of the Missouri river, and the testimony is overwhelming that the rate from points in that territory upon livestock is already too low. There are certain expenses that are peculiar to the handling of livestock that do not apply to any other class of freight. In the case of shipments from one market town to another, that is, from Missouri river points or South St. Paul to Chicago, the railway companies have to load the stock into the cars at an expense of from 50c to a dollar a car. (See Stickney, p. 628.) If there is a delay in transportation, so that the owner of the cattle loses the market for a day, claims for damages are asserted, which averaged on the Chicago Great Western Railway, during the year 1905, $1.61 per car. (Stickney, p. 628.) The railway company is compelled to clean livestock cars, at an expense of 50c to a dollar per car. (Stickney, p. 629). In hot weather the livestock is sprayed with cold water several times in transit, at an expense of 25c a car. (Stickney, p. 629.) The shipper is entitled to free transportation for one passenger for each two car loads shipped from the point of shipment to Chicago on the train which carries the stock, and a free return ticket on a first-class passenger train, which, esti-

mated at the value of one-half regular rates, would amount to $6.50 per car. (Stickney, p. 629.) It appears by the testimony of all the witness that it has always been the practice to issue this transportation so that the producer of livestock can accompany his shipments to market, and it is safe to say that it is an expense which could not be done away with, and is incident to the business. It is expressly authorized by the section of the Hepburn act relating to passes. All of these unusual elements of expense apply to shipments of livestock from local stations, with the exception of the expense of loading at terminals, as the shipper loads the stock at country stations, but at such points the railway company is obliged to furnish stock pens at which stock is loaded, which are constructed and maintained for no other purpose whatever than the handling of livestock. Mr. Stickney testifies, at page 632, that upon a new line of road which the Great Western recently constructed, these stock pens at country points cost $1,422.04 each, which did not include the cost of paving the floors, which will have to be done later, at an average cost of probably $1,000 each. Applying this average cost to all the stock pens upon the Great Western system, and dividing it into the amount of shipments during the year 1905, would show that there is properly chargeable to this item $2.25 per car. These stock pens have to be cleaned by the railroad company, and stock cars set out practically one at a time to the pens to be loaded, which delays trains and

adds materially to the cost of transportation; that 25c per car would be a low estimate for such special item of expense. (Stickney, p. 632.) Outside of these specific items which we have picked out, Mr. Stickney, in his testimony on pages 623 to 632, makes exhaustive computations to show the actual expense of handling this class of traffic, based largely upon figures taken from the books of the Chicago Great Western Railway Company. We will consider this testimony in another connection later, but it is sufficient to say here that it demonstrates that the rate an livestock complained of in this action is unreasonably low considered by itself.

Mr. Gardner, the general manager of the Chicago & Northwestern Railway Company, on page 324, shows that the special kind af equipment necessary for the transportation of livestock lies idle generally, except during the particular months in the year that livestock is chiefly moved. He also states, on the same page, that out of a total revenue of three million dollars from the livestock traffic, $63,000 was paid back to the shippers on account of damages to stock, and that upon an average $25,000 a year is paid in personal injuries to persons accompanying livestock, who are given free transportation by the companies. He further testifies that on their system there is an investment af $700,000 in stockyards at country stations, and $250,000 in independent tracks necessarily constructed to reach such yards (p. 326). He details very fully the expense of maintaining

these yards, and the items that enter into it. On page 327, he explains the method of construction of stock cars, and the great expense of maintaining them, and the fact that their life is several years shorter than that of the average box car, and that it costs about $35 per car per year on an average to keep freight cars in repair, and about $60 to $65 per year to keep stock cars in repair. He further testifies, on pages 328, 329, that while the shippers load the stock at country stations, the extra time that is put in by railroad men in assisting in such work, including the extra time of the station men, involves an expense of about $2 per car, which was an item not taken into account by Mr. Stickney in his computation. At page 331, he calls attention to another item of expense, referred to by other witnesses, which is that shippers will telegraph in for stock cars to be brought to country stations to be loaded, and, after the cars are sent in, the market in Chicago goes down, and the locomotive and train crew have to return without a load, and when the shipper, some days later, is ready to ship, another full movement of the engine and train crew is necessary to go out and pick out these cars. At page 332 he explains the cost of cleaning the stock cars to be from 50c to $2 a car each trip, and that his company has purchased and maintains two farms near Clinton, Iowa, at which cars are cleaned, and the company is at the expense of hauling them out to that point from Chicago to be cleaned. The Northwestern road also provides drovers' cars,

which cost several hundred dollars more than the ordinary caboose, and the fittings in those cars, such as blankets, mattresses, pillows, and the like, cost $40 or $50, and it also costs about that much more per year to maintain them. At page 333 he testifies that when 800 cars of stock are brought in from the west on Monday morning, which is not unusual, there are from 250 to 260 people who have been transported by the railway company, all of whom receive this transportation to the city and back to their homes, and the aggregate value of such transportation is very great, even if computed at reduced rates. In the case of washouts or wreck, it is necessary to run the cars back to some point where the stock can be watered and fed, and possibly unloaded. (Page 333.) In addition to the ordinary country stockyards, the Northwestern road maintains five or six feed yards, necessitated by the act of congress, and by the custom of doing business. (Page 334.) As to the extra superintendence required in handling the stock runs, see page 334. There is also the expense of bedding the cars with sand or gravel, which Mr. Gardner estimates at a dollar per car. (Page 335.) The expense of picking up any stock train at intermediate stations is twice as great as handling a through train from Missouri river points or St. Paul to Chicago. (Pages 337, 338.) He states that a conservative estimate of the value of free transportation furnished by the Northwestern to persons in charge of live cattle and hogs during the year ended June 30th, 1905, would be about

$200,000. At page 339 is a table showing the number and cost of stockyards and tracks, and the cost of maintaining the same upon the various divisions of the Chicago & Northwestern. At page 380 he speaks of the delays occasioned by the necessity of cleaning cars, which involves to his company an additional investment of $650,000 to $800,000, necessarily tied up in additional cars, which would not be required if it was not essential that they be cleaned. Mr. Gardner testifies, at page 397, that he has never heard any complaint as to the rates on livestock, except from the commission men in Chicago; he has heard no complaints from shippers in Iowa, although he sees them frequently, and knows many of them.

Mr. Keepers, general freight agent of the Illinois Central, testifies (page 399) that the rates on cattle and hogs in controversy are now unreasonably low, for the reason that they do not yield a fair compensation for the service performed; that they would be much higher but for the fact that they are reduced by competition. He filed a table, at page 399, showing the total freight receipts of his road for the year ended June 30th, 1905, and the receipts for the transportation of cattle and hogs, and the loss and damage paid on account of cattle and hogs, and for injury to persons in charge of cattle and hogs, and the total loss and damage claims for all freight, which showed that the losses on account of livestock shipments were about twice as great as the average for the entire freight business of the company.

At pages 401 to 403, he filed Exhibit 3, showing the comparative revenue per car received from livestock and from wheat, corn, pig iron, cast iron pipe, and lumber, agricultural implements, canned goods, and many other commodities, which shows that the livestock traffic is much less profitable per car than the transportation of the representative commodities set forth in said exhibit. At page 407 is an exhibit showing that the revenue per car to Chicago on cattle and hogs is less than the revenue into Kansas City, St. Paul and East St. Louis, from various points situated at a substantially equal distance from the terminus. At pages 409 to 414 Mr. Keepers files another series of comparative tables, showing the low revenue received per car on cattle and hogs, compared with other subjects of transportation.

Mr. J. H. Hiland, third vice president of the Chicago & Milwaukee & St. Paul Ry. Co., in charge of the traffic of that system, was asked, at page 506:

> Q. "I wish you would state, Mr. Hiland, whether the rates on cattle and hogs, set forth in said Exhibit No. 1 (the rates in controversy), and the rates from your intermediate stations to Chicago are just, or unjust, reasonable, or unreasonable, and give your reasons for any opinion you may express?
>
> A. The rates on livestock, in my opinion, do not bear a just proportion in the contribution to the total revenue derived for the transportation of freight carried by the Chicago, Milwaukee & St. Paul Ry. Co., as adjusted between the points mentioned."

On page 508, Mr. Hiland introduced a very instructive table comparing the rates on livestock from intermediate points between the Missouri river and Chicago with the rates on livestock to other markets for like distances. This table shows that the rates are in substantially every instance lower than the rates to other packing centers.

Mr. Peabody, the statistician of the A. T. & S. F. Ry, who called as a witness by the complainant, identified as prepared by him, a table which will be found on pages 1165 and 1166, which showed the low average revenue per car load received for the transportation of cattle and hogs by that company, as compared with practically every other species of traffic, including dressed meats and packing house products. On page 1229, Mr. Peabody explains these tables. On pages 1231 to 1233, Mr. Peabody testifies as follows:

> "Q. Now, as I understand the statistics put in by Mr. Ripley, which were prepared by you, they show that livestock does not begin to pay its proportion of all of the cost of operation, including interest and taxes.
>
> A. Oh, no, by no means. * * *"

Then, having his attention called to certain figures that had been introduced by Mr. Ripley, and explained by him, the testimony proceeded:

> "Q. Do you remember whether livestock pays a small profit over the actual cost of movement, excluding its percentage of operating expenses, and excluding altogether interest and taxes?
>
> A. Are you now referring to livestock from

Kansas City, or to our whole livestock business?

Q. I am referring to the movement that you embraced in that calculation; that is, from Kansas City. * * *

A. From Kansas City it lacks $18.77 of paying the total transportation cost; that is, on the basis of the average cost; $2.56 less that the total operating cost; but shows a margin of $19.29 more than the 55 per cent. of the operating cost, which I estimated as being the movement expense.

Q. Now, then, a carrier, in accepting and carrying livestock from Kansas City to Chicago, would not be moving that traffic at a loss?

A. No.

Q. As compared with the cost of its actual movement?

A. With the cost of its actual movement, no.

Q. But he would be moving at a loss of $2.56 if it was made to pay its full proportion of all operating expenses, is that true?

A. That is on the theory that the cost of handling that, was the average cost of handling all freight. Of course, you cannot apply that to a car of cattle, because that might cost more, or it might cost less; I can't conceive of its costing less than the average; it will cost more than the average to handle cattle; in fact, that is admitted in the case, I believe.

Q. And if the carrier were to charge up against the transportation of a car load of cattle from Kansas City to Chicago not only the total operating expenses, but its proportion of interest and taxes, it would fall $18.77 short of meeting them?

A. It would, yes, sir."

Mr. Tittemore, freight traffic manager of the Minneapolis & St. Louis and the Iowa Central

Railways, testified particularly with reference to the reasonableness of the rates from St. Paul and the Missouri river zone to Chicago. At page 569 he was asked whether the rates on livestock were just and reasonable, and to give his reasons for any opinion he might express. He answered:

> "In my judgment, the rates on livestock from the Missouri river, and particularly from the Missouri river zone, are more than just to the shipper, and are less than the carrier should receive for the service we render. The Minneapolis & St. Louis and Iowa Central Companies do what we call a pick-up business, and I believe that nine-tenths of the traffic is composed of that class of business * * * If you were to refer alone to terminal rates, and handle the business in train loads, which is not the case, the rates might be considered—the present rates might be considered reasonable. In the first place, take it with our roads; we have to provide stockyards, at a considerable expense, to such an extent that at a majority of our country stations it costs us more to provide for the reception and shipment of livestock than it does for the reception and shipment of passengers, if you will, and almost every other kind of freight. One of what I call our six-ten yards, such as is located at Grinnell, Iowa, or at Brighton, Iowa, costs us a little more than $1,200. We provide scales and scale houses; we provide feed troughs and racks; we pave the yards with vitrified paving brick; in many cases we provide windmills, and in some cases use city water. We not only have to shed the yards to withstand summer suns, but also winter snows and winds, and, on the whole, the yards cost us between $1,200 and $1,300; nearer $1,200 than $1,300. The Iowa Central and the M. & St. L., during the past two years, have done considerable work on their stock-

yards, and the Iowa Central expended, during the last two years, approximately $20,000. * * * The M. & St. L. expended approx- $10,000, or approximately $70.00 per yard per annum."

He then proceeds to detail the extra expense of going out on the branches and picking up small loads of two or three car loads of stock. He further says:

"It is my experience that stock trains lose more time at stations, are compelled to make greater speed between stations, and handle less revenue tonnage per train mile than any other class of trains on our railroads."

On pages 570 and 571, he again repeats that the rates on livestock are too low, and that the revenues of the road would be very much increased if, instead of handling livestock, they could haul to market the grain consumed by the stock on the farm.

Mr. Gower, the assistant freight traffic manager of the Chicago, Rock Island & Pacific Railroad, testified as follows (page 720):

"Q. I wish you would state whether the rates on cattle and hogs, set forth in said Exhibit No. 1 (the rates in controversy), are just, or unjust, reasonable, or unreasonable, and state fully the grounds of any opinion you may express?

A. Well, I have testified before the Interstate Commerce Commission several times that I consider the rates on cattle and hogs throughout this western country were too low, and, as these rates from the Missouri river are as low as any rates we have for a similar distance, and the more I hear on the

subject the more I am convinced that our livestock rates are too low. Livestock has various expenses; for instance, it is the most perishable of freight, and it has a great many expenses which are peculiar to it."

At page 724, he testifies:

"Q. In proportion to the service performed, is the net revenue received by railroads for the transportation of cattle and hogs more, or less, than the net revenue received by them for the transportation of ordinary dead freight?"

A. The net revenue, ordinarily, is less on livestock than dead freight, on account of the smaller proportion of pay freight to the gross load."

He follows this with some comparative figures, based upon shipments of other commodities into the same territory, which figures show that, taking into account the pay load, weight of the car and the revenue per car upon different commodities, the earnings per ton are as follows: On class A freight, which covers machinery of all kinds, and certain classes of iron and furniture, $3.20 per ton; 5th class freight, which included heavy articles of merchandise, most canned goods, etc., $3.09 per ton; hard coal, a very low rated article, $1.70 per ton; on east-bound business, butter and eggs, perishable freight like livestock, $3.90 per ton; grain from intermediate points in the zone under consideration, $2.13 per ton; cattle, $1.38 per ton.

The latter, on a 20c basis, would be reduced to $1.18, and hogs, which, on a 23½c basis, produce

$1.11 per ton, would, on a 20c basis, be reduced to 94c.

In view of the uniform testimony as to the extra expenses necessarily incurred in handling livestock, it would seem that these figures are a demonstration that the rates complained of are reasonable in and of themselves, unless the claim should be advanced that all freight rates are altogether too high, and no such suggestion has been made in this case.

Mr. John M. Daly, of the Illinois Central, a witness of large experience in various branches of railroading, testified that the average weight of a car load of livestock, including both cattle and hogs, is about ten tons, as against an average of about 23 tons per car of dead freight, excluding from that the tonnage in dairy freight, game and fish. The average speed at which trains of live cattle and live hogs are moved is about 19 to 20 miles per hour, and the average speed at which cars of dead freight are moved from 10 to 12 miles an hour. (P. 799.) When those figures are placed alongside of the comparative revenue, and are considered in connection with the added items of expense heretofore adverted to, it would not seem as though any argument need be made to show that the rates on livestock are reasonable per se. It is a matter of common knowledge that increased speed of movements entail increased expense; that a light pay load, as compared with a heavy pay load in the same class of cars, involves an added expense in movement. Both these elements are present in

the case under consideration. At page 804, in answer to questions by the court, Mr. Daly testifies that 86% of the livestock cars on his road are returned empty, refrigerator cars usually go back filled, and of box cars about 88% go back loaded with merchandise and other freight, so that in this particular it seems that there is a large item of additional expense in the handling of livestock not entailed in conducting ordinary freight transportation. At pages 805 and 806, Mr. Daly testifies that the total receipts of the Illinois Central in handling livestock from the Missouri and Mississippi river to Chicago was about $433,000; that $14,000 was paid in claims in handling the livestock, and nearly $10,000 for injuries to attendants, making a total of about $24,000, or nearly 6% of the gross receipts; that the total receipts for eastbound dead freight from the same territory during the same year was $920,000, in round figures, and the damages paid on the same about $7,000, or less than 8/10 of one per cent. On page 806, he gives the details as to the cost of stockyards at country stations, and the cost of maintenance of the same. On page 809, he states the cost of cleaning cars from 30c to $1.50 per car, varying at different seasons of the year. At pages 810 and 811, he calls attention to the increased cost of handling livestock by reason of the fact that much the larger percentage moves in the winter, when the rating of locomotives is less by about 26% than in summer, and the expense of keeping the loading tracks to the stockyards is greater on

acount of the snow fall. This work often has to be done at night, entailing extra pay to the men.

Mr. Ripley was called as a witness by the complainant, and, while diagreeing with the defendants' witnesses on certain features of the case, in that part of his cross-examination beginning at page 1127 he admitted very freely the extra expenses of maintaining stockyards, of bedding cars, and carrying the drovers with the cars, and the specially designed cabooses for drovers, damages on account of personal injuries to such drovers, etc. In answer to complainant's counsel, Mr. Ripley testified as follows, at page 1101:

> "There never has been a time when the cattle rates brought anything like their fair proportion of the general expenses of the railroad company in the way of revenue. The cattle rates are a relic of the days when the country was open, and when the cattle could be driven to market quite as cheaply as they could be taken by rail, although not quite so quickly. The result of that has been that from time immemorial ever since railroads were built in this western country, the cattle rates have been low in proportion to the rates on other commodities, and, although conditions have changed, and the country has become cut up into farms, and it is no longer, and has not been possible for many years to drive the cattle, yet it has not been possible to advance the rates, and make them what they should be, as compared with the rates on other commodities."

Considering the testimony to which we have called attention it must be apparent to the court that the learned trial judge was abundantly justified in

finding that the rates upon livestock from the territory in question are reasonable in themselves. His first finding of fact reads as follows:

> "First. That the livestock rates are reasonable in themselves. All livestock from points west, southwest, and northwest of the Missouri River, and St. Paul are shipped on a proportional rate from the Missouri River or St. Paul to Chicago. These rates are equal to or less than the rates on dressed meats and packing-house products between the same points. There can be, and is, no complaint as to such traffic. The local rates from the Missouri River and St. Paul, and from 150 miles east, to Chicago, are as shown in above schedule. These rates gradually decrease, until the Mississippi River is reached, and the average Iowa rate is 21 cents. The great weight of evidence indicates that these rates are at least reasonably low."

We come then to a consideration of the testimony bearing upon the finding by the Interstate Commerce Commission that the rate upon livestock should be no higher than that upon packing house products and dressed meats. It will be unnecessary to repeat the testimony to which we have adverted in discussing the first point as to the reasonableness of the rate, but we will content ourselves with pointingout the showing as to the comparative cost of handling the two classes of traffic, and the other considerations developed in the testimony which resulted in the lower rate upon packing house products and dressed beef than obtains upon livestock.

THE SECOND FINDING OF THE LEARNED TRIAL COURT IS THAT "THE COST OF CARRYING LIVESTOCK IS GREATER THAN THAT OF CARRYING DRESSED MEATS AND PACKING HOUSE PRODUCTS."

We have already pointed out certain of the items of expense in handling livestock that are not involved in the transportation of ordinary dead freight, and will now consider testimony that was directly addressed to the comparative cost of moving the two classes of commodities embraced in this inquiry. In the testimony of Mr. Stickney, beginning on page 623, he makes sundry comparisons and computations based upon the actual movement of these commodities over the Chicago Great Western Railway, from which it appears, (and this applies to the other defendants as well,) that the Railway Company furnishes its own stock cars, leasing from other parties only such cars as may be needed above the number owned by it; the refrigerator cars in which packing house products and dressed meats are transported, however, are leased by the railroad at a rental of one cent per mile, and in addition to that rental the railroad company pays for any injury or damage done to the car by derailment, accident, etc., which during the year 1905, aggregated an additional 1/10 of a cent per mile, so that the total payment made by the railroad for the use of the refrigerator cars and renewals and repairs to the same, was 1-1/10c per mile. The average mileage of the refrigerator cars is approximately 100 miles a day, while the aver-

age mileage of railroad freight cars is about 22 miles per day, and the average mileage of stock cars less than 22 miles per day. The movement of stock is very irregular, even between terminal points, as is shown by the table presented by Mr. Stickney, appearing on page 625, which shows that the movement between South St. Paul and Chicago during the year preceding the trial varied from as low as 17 cars in the month of June to 264 cars in the month of August. At the bottom of page 625 and the top of page 626, the astonishing statement is made that during the year the railway company handled an aggregate of 15,134 cars of livestock, an average distance of 197 miles, being an average of less than 42 cars per day; that it owned 686 stock cars, but nevertheless it was obliged to rent from private car lines sufficient cars to move 54% of its livestock, which means that it was only able to get a movement of 5-8/10 of a mile per day per car. On pages 627 and 628 Mr. Stickney makes a series of computations founded upon the records of his company, which show that the actual cost per freight car mile upon the cars owned by the company was 1.23c for use, depreciation, and repairs, as against the 1.1c paid for the use, depreciation and repairs of refrigerator cars. After making that computation, he gives the damages paid by his company for delays in failing to reach the market, to which we have heretofore called attention, and also the expense of loading the cars of livestock at the stockyards on the Missouri River, being from 50c to $1.00 per car, while the packing house products

and dressed beef are loaded in refrigerator cars by the packing houses without expense to the railway company. The railway company is compelled to clean the livestock cars, while the refrigerator cars are cleaned by their owners. The expense of re-icing the product in refrigerator cars in hot weather is borne by the shipper, but the spraying of livestock is paid by the carrier. No free transportation is furnished to shippers of packing house products. Taking these items into account, we have the table appearing on page 629 of the record, making a total expense with the various items of use of car, damages on account of delay, loading, cleaning cars, icing and spraying, and passenger service, of $16.01 per car on cattle and hogs, and $5.50 per car for packing house products and fresh meat, and as most of the cars of both classes are returned empty, there is properly added the return use of the car and the mileage, making an aggregate of $22.16 for cattle and hogs, and $11 for packing house products and fresh meat. The average rate per hundred, owing to the proportional rate governing from Missouri River points, is 18c on cattle, and 19½c on hogs, as against 20c on the product. The witness then gives the average pay load as 21,513 pounds of cattle, 16,636 pounds of hogs, and the average weight of the Chicago Great Western stock cars as 27,500 pounds; the average pay load of packing house products other than fresh meat is 31,632, and fresh meat 22,414 pounds; the average weight of refrigerator cars, in which they are hauled, including ice, 41,000 pounds, producing a revenue per carload of

cattle $38.72, hogs $32.02, packing house products $63.26, fresh meats $44.82. Adding in the weights of the respective cars and deducting the unequal burdens for the use of the cars, and other items heretofore mentioned, of $22.16 on cattle and hogs, and $11 on packing house products and fresh meat, gives the result of a car of cattle, including the weight of the car and the contents, 49,013 pounds, with a revenue of $16.56 for the haul; and a carload of hogs, including the weight of the car, 44,136 pounds, with a revenue for the haul of $9.86; packing house products, including the car 72,632, with a net revenue for the haul of $52.26, and fresh meat, including the car, 63,414 pounds, and a net revenue of $33.82, so that dividing the net revenue by the number of pounds hauled, it is found that the net revenue per hundred weight on cattle is 3.39c, on hogs 2.24c, and on packing house products 7.19c, on fresh meat 5.3c. This clearly demonstrates that the rates between the terminal points, that is, between the Missouri River points, where the packing houses are located, and Chicago, are now adjusted much more favorably to livestock, if there is any relation whatever between the two, than is proper, as the transportation of packing house products and dressed meat is twice as profitable as is the transportation of livestock. But the witness went on to make a similar computation based upon the local rate of 23½c per hundred upon cattle and hogs in what is known as the Missouri River zone, and which is the only territory in which that rate is collected, and compared the revenue to

the railroad company after deducting these common expenses, with the net revenue received from the transportation of packing house products and dressed meats from the river, which is the traffic complained of here. He first deducted from the total burden upon the car of livestock the sum of 75c, being the expense of loading at the terminal point, as the loading at interior points is done by the shipper, leaving $21.41 in lieu of the $22.16 in the case of shipments from the river. He then added the interest and depreciation upon the investment in stockyards at interior points, which divided into the total cars actually handled, amounted to $2.25 per car; then added 25c per car additional for cleaning the stock pens, and the expense of setting in the cars, resulting in delaying trains, making a total special burden on livestock shipments from interior points, of $23.91 per car. He then recalled as above stated that the 20c rate on the products of animals, after deducting the burdens, left a rate of 7.19c per hundred for simply hauling the load, plus the weight of the car. To produce a similar rate for hauling livestock from interior points, with the burdens upon the same heretofore mentioned, and taking into account the weight of the contents and of the car, it appears that it would be necessary to collect on cattle not 23½c per hundred, but 27½c per hundred to give the railroad company the same net revenue that it receives for hauling packing house products, and applying the same basis to the shipment of hogs it would be necessary to make the rate 33½c per hun-

dred instead of 23½c; and if the comparison is made with the 20c rate on fresh meat, which, as we have shown, loads much less heavily than packing house products, to produce the same net revenue would require a rate of 23.19c on cattle and 28.43c on hogs; in the case of cattle just a trifle under the 23½c rate, but 2.19c above the average rate for the state of Iowa, as shown by the testimony, which establishes that that rate is only 21c (see witness Koch, p. 603); and in the case of hog shipments over 5c a hundred higher than the 23½c rate or 7.43c higher than the average rate from Iowa to Chicago.

Mr. Crosby, Freight Traffic Manager of the Chicago, Burlingaon & Quincy Railway Company, testified, pages 238 to 239, that the total earnings of his company for the year ended June 30, 1905, from the transportation of cattle and hogs, was about $4,800,000, and from the transportation of packing house products and fresh meats about $1,800,000, and from other perishable freight a little over $1,700,000, making an aggregate of about $3,500,000 as against $4,800,000 from livestock, or in the neighborhood of three-quarters. During the same time there was paid out for loss and damage to cattle and hogs and personal injuries to attendants in charge of livestock, nearly $42,000, as against only $13,600 for loss and damage to all other perishable freight, including packing house products and meats; so that the loss and damage instead of being three-fourths, that being the ratio

of the receipts, was less than one-third. At page 241, Mr. Crosby gives an interesting exhibit of the relative revenue received for the transportation of cattle and hogs and other commodities, and on page 242 shows that the Iowa distance tariff projected to 490 miles, the distance from the Missouri River points to Chicago, would produce a rate of 25.23c on cattle, and 22.12c on hogs. The Kansas rate, if projected, would produce a rate of 31c per hundred on cattle, and 39½ per hundred on hogs. The Missouri Railroad Commission tariff for 400 miles gives a rate of 21c a hundred on cattle, and 24c on hogs, and if the rate was extended to 490 miles on that basis, the cattle would be raised to about 25c a hundred. He further says that aside from the rates from Chicago to New York and other eastern points, he knows of no rate in any part of the United States on cattle and hogs as low as 23½c for a distance of 450 miles. At page 243 he testifies as follows:

> "Q. Is the service rendered by railroads in the transportation of cattle and hogs more or less expensive than the service rendered in transportation of packing house products?
>
> A. I think it is more expensive—livestock is of more of a perishable character than packing house products; we have to provide special facilities for loading it, and we have to provide places for unloading it and feeding it, and taking care of it in transit; we provide facilities for handling livestock that we do not for any other class of freight. * * *
>
> "Q. In proportion to the service performed is the net revenue received by the railroads for the transportation of cattle and hogs greater or less than the net revenue received by them

for the transportation of packing house products and fresh meats?

A. I believe we can handle packing house products under the present condition of affairs for less money than we can livestock. I believe we have less net money when we get through handling our livestock than we do with the products."

On cross-examination Mr. Crosby, at page 265, says that so far as the business of the packing house products and fresh meat is concerned, it can be handled on schedule trains, and the road still do the balance of its business without interference. He then proceeds:

"The livestock comes to us as a class that calls for special service. It either moves in large quantities or comes to us in train loads from the range or it is picked up by local trains. The business that comes to us at the Missouri River generally comes to us with the request and the demand in fact, that we make fast time from the Missouri River to Chicago. It necessitates our making time that is faster than our schedule trains make, and we have to perform special service. In order to give special service either to livestock or anything else, regular business has got to step one side, for the track has to be kept clear to give it the right of way. In addition to this we have to go to the extent of providing facilities not only at the starting point, but at intermediate points, for looking after the livestock. If anything happens we have got to provide a place to feed and water them, and sometimes it is practically impossible to do it. In the case of handling fresh meat or packing house product all we have got to do is to keep it under ice. If it is under ice, the length of time doesn't cause any extra shrinkage nor claims

for damages which is true in the case of livestock, where we have all kinds of claims for shrinkage and loss in value, and that makes the business very much more expensive. The 28-hour law also makes an additional expense. * * * We have to provide yards especially under the 28-hour law, where we can unload the cattle, and sometimes the enforcement of the law requires additional facilities where the yards as at present established would not take care of the business."

At page 287 Mr. Crosby was being cross-examined upon the comparative cost of handling livestock and other commodities, and testified:

"As I remarked before, it seems to me that livestock is the most expensive proposition we have to handle. We have to give it special service, it is perishable and it seems to me it ought to stand more in proportion than the general average of our business.

Q. Including your local freight?

A. Yes, sir.

The Court: Now, what other point do you give to sustain the fact? You furnish passes to men in transporting them?

A. Yes, sir.

Q. What else?

A. We carry less weight per car than we can on almost any other commodity; we have to hurry them through.

Q. There is more danger from wreckage?

A. Yes, more danger from wrecks; we have to run faster, and if we are delayed with them we have got to provide means to feed and water them, and we have got to give them special attention in every respect that we don't have to give to anything else, and transportation for the employes in charge, and we have to build special pens for unloading and taking care of them."

At page 288 Mr. Crosby testifies that livestock takes up a great deal more space in proportion to weight than packing house products or fresh meat, and that as a matter of fact, nearly every manufactured product is more bulky than the raw material from which it is made, except in the case of packing house products. At the request of the court, Mr. Crosby during the adjournment made up a statement of the reasons why it costs more to handle livestock than it does packing house products or other similar freight, and gives these reasons at pages 289 to 296, inclusive. At pages 295 and 296 the court will find Crosby Exhibit A, wherein fourteen reasons are given for the additional cost of handling livestock, and upon further examination upon the same page, there is added to these reasons the additional one that the weight of the car bears a larger proportion to the total weight in the case of livestock than in the case of packing house products.

Mr. Gardner, of the Chicago & Northwestern, at page 320 testifies that the average weight of the cars employed on his road in the transportation of live cattle and hogs is about 18½ tons, including the bedding and offal; the average weight of cars used in the transportation of dressed meats and prepared products about 22 tons, allowing for the ice; that the average weight of the contents of the cars when loaded with livestock or live hogs 9 7/10 tons; the average weight of the contents of the cars when loaded with dressed or prepared products of

cattle or hogs 12 2/10 tons, which shows clearly that the proportion that the car bears to the total weight is much greater in the shipment of livestock than in the transportation of products. On page 321, he says that through trains of live cattle and hogs average from 25 to 28 miles an hour, and a pick up train of cattle and hogs—and the average train of livestock on the Northwestern comes from about ten different places—averages about 35 miles an hour running time, while on the same portion of the road the average rate of speed at which trains of dressed or prepared products of cattle and hogs are moved is only from 20 to 22 miles an hour; that the average tonnage rating of locomotives in the transportation of live cattle or hogs is from ten hundred to eleven hundred tons, 35% of which only is revenue tonnage, and that the average tonnage rating of locomotives used on the same portion of the road in the transportation of dressed or prepared products runs from 1,000 to 1,250 tons, and 36% of that is revenue tonnage.

On page 322 he testifies that livestock trains are given the same preference over all other freight trains, including those loaded with dressed or prepared products of cattle or hogs, that passenger trains are given over all other freight trains, and in some instances they have the preference over passenger trains. At page 330 he notes another reason for the additional expense of handling livestock over that incurred in moving the product, namely, that the product is moved regularly; it is possible to figure on a certain number of cars every

day from the same places, and it is ready every day with the same regularity that a passenger train is ready to depart from its terminal station; it is known several hours in advance of departure how many cars of beef are going to be shipped, so it is possible to collect enough additional freight to fill out a train, if necessary, and the trains are run at a regular rate of speed; but in the case of stock cars it is entirely different. If dressed beef cars are delayed by a wreck or anything of the sort, it is only necessary to see that the refrigeration is kept up and the ice in all cars will ordinarily last ten or twelve hours without additional icing; and the loading of dressed beef is generally confined to the main line of the road or lines on which there is a heavy traffic, so it is not necessary to start a special engine and special crew to bring it down to the main line, and it is much easier to regulate trains on the main lines, and much less expensive. In the case of livestock there is an indefinite movement as compared with the regularity of the movement of dressed beef and packing house products. It is dependent in a great part upon market conditiions at the various purchasing or packing plants. At page 332 he calls attention to the large number of men who have to be kept on duty on Sunday so that trains of livestock can reach the Monday market in Chicago, and whose duty it is to water the stock, repair and inspect cars, and having no other work to do the company pays for full time, while it gets only a half day's service. He then proceeds to give the other unusual expenses in handling live-

stock, which we have heretofore quoted under another head. At page 334 Mr. Gardner says:

> "I know I would guarantee to increase the revenue freight of the Northwestern from 25 per cent to 40 per cent if we could eliminate the livestock from it, and I have no doubt other operating men could do better than that."

And at pages 336 and 337 he sums up the whole matter as follows:

> "Q. From your experience can you tell us how the cost of the transportation of live cattle and live hogs, all conditions considered, compares with the cost of the transportation of the dressed and prepared product of cattle and hogs? Is it greater or less, and about what per cent?
>
> A. I should place the livestock at 100 and the products at about 70. * * * *
>
> The Court: That is the cost, if I understand your question.
>
> Mr. Baxter: That is the cost?
>
> The Court: The comparative cost?
>
> A. Yes, sir."

Mr. Tittemore, of the Minneapolis & St. Louis and Iowa Central, testified, page 575, as follows:

> "Q. In your opinion is the service rendered by railroad companies in the transportation of live cattle and hogs more or less expensive than the service which they render in the transportation of packing house products and fresh meats?
>
> A. I consider that the service rendered is more expensive for livestock than for packing house products and fresh meats. * * *
>
> Q. How is the net revenue received by railroads from the transportation of cattle and hogs as compared with the net revenue received by them for the transportation of packing house products and fresh meats?

A. I believe—it is my best judgment that the net revenue received from the transportation of livestock is less than from almost any other—I might say any other class of freight."

At page 580 the court asked Mr. Tittemore the following question:

"Q. Do you think you get a high enough rate on dressed meat and packing house products?

The Witness: Well, no, your Honor, I do not. I have contended constantly for a higher rate on livestock than now exists, and I do not believe that the present rate of packing house product is reasonable as a compensation to the carrier."

Mr. Rice, General Inspector of Transportation for the C. B. & Q. Railway, says, at page 453, that the average rate of speed at which trains of live cattle and live hogs are moved is from 15 to 20 miles per hour as against five miles per hour for ordinary dead freight trains, making this computation in each case by dividing the number of miles in the journey from Missouri River points or St. Paul to Chicago, by the hours required to make the trip. In order to bring this result of 15 to 20 miles an hour from the point of starting to the point of delivery, it is, however, necessary to make in the actual running 25 to 30 miles an hour, and in the case of dead freight it is necessary to make 10 miles an hour in order to average five miles per hour from the point of starting to the point of delivery. At page 454 he testifies further that increasing the speed of a train from 12 to 18 or 20 miles an hour would decrease the tonnage a loco-

motive can pull from 40 to 50%. At page 455 he states that preference is invariably given to trains of livestock over trains of packing house products or any other kind, frequently including passenger trains. At page 455 he says that he has known of thousands of cases where stock trains were started at Galesburg, Illinois, for Chicago, ahead of passenger trains, and preceded such passenger trains to Chicago, and at page 456 that on certain days in the week when the livestock movement is heaviest, it frequently requires all the power the road possesses to move it, and other freight must lie by and be delayed, and it frequently takes two or three days to catch up and move other freight that has been stopped. After testifying to the cost of the stockyards along the lines of the Burlington road east of the Missouri River, and the cost of maintaining the same, the witness testified that cattle frequently get down in the cars, and it is necessary to stop the trains to get them up; that delays from ten minutes to an hour result, and at times it is necessary to side track the train and take the cars to local stockyards, unload them and re-load them. (Page 458.) He also testifies to the fact that when reaching Chicago it is necessary to hurry the deliveries of stock from the point of intersection of the Burlington tracks with the Union Stockyards tracks down to the yards, irrespective of whether there is a complete train load to be taken in or not; that this is necessary to insure reaching the market within the proper delivery time; that nothing of this kind is required in the

case of packing house products or ordinary dead freight. (Page 458.)

At pages 459 to 463 Mr. Rice testifies at length with reference to the additional expense incurred in making up and handling trains of livestock over the cost of handling packing house products emphasizing the fact that all the packing house products move from comparatively few points over the main line in regular trains, while live stock has to be picked up at largely increased expense on the branch lines, brought to the main lines, and assembled into trains; that the main line trains have to come to such junction points only partially loaded, so as to be able to take the livestock when delivered at such junctions. He states that 70% of the stock coming into Chicago is hauled for a distance on branch lines to the point of delivery to the main line. He mentions a number of incidental expenses, which in the aggregate are very important items of cost in the movement of livestock trains. At page 464 he testifies:

> "Q. In your experience how does the cost of transportation of live cattle and hogs, all conditions considered, compare with the transportation of the dressed product of cattle and hogs?
>
> A. The cost of the transportation of livestock is considerably greater than the cost of the transportation of the product. * * *
>
> Q. What is the difference between the cost of handling the dressed or prepared product of cattle and hogs in through train loads from St. Paul and Missouri River points directly through to Chicago, and the cost of picking up live cattle and hogs at way stations?

A. The cost of picking up live cattle and hogs is much greater. The packing house freight is confined entirely to the main lines, and it has no connection with the branch lines; it is not handled on those interior lines as the stock is."

At page 466 he testifies that it costs 30c a car to clean stock cars, and owing to the fact that the cleaning tracks are necessarily, on account of their being a public nuisance, in remote places, a long switch is required to move the cars to and from that track, the cost of which he estimates at 30c per car, making in the aggregate 60c a car for the switching and cleaning.

He further testifies at pages 466 and 467, that he agrees with Mr. Gardner's statement that but for the necessity of cleaning the stock cars the road would be able to do with 20% less cars, and handle the business except that he thinks it takes two days, oftener than one, to clean the cars; and the total number of stock cars on the C. B. & Q. being over 6,000, 20% of the same would be 1,200, costing in round figures over $700,000. He further says that about half the cars are required to be disinfected at a cost of about 20c a car. At page 469 he says an additional expense in handling livestock is caused by the fact that prospective shippers order cars set out on branch lines, and then reconsider and fail to ship, which causes a dead loss, as it is necessary to run through with half a train or less.

Mr. Daly, of the Illinois Central, testified to a number of comparisons of expenses in handling the two classes of traffic under consideration; that locomotives hauling livestock trains haul about an average of 780 gross tons per train. This, of course, includes the weight of the cars as well as the contents, and the average tons hauled by locomotives in the transportation of dressed or prepared product of cattle and hogs is about 867 tons; that the increase in speed from 12 miles to 18 or 20 miles per hour reduces the average tonnage that can be hauled by a locomotive about 39%. (Page 801.) He further testifies that livestock trains have the preference at all times over trains carrying dressed meats or packing house products, which delays the other trains. He further shows that extra engines have to be kept ready for service in handling the trains of stock which are bunched certain days in the week, and that other freight has to wait, causing congestion in the yards at interior junction points. (Pages 802 and 803.) 86% of the cars intended for the transportation of livestock move to the point of shipment empty, while only 48% of the refrigerator cars loaded with packing house products move west empty. The Illinois Central owns its own refrigerator cars, and loads a large percentage of them going west with fruits brought up from the south. (803, 804.) In the five winter months there is 128% more livestock moved than during the five summer months, or an average of 69 cars per day in winter against 30 cars per day in summer, while there is only 5% differ-

ence between summer and winter in the movement of packing house products. (Pages 804, 805.) The average life of a stock car is only about twelve years, as compared with 20 years, the average life of an ordinary box car. (Page 808.) He also testifies:

> "Q. Are any trains of cattle and hogs run special in order to make the markets, or are they always run upon some fixed schedule?
>
> A. We have a schedule, but on these days when the heavy movements occur, they are run ahead of that schedule and run special ahead of the schedule in order to get the first train in two or three hours ahead of the schedule time, for the reason that the last train will be that much behind the first one and get it in on its schedule. If a stock train is delayed for any reason our superintendents and chief dispatchers have written authority to run the trains up to a maximum speed of 35 miles per hour in order to make the market." (Pages 808 and 809.)

Then in answer to a general question as to whether there are any other special expenses incident to the transportation of live cattle and hogs that are not incident to the transportation of their products or even of ordinary dead freight, Mr. Daly first testified as to the cost of cleaning cars. We have called attention to this in another connection. On page 810 he again speaks of the fact that the stock cars moving back west empty to the per cent they do, creates about half as much more train mile expense as the packing house products create; that in addition to building and maintaining the stockyards it is necessary to send men to test and

adjust the scales, look after the water supply, troughs, flooring and fencing, and there is also over time paid to station agents, who are obliged to be present to seal cars at night time. At pages 811 and 812 he states that the heavy movement of stock on Monday has a tendency to reduce the average number of cars of stock hauled on the other five days of the week, and frequently they are compelled to run stock trains on a fast schedule with only ten cars of stock, filling the trains up to the maximum of the fast rating, namely, 780 tons, with dead freight, which results in hauling a low grade commodity at a very expensive speed which that commodity does not pay for, because it is necessary to handle the ten cars of stock the same as though it were a full train. He gives an example as follows:

> "Take ten cars of stock; that is, 280 tons on the 780 rating. That gives you 500 gross tons of other freight to put in. That would be about 12 or 13 cars. Now, if it were not for these ten cars of stock, instead of hauling 780 tons we would be hauling 1,200 tons of the dead freight, or else not running the train. Consequently, the stock handled in less than solid trains of stock is more expensive than when handling in solid trains."

It will be recalled that the lower tonnage rating of the locomotive is caused by the faster speed at which stock trains are run, so that while a locomotive may haul 1,200 tons of ordinary freight at the speed slow freight trains are moved, the same locomotive will only haul 780 tons at the rate of speed required in the transportation of livestock. After

speaking of other expenses chargeable to the two classes of freight, Mr. Daly sums the matter up on page 816 as follows:

> "I think the packing house products give us 30% more revenue than the livestock, taking into consideration the switching charges that we pay to the packers at the Missouri River, Sioux City and Omaha; taking $10 cost on the refrigerator for mileage; take the $3 cost from here to the junction railway getting rid of the packing house stuff, etc.; take the $1.16 claims for damages, average per car for damage to the packing house product, and deducting that from the amount received per car at the 20c rate; then take the livestock, the cost of your yards and the cost of your facilities for taking care of it, the cost of returning the men, both in coaches and sleeping cars, the claims and the fixed charges connected with it, and you have got more revenue to apply on the transporting of the product of packing houses than you have on the livestock, considerably more. I should say 30% more.
>
> Q. You mean the rate on livestock ought to be about 30 cents instead of 23½c?
>
> A. I am figuring that way, yes, sir."

Mr. McCullough, Vice President of the Chicago Northwestern, in charge of the traffic, after giving a lot of details, testified at page 951, in answer to a question by the court:

> "My general observation and the information that has come to me from time to time, I think our present rates on dressed beef and packing house products, our present rates on livestock from Missouri River points and all the territory that is tributary to the Missouri River, are lower than they should be. As to what differences should be made in those rates so as to make them fair and reasonable to the

railroad and to the shippers, in cents per hundred pounds, I am unable to say. As to the relative difference in the rate between dressed beef and packing house products and livestock, I am thoroughly satisfied in my mind that there should be a difference, that the rate on livestock should be higher than the rate on dressed beef and packing house products. What that difference should be in dollars and cents, I could not state today."

The testimony of Mr. A. C. Bird, Vice President of the Missouri Pacific, formerly Third Vice President of the Chicago, Milwaukee & St. Paul Railway Company, given by him upon the trial of the case before the Commission, was read in evidence as Mr. Bird was ill in California and unable to appear and testify. At page 1961 the question was asked Mr. Bird:

"Q. Now, based on your actual experience for the last ten or a dozen years, has the loss either in transporting livestock or dressed beef, or the difference between them in that respect, been sufficient to justify a difference in the rate, I mean so far as the question of actual loss to the carriers is concerned.

A. That is necessarily largely a matter of opinion. As a matter of fact however, there is scarcely any comparison of the losses on the one and on the other. Nothing short of collision or the wrecking of a train of meat or an unusual delay has in my recollection resulted in any claim, certainly not in the payment of any claim on refrigerator property, while a much shorter detention of livestock results in heavy claims.

Mr. Tomlinson: Do you mean to say that your company pays claims for delay of livestock in transit if they fail to reach a market?

A. If they fail to exercise due diligence. If

the delay was caused by accident, wreck, etc., and holds back a livestock train, yes, we pay those damages.

Mr. Tomlinson: How about fresh meat?

A. No, unless the meat is injured, and it would not be any ordinary delay."

Again, on the same page, Mr. Bird testified that it was more risky to carry livestock than the product, because the livestock was alive and subject to accidents, which did not attach to the transportation of property under refrigeration. At page 1966, Mr. Bird testified that more service is performed in gathering up business along the line than in handling the train loads through from the river or the portion of the train load made up of packing house products; the service on livestock is a great deal more expensive than on fresh meat for the reasons stated.

Again, on page 1968, Mr. Bird testified:

"There is no occasion for the speed on the packing house commodities from the Missouri River to Chicago that there is on stock trains that pick up cars all along the line of road and have to run to make a certain market. There is no necessity for the speed on fresh meat that there is on livestock, because the fresh meat is refrigerated and the livestock is not."

At page 1971, he says:

"My belief is that the rates on livestock from Missouri River points to Chicago do not pay a just proportion of the total transportation charge between those cities. * * * It costs more to haul livestock than a car load of first-class freight."

Mr. Bird, on pages 1998 and 1999, made sundry comparisons showing the percentage that the freight charges bear to the value of livestock and other commodities on the basis of a haul of 200 miles, which would run over into Iowa for some distance. This showed that the freight charge on the cattle was only 2.6% of the value of the cattle, while on coal it was 92% of the value of the coal; staves and heading 15% of the value; brick 85% of the value; lumber 23% of the value; salt 51% of the value. He then made a computation showing the relation between the amounts exacted by the members of the Chicago Livestock Exchange, the petitioners, for handling the stock after it arrived at Chicago, and the amounts received by the railroads for transportation, which showed that it was necessary that the stock should originate some place considerably in excess of 50 miles from Chicago, before the railroad charge equaled the amount exacted by the commission men. His testimony is as follows:

> "I had occasion at the same time to compare the railroad's earning capacity on livestock with the total charge exacted, or to which that stock was subjected to after the transportation act was complete, and I found on a 50-mile haul and the rate on this basis was not much in excess, if any, of the average through rates charged from Chicago on Iowa stock. The freight was $14.63 and the yardage $5; commission $10; hay $1.25, making a total of $16.25, which was 111% of what the railroad got out of it on a 50-mile haul; and on sheep in single deck cars they got 139% of the freight rate; on hogs in double deck cars they

got 114.10%. For 100 miles, it was on cattle $16.25 terminal charge against $18.05, and on hogs in single decks the railroad charge was $19.50, and the charge here was $12.05, and so on down."

George E. Simpson, Superintendent of Transportation of the Chicago, Milwaukee & St. Paul Railway Company, testified, page 672, that preference was given to livestock trains over trains loaded with the products of cattle and hogs, in order to reach the market at a given time. He said:

"We are obliged to get the stock in for the morning market.

Q. Well, why? Why are you anxious to do that?

A. They ship with that view. They load with a view of arriving at Chicago at a given time in the morning. We consider stock arriving at the yards after eight o'clock as late stock, and the market is liable to decline and result in loss to the shippers.

Q. Well, what does he do if he sustains a loss by reason of not getting there in time?

A. He generally makes a claim.

Q. You give preference to these livestock trains over any trains other than freight trains, do you?

A. Yes; we commonly give them preference over our ordinary passenger trains, both in running ahead and at meeting points."

Again, at page 674, he testified that owing to the irregular movement of livestock there are six or eight months in the year when 10% or 15% of the livestock cars are idle, and while the livestock tonnage of the road is only 4.53% of the total tonnage, and during the year 1904 over $66,000 was paid

out for claims on stock shipments. He further testified that in the territory in question 216 stockyards were maintained, of a total value of about $184,000, and he estimated the cost of maintenance and renewal of the same at about $23,000 per annum. On page 678 he gives about the same testimony as to special expenses incident to the transportation of live cattle and hogs which are not incident to the transportation of dressed or prepared products of cattle or hogs, that was given by the other witnesses. On page 677 he testified:

> "Q. In your experience how does the cost of transportation of live cattle and live hogs, all questions considered, compare with the cost of transportation of the dressed or prepared product of cattle or hogs?
> A. The first is greatest."

On page 678 he states that the road has about 200 cabooses equipped with bunks, blankets, mattresses and pillows for the accommodation of stock men. Free transportation is furnished shippers of stock, but not the shippers of the products.

Against this great mass of testimony, besides other cumulative evidence, the complainant offered as witnesses Mr. E. P. Ripley, President of the Santa Fe; Mr. James Peabody, Statistician of the same road, and certain computations made by Mr. Tomlinson, who was the attorney for the Chicago Livestock Exchange upon the hearing before the Commission, and also a few statements made by other witnesses before the Commission. Mr. Ripley and Mr. Peabody made a series of statements

based upon the average cost of transportation per gross ton miles, without attempting to make any distinction between different classes of commodities, and then added the terminal expenses in all cases, and in the case of dressed meats and packing house products added the car mileage and certain expenses peculiar to the Santa Fe, but which were not borne by other lines, and which, therefore, should not be considered, and also omitted to charge the cattle traffic with the expenses of equipment as computed by Mr. Stickney, which exceeds the car mileage, with the result of showing that it was more profitable to transport cattle than dressed meats, and also slightly more profitable than to transport packing house products at the same rate. See statements, pages 1104 to 1106. On cross-examination, however, Mr. Ripley conceded practically all of the items of additional expenses testified to by the other witnesses which he had not taken into account in making his exhibits, and also admitted that the tables were not based upon actual conditions, as the proportional rate actually paid on livestock from Kansas City to Chicago was considerably less than the 20c collected for packing house products. At page 1120 Mr. Ripley testified:

> "Q. Is it a fact, Mr. Ripley, that all or substantially all the livestock that is carried to Chicago from Kansas City is carried on a proportional?
>
> A. I think most of it is, yes, sir.
>
> Q. And that proportional is considerably less than 20c, is it not?
>
> A. I think so.

Q. Consequently, a comparison such as you have introduced here as between rates at 20c for packing house products and dressed meats on the one hand, and live cattle on the other, would not be a comparison which would be applicable to existing conditions?

A. The rate would have to be—in order to make the comparison authentic or valuable—the actual rate in force would have to be used."

In view of all the testimony it is apparent that the court below was abundantly justified in his second finding of facts, to-wit, that the cost of carrying livestock is greater than that of carrying dressed meats and packing house products.

The references that have been made to the testimony of the various witnesses show clearly that the defendant railroad companies pay out a much larger amount in damages for losses arising from the carriage of livestock than they do for losses from the carriage of dressed meats, and packing house products, in proportion to the value of the products carried, and more in damages per car, regardless of the value, even conceding, as is found by the court in its third finding of fact, that dressed meats and packing house products are in value worth nearly twice as much as livestock. Therefore we are content to assert that, conceding everything with reference to the value of the service found by the court in his third finding of fact, the said value is not an important element in this particular case in fixing rates, by reason of the facts stated in the finding itself.

THE FOURTH AND FITH FINDINGS OF FACT OF THE TRIAL COURT ARE TO THE EFFECT THAT THE RATES GIVEN PACKERS FROM MISSOURI RIVER AND ST. PAUL, ARE THE RESULT OF GENUINE COMPETITION.

It appears without controversy that the present rates on packing house products were first permanently established in August, 1902, by a contract made between the Chicago Great Western Railway Company and the various packers doing business at Missouri River points and St. Paul by which it was agreed by the railway company that it would put in and publish the rates in question, and maintain them for a period of seven years, in consideration of which the packers agreed to give to the Chicago Great Western Railway Company a certain percentage of their business. This contract was caused by competitive conditions. The lines of railway owned and operated by the various defendants are all competitors for this business or a portion of the same. They are all competing for the Missouri River business, and most of them for the business from St. Paul, and have been for a number of years. From Kansas City and St. Joseph the Chicago Great Western is the long line. At page 638 Mr. Stickney was asked how he arrived at the rate his road was to receive on dressed beef, and was asked whether he did not get that on the basis of the cost with a profit, and responded as follows:

> "A. No, the rates were not made that way, the dressed meats were not. We had been in business for eight or ten years, I guess,—

longer than that,—hauling dressed meats, and the way the rates were made a packer would come around and say: 'Well, now, Mr. Great Western Road, if you want to haul any of that dressed meat, you have got to,' they say they are very fond of you and they will give it to you in preference to anybody else at the same price, but you have got to make the same price. 'Well, what is the price? The tariff rate is 23 cents, isn't it? What price have we got to make to haul it?' 'Well, we do not want to make a price on your stuff. What price will you haul it for?' 'Well, the tariff rate is 23 cents.' 'Would 20 cents do?' 'No, no; oh no, not 20 cents.' 'Well, will 18 cents do?' 'Oh no, no.' 'Well, what rate will do?' 'Well, we can get it hauled for 16 cents. If you want any of it at that price you have have it.' Well, we generally take it. That is the way the rates were made, by bargaining. It was all billed at 23 cents, and then if the rate agreed upon was 16 cents, why, it was rebated.

It went along that way for a great many years, and finally after one of these—I have forgotten whether it was the Elkins' law or what law was passed, the railroads had sort of a spasm, and they wanted to put up the rate. I think it was one of the decisions of the Interstate Commerce Commission in the Alton case that the rate on packing house products per hundred pounds must be higher than the livestock rate, so they wanted to put up the rate and they were afraid to make rebates, and so forth, and the packers came around and made the proposition that they would give us 20 cents per hundred to Chicago, and 18½c per hundred forthrough business, and give us a certain percentage of their output every month—not every year, but every month—so that we had a steady quantity all the time, provided we would put in a tariff of that kind and keep it in force for seven years, and that is the way the tariff was made. We knew the rates were more than we ever got before."

In a circular letter to the stockholders of the Chicago Great Western Company, dated August 4, 1902, issued by the President of that company at the time the contract with the packers was made, and which letter was introduced in evidence by the complainant, and will be found at pages 1911 to 1916 of the record, there appears a very complete statement of the competition that had existed for years for the traffic in packing house products and fresh meats. As stated before, this was introduced in evidence, not by the defendants, but by the complainant, and it shows in a much more elaborate way than was developed in Mr. Stickney's testimony on the stand the organization of the packers and the methods in which this business had been competed for. These large corporations each had skilled traffic men who were able to control the traffic of the corporation that they represented; the amount of such traffic was enormous, and for reasons that have heretofore appeared, highly desirable to the railroad companies; for even if transported at low rates, so long as there was any profit over and above the actual cost of transportation, it swelled the volume of traffic over which the general expenses of the road could be spread. For years prior to the spring of 1902, when injunctions were issued out of the Circuit Court of the United States against various of the roads competing for this business, enjoining the payment of any further rebates, the published rate had not been observed, but by the stress of competition the rates had been cut by means of rebates, to as low as 16 cents per hun-

dred pounds. No railroad knew what another was getting for the service, and all were competing for the business. Although the full published rate was collected for a month, it was understood by the railroads that the pressure that could be exercised by the tender of the enormous traffic would necessarily result in successive rate cuttings by the different lines in consideration of traffic, so that eventually the rate might be reduced to such a point that the business would have to be transacted at a loss, or certain of the roads retire from the competition. With this state of things existing, the contract with the Chicago Great Western Railway Company, by which the packers agreed to pay 20 cents per hundred pounds on traffic terminating in Chicago, and 18½ cents per hundred pounds on traffic destined to the east, for a period of seven years, and to give to that road a certain percentage of the business, irrespective of what rates might be made by other lines, in consideration of which the railway company agreed to publish and maintain such rate for that period, was entered into. As found by the trial court, it appears clearly by the testimony that this contract did not originate the competition, but it was in the effort to save a portion of this business at a living rate, and prevent competing lines from taking it all away by cutting rates, that this contract was made. As soon as it was known that this arrangement had been entered into, it is apparent that the other lines were compelled to cut the rate or the packers would have turned over to the Chicago Great Western the en-

tire traffic or such portion thereof as the facilities of that railway would permit it to carry. Therefore, the testimony of the various witnesses that this rate was made by competition, is, both as to the Chicago Great Western and the other lines, absolutely true; and what doubt can there be on the uncontradicted testimony of Mr. Stickney alone, that the trial court was entirely justified not only in finding that the rate was induced by competition, but that the competition was genuine and in no way fictitious, and that it did not result from any agreement between the defendants. And not only was this rate fixed by competition, but the rate upon livestock was also fixed in the same way, although the competition was necessarily less severe, as the packing house traffic was concentrated in the hands of parties who could throw an enormous volume to whichever line they chose. Mr. Crosby testified, page 239, that the rates on cattle and hogs are affected by competition and regulated by competition, as between carriers and as between markets. Again, pages 250 and 251, Mr. Crosby said, in answer to a question as to whether the railways other than the Chicago Great Western, can for any reason increase the rates on packing house products and fresh meats from the Missouri River to Chicago:

> "A. No, sir, not if they want to engage in the business.
>
> The Court: Why?
>
> A. Because there is a contract with these roads in effect, 20 cents from the Missouri River to Chicago.

Q. A contract on the part of the Western Company alone?

A. Yes, sir.

Q. Why cannot the other companies go ahead?

A. Well, we cannot handle business between the Missouri River and Chicago at a higher rate than our competitors do.

Q. Because when one company acts you must all act?

A. The action of one will regulate that of all.

Q. That is, providing you get any business?

A. Yes, of course, we can go out of business."

At page 399, Mr. Keepers, of the Illinois Central, after stating that he considered the rates on cattle and hogs unreasonably low, was asked:

"Q. Are they in any way affected by competion?

A. Entirely so, otherwise they would be much higher."

At page 417 he testified as follows:

"Q. Can a railroad other than the Chicago Great Western fix rates on packing house products and fresh meats from St. Paul and Missouri River points, and other points, without abandoning the traffic?

A. They would probably have to abandon the traffic. If the volume was so great that the Great Western could not haul it, they might give us some business, but probably it would not amount to much. I think the Great Western would increase its facilities so as to do it all. It would mean abandoning the business.

Q. I understand that the relation between the rates on livestock and the rates on packing house products has been changed, not by increasing the rates on livestock, but by re-

ducing the rates on packing house products. Is that correct?

A. That is correct."

Mr. Hiland, of the Chicago, Milwaukee & St. Paul, at page 506, after stating the existing rates on cattle and hogs are too low, says that they are induced by competition between roads and various markets. At pages 510 and 511, in answer to questions by the court, testified:

"The rates on dressed meats and finished products between the Missouri River and Chicago have been reduced from the points that I have suggested, so that they gradually got down below or in the neighborhood of the cattle rates. They were reduced still lower by competition prior to the Great Western contract. That has been done by competition, but the Great Western contract carried it to a point where it was a minimum. It got to a point where there was no opportunity to go under or below that without carrying it—I won't say at a loss, but the roads determined that they would not make any less rate than that. Instead of adopting their usual practice of one road cutting a rate and the other cutting it lower, they finally got down to what we might term rock bottom. They said, 'This rate has got now to a point where nobody wants to go any lower.'

Q. This twenty-cent rate on the product was fixed entirely by competition among the carriers, competition among the railroads that carry that product, that is what fixed that and there was not any market consideration about it?

A. Competition fixed the rates as they exist at the present time on both the finished product and the live animal."

Again, on page 511, when asked as to the circumstances which led up to the making of the Great Western contract, he answered:

"A. In answering that question I do not know of my own knowledge but only by hearsay as to what led to the contract and the making of it by the Great Western road. In my opinion the Great Western road in making that contract were governed by hearsay in the making of that rate, the same as we have all been governed in the making of the rates when we want business. We ascertain, as near as possible, what the other fellow was getting, and then we meet that rate or as near that rate as would enable us to carry what we want."

Mr. Tittemore (page 586) testified:

"Q. Is it not a fact that from the situation that exists you must accept the traffic at the rates which the other roads are pleased to publish to Chicago?

(It will be remembered that Mr. Tittemore's roads are the Minneapolis & St. Louis and the Iowa Central, which reach Chicago only through connections.)

A. Competition fixes the rates; we must accept or build into Chicago. * * *

Q. And if you built into Chicago it would be the same situation, you still would have to accept the rates that others were making?

A. Yes, sir."

Mr. Gower testified, page 720:

"Q. Are those rates affected or not affected by competition, I mean the rates between the Missouri River and Chicago?

A. Oh, they were put there originally by competition.

Q. Sir?

A. It was competition that put the rates there."

At page 761:

"Q. Were these rates from the Missouri River on the product of livestock made lower as a matter of judgment, or not?

A. The rates from the Missouri River were made to meet the competition of another road that established the rate."

Mr. McCullough, vice president of the Chicago & Northwestern, testified, page 939:

"Q. Should your road attempt to charge higher rates on packing house products and fresh meats from South Omaha to Chicago and points east than are charged by the Chicago Great Western Railway, under its contract with the packers, what would be the effect upon your traffic in packing house products and fresh meats?

A. We would abandon it to the other roads, whose rates are less than ours.

The Court: Do you get your share of the traffic now?

A. Yes, sir, the rates being the same. * * *

Q. Now, Mr. McCullough, if you should attempt to raise your packing house rates, so as to make them as high as your livestock rates. I understand you would have to go out of the business, as long as the contract between the Great Western and the packers continued?

A. Unless all the other railroads did the same thing.

The Court: Including the Great Western?

A. Yes, sir. * * *

Q. And the only effect of it would be to drive you and the other lines that operate between the Missouri river and Chicago out of the packing house business?

A. We would retire from the business, and turn it over to the Great Western road."

At page 953, Mr. McCullough testified:

"In making the rates on the 8,000 miles of railroad with which I am connected, there are three features, three conditions that fix about every rate we have in force on our road.

First, is competition. One time our company thought that when a rate was made by a competing road that was less than our company thought we could do the business at, we thought for awhile that it was not necessary for us to meet those reduced rates. Take a country station, for instance, where there is a local station on our road, and a local station on a competitive road, the stations being six or eight miles distant.

We found that the farmer would, of course, drive his livestock and sell it at the station where he would get the most money for it. If the rate from our station was higher than the rates from the competing station on the other road, he gets a better price, of course, on the other rate, and the livestock, instead of being driven to our station was driven to the station on the other road. We found that where the farmer sold his cattle he sold his grain, provided he could get as much money for his grain at the station where he sold his cattle as he could at other markets. We found that where he sold his cattle and grain he also sold anything else, the product of his farm. We also found that where he sold his cattle and his grain and his farm products, he bought his lumber, and he bought his coal, and he bought his dry goods and his groceries, provided they were sold as cheap at that station as they were at the station on the other road.

Since that time it has been the policy of our company to adopt at our stations rates on freight of all kinds, particularly livestock or freight that can be moved readily from one part of the country to another, the rates adopted by our competitors, without regard

> to whether the rates were what we considered remunerative or whether they were otherwise. That, I think, illustrats how the tariffs, 80 per cent. of the rates now in force on the 8.000 miles of road I am connected with, are adjusted."

Mr. McCullough then went on to give the other elements entering into rate-making as a practical question, and said that these elements could be treated under the head of commercial conditions.

At pages 955 and 956, he further elucidated the manner in which rates are made, and included the cost of service as one of the elements.

Mr. Ripley, of the Santa Fe, testified, at page 1101:

> "Primarily, one principal rule which should govern in the making of all rates is what the business will bear. I don't mean by that all that the business can bear, or all that can be extorted from the business, but what the business will bear, having regard to the value of the service to the shipper, which includes the value of the commodity transported; second, the cost to the railroad company, and, third, the relation of the goods, which are the most valuable to those which are the least valuable.
>
> It becomes necessary to bring all of those considerations to bear upon the judgment that is exercised in the making of rates where the carrier has complete control of the rates; but that rule or that method, which is the proper way, is, of course, entirely set aside at times by reason of necessity. It is entirely set aside when competition enters into the case, where it is not a question of what ought to be, but what you can get."

He followed this statement with the testimony heretofore quoted, to the effect that cattle rates have always been too low, and then proceeded:

> "Q. When you speak of rates on other commodities, do you mean packing house product and dressed meat?
>
> A. The packing house products and dressed meat has been a later development, and the rates on those articles have been made not upon any theory of rate-making, and not by the railroad companies, but by the shippers. That is to say, the influence of competition has been such, and the concentration of the business in few hands has been such, that they have been able to dictate terms to the railroads."

While it clearly appears by this testimony that the rates upon packing house products were made by competition of the most strenuous character, and that the rates upon livestock have also been made by competition, still, there is no evidence in the record that the rate upon the one commodity is affected by that upon the other. As we have shown heretofore, all the livestock moving from the points along the Missouri river, and from South St. Paul, is carried on a proportional rate, which is less than the established rate on the product.

The sixth finding of fact by the trial court is:

> "THAT THE PRESENT RATES ON LIVESTOCK HAVE NOT MATERIALLY AFFECTED ANY OF THE MARKETS, PRICES OR SHIPMENTS; THAT THEY ARE REASONABLY FAIR TO CHICAGO AND TO THE SHIPPERS; THAT THE SHIPMENTS OF LIVESTOCK FROM POINTS BETWEEN CHICAGO AND THE MISSOURI RIVER AND ST. PAUL ARE AS GREAT IN PROPORTION TO THE VOLUME OF BUSINESS AS BEFORE THE PRESENT RATES WERE MADE; THAT THE MAJORITY OF THE LIVESTOCK COMES TO CHICAGO FROM POINTS AS NEAR AS 150 MILES THIS SIDE OF THE MISSOURI RIVER AND ST. PAUL, AND THAT THE LOWER RATE GIVEN TO PACKERS DOES NOT SEEM TO DIRECTLY INFLUENCE OR INJURE THE SHIPPERS OF LIVESTOCK."

The court is clearly justified in each of the statements contained in this finding. The adjustment of the rates in controversy became effective in August, 1902. For several years prior to that date, the published rates on the product from the Missouri river to Chicago had been 23½c a hundred, the same as on livestock from the Missouri river zone, so called, which, as before stated, extends about 150 miles east of the Missouri river. The court will take judicial notice of the statistics contained in the United States Census Reports. An inspection of pages 143 214 and 220, of volume 5 of the 12th United States Census Agricultural Report part 1, discloses the following significant facts:

Illinois, in the year 1890, produced 3,063,000 cat-

tle, exclusive of calves, and in 1900 only 2,308,100, a decrease of over 22%.

In Iowa, in 1890, there were produced 4,895,000, and in 1900, 4,077,000.

In Minnesota there is a small decrease of about 5%.

In Wisconsin, an increase of 2.6%.

In Missouri a decrease of nearly 20%.

In North Dakota, an increase of 78%.

In South Dakota, an increase of nearly 68%.

In Nebraska, an increase of 13%.

In Kansas, an increase of 12%.

Colorado remained about stationery.

Indiana, which is partially tributary to Chicago, decreased nearly 17%.

These figures show that during the ten years from 1890 to 1900, and there was no evidence that the ratio of increase and decrease had changed after 1900, the country naturally tributary to Chicago fell off in production of cattle, while the country beyond the Missouri and northwest of St. Paul had largely increased in its production. The showing as to hogs is even more significant. Illinois decreased two-tenths of one per cent. in the ten years named, falling from 5,924,000 to 5,915,000. At the same time Wisconsin increased nearly 50%; Minnesota increased nearly 69%; Iowa increased 17%; Missouri decreased about 9%; North Dakota increased 108%, although its production was still very small; South Dakota increased 39%; Nebraska increased 8%; Kansas decreased about 10%. In the Indian Territory there

was an increase from 1,572 head, in 1890, to 650,000 in 1900; in Oklahoma, from 22,000, in 1890, to about 584,000 in 1900. It is a matter of common knowledge that Oklahoma has developed faster than any other agricultural region in the United States since 1900. Hence the production there has undoubtedly very largely increased over what it was in that year. It will be seen from these figures that the increases have been in territory naturally tributary to the Missouri river and St. Paul markets, and the decreases in the territory tributary to Chicago. Therefore, we would naturally look for a substantial decrease in the receipts of livestock at Chicago, irrespective of railroad rates, and if, as is alleged in this case, there is an undue discrimination against Chicago, which has an effect on the movement of traffic, we would expect to see a tremendous falling off in the shipments to the Chicago market. An exhibit attached to the testimony af Mr. W. J. C. Kenyon, general manager of the Omaha Stockyards & Ry. Co., appearing at page 1022 of the record, gives the total receipts of cattle and hogs at the Chicago stockyards for the years 1901, 1902, 1903, 1904, and the first seven months of 1905, carrying the records down as near as possible to the date af the trial of this case in the court below. It will be observed that 1901 was the year before the rates complained of were put in force, and the old rates continued during a little over half of 1902. It appears that in 1901 there were received at the stockyards at Chicago, 3,213,220 head of cattle; in 1902, 3,193,-

306, being substantially no change, but in 1903, the first full year that the alleged discriminating rates were in force, the receipts were 3,704,299; in 1904, 3,520,684, and in the seven months of 1905, 2,060,445; so that although the production of cattle and calves was decreasing in the territory near Chicago, still the stockyards at Chicago, with the alleged disadvantage of the present adjustment of rates, show an increase in receipts. Kansas City, on the other hand, which must have been the chief beneficiary of the enormous growth in Oklahoma and other points in the southwest, remained substantially stationary; in fact, showed a slight decrease, the figures being 2,279,166 in 1902, the year the present rates went into effect, and 2,137,112 the following year, and 2,163,471 in 1904. Omaha remained about stationary from 1902 to 1903, increasing only 60,000 head, and in 1904 decreased about 130,000. St. Joseph showed a slight increase, but from 1901 to 1904 the increase was only about 12%, although new packing houses had been built at St. Joseph during the time. At Sioux City there was an actual decrease of about 15% from 1902 to 1904; St. Louis, an actual decrease; in St. Paul the increase was only about 25%. In the shipment of hogs there was a decrease at Chicago between 1901 and 1902, and a slight decrease from that year to 1903 and 1904, but the difference between 1902 and 1904 amounted to only about 8%. In Kansas City there was a decrease between 1902 and 1904 of a somewhat smaller per cent. At

St. Joseph, a decrease of about 2%. At Sioux City, an increase of about 11%; at St. Louis, a substantial increase, and in St. Paul, an increase about 25%; but the receipts of hogs at Chicago for the year 1904 amounted to 7,238,746 head, as against only 8,178,458 at the combined markets af Kansas City, Omaha, St. Joseph, Sioux City and St. Paul. These are the markets that are claimed to be the beneficiaries of an undue discrimination against Chicago, and although the livestock is largely raised near to these markets, and vast quantities in the territory far beyond the Missouri river and St. Paul, still there are carried through these places, and from territory naturally tributary to them, almost as many head of hogs, which find their market in Chicago, as are marketed at these places combined. In the case of cattle, the total receipts at Kansas City, Omaha, St. Joseph, Sioux City and St. Paul, in 1904, were 4,414,850 head, and at Chicago alone, 3,520,684. With such a showing as this, it certainly requires a good deal of courage to say that Chicago is suffering from an *undue discrimination* against it.

At pages 999 to 1003, Mr. Kenyon explained this table, and the other exhibits used in connection with it, and his testimony demonstrated clearly that the bulk of the receipts at Chicago come from territory that by reason of its distance is naturally tributary to the Missouri river or St. Paul markets, and that instead of losing business, either by reason of the freight rate situation, or by reason of the decrease in production in the territory near

to Chicago, and the increase in production in the territory near the other markets, it appears that Chicago is continually increasing its business at the expense of the other markets.

Another thing mentioned by Mr. Kenyon, and other witnesses, is that in 1904 there was a strike at the stockyards in Chicago, lasting from the 12th of July to the 12th of September (see Kenyon, p. 1009), but in spite af that fact, it is shown by the table that the receipts of cattle were larger by 300,000 in 1904 than 1901, before these alleged discriminating rates went into effect.

Mr. Baker, the secretary of the Livestock Exchange of Chicago, testified on cross-examination, at page 1447, that the facilities for slaughtering at the Missouri river points were as good as at Chicago, and that at St. Joseph they were superior to the average of Chicago, on account of more modern construction and machinery. Further, Mr. Baker testified, at page 1450, that the by-products of livestock are practically of the same value in Chicago and Kansas City.

Not only does the evidence show that the market in Chicago is in a healthy state, and the receipts of livestock have been maintained in spite of the decrease in production in regions tributary to that city, but it also appears that, instead of the freight rates being so adjusted as to discriminate against Chicago, they are so made as to favor that market as against the packers at the Missouri river, South St. Paul, and intermediate points. Packing houses have been established at Cedar Rapids, Des Moines,

Marshalltown and Ottumwa, Iowa, and at Austin, Minnesota. There are other small packing houses at interior towns, but the principal ones are located at the points named, and each one of these points, as well as South St. Paul and Missouri river points, is handicapped by the adjustment of rates in favor of Chicago.

General Flower, president of the St. Paul Union Stockyards Co., testified, at page 775, that the train service is arranged to favor Chicago, and that it takes as long to get stock to St. Paul from a point, say 100 miles south of that city as it does to get it to Chicago, which is between 300 and 400 miles; that is, the train schedules are so arranged as to force the stock in that direction, if possible. On page 776, General Flower spoke of an interview that he had with the traffic manager of the Northwestern, in which he endeavored to have this policy changed, but without any result. Referring to Mr. McCulough, the traffic manager, he says: "He was very courteous and pleasant, but he frankly told me it was according to the policy of his line to do everything they could to increase its revenue, and that the long haul was what they were after, and that he could not do anything about changing the plan that they had adoped." And he shows, at page 777, that the chief competition is between South St. Paul and Chicago, and that the receipts of cattle and hogs from southern Minnesota points, near to South St. Paul, decreased during the five years from 1900 to 1904. Flower's Exhibit 1, appearing on pages 779 to 783, inclusive, is very in-

structive. It shows the receipts by carloads from the various counties in southern Minnesota, the distances from the county seats of those counties, and the rates on cattle, hogs and sheep to St. Paul and Chicago, respectively. A mere glance at this table is sufficient to show why, other things being equal, livestock would move to Chicago, when we take into account the rate on packing house products from St. Paul to Chicago or to the Indiana-Illinois state line, if the product is destined to the east. It will be seen that the sum of the rates on the livestock into St. Paul and the rate on the product from there to Chicago largely exceeds the rate on the livestock from the initial points to Chicago direct. Not only is Chicago favored in this way, but it is given a large advantage in the case of through shipments from the ranges of the northwest. On page 786 is a table showing the through rate to Chicago, and the rate to St. Paul, and the distances to those places, respectively, from points on the lines of the Northern Pacific, Great Northern and Soo Railways. This western country is naturally tributary to St. Paul, and not to Chicago; and still it will be seen that the rates from the range country in Montana to the two places, respectively, are so arranged that the rate into St. Paul, plus the product rate to Chicago, exceeds the through rate on livestock from the point of origin to Chicago. The only places where St. Paul is given any advantage are on shipments from certain points in the Red River valley. The proportional from St. Paul to Chicago had been raised just be-

fore the trial, in the effort to prevent manipulation of billing. Mr. Foster, of the firm of John Morrell & Co., Limited, pork packers at Ottumwa, Iowa, testified (page 644) that Chicago was a competitor with his house at nearly all the stations from which hogs were shipped to Ottumwa, and at page 642, says that the sum of the rates on hogs into Ottumwa and the product from there to Chicago, is in all cases higher than the through rate from the point of origin to Chicago, *and in some cases as much as ten cents a hundred more.* It having been suggested that this difference is somewhat made up in the loss in weight caused by killing and packing, it was brought out in the testimony of Mr. Foster that the weight of the product shipped out, including the casings, barrels or boxes in which it is placed for shipment, in and out, amounts to from 115 to 120 per cent. of the weight of the hogs shipped in, and that these boxes and barrels have to be brought to Ottumwa from points in Wisconsin and through the Peoria gateway in Illinois. This packing house at Ottumwa is a large concern, employing from 900 to 1,300 people, and they are enabled to do business with this handicap as against Chicago, largely by reason of the fact that there is no livestock exchange or band of commission men there to exact a commission upon the livestock sold to the packers. (p. 643.) It further appears that there was formerly a lower rate to Chicago on packing house products from Ottumwa than the hog rate, but years ago the Interstate Commerce

Commission changed it to an equality, with the result that Morell & Co. have lost to the Chicago packers 60 to 75 per cent. of the trade in Illinois territory naturally tributary to Ottumwa, which trade they formerly enjoyed (p. 643, 644). It will be seen that the Chicago packers are, by the adjustment of rates, enabled to ship the hogs through to Chicago and then send the product back on the same roads into this competitive zone in Illinois, and largely drive the Ottumwa packer out of the market.

Mr. Eberhart, secretary of George A. Hornell & Co., pork packers at Austin, Minnesota, testifies, page 657, and the following pages, with reference to the disadvantage under which his firm labors in competing with Chicago. On pages 659 to 663, there will be found a table showing the rates from various stations to Austin, together with the mileage to that point, and the rates to St. Paul and Chicago, with the mileage to those points, respectively. The court will also observe a column headed, "Our Rate," which is explained, on page 665, to be the rate that Hornell & Co. are obliged to make to shippers from various points to Austin in order to prevent hogs going through to Chicago. For instance, from the town of Bryant, South Dakota, 280 miles from Austin, the railroad rate is 29½c; while to Chicago, 632 miles, considerably more than twice as far as Austin, the rate is only 38c; and as the product of the Austin packing house has to be sold in competition with Chicago, and hence their prices are largely based upon Chi-

cago prices, it is impossible to take from the shipper the total product rate from Austin to Chicago and the hog rate from Bryant to Austin, as that would bring the price at the initial point so far below the Chicago price. Therefore, Hornell & Co. have to absorb a part of the hog rate into Austin, and in the case of Bryant, the part that that company absorbs amounts to 5½c a hundred, so that they make the rate to the shipper 24c, although the company itself is compelled to pay 29½c. On page 665 the witness testifies that the packing house rate from Austin to Chicago is the same as the St. Paul rate, 15.7c. The rate from Bryant, South Dakota, to Austin being 29½c makes an aggregate of 45.2c as against the direct livestock rate from Bryant to Chicago of 38c, or a discrimination in favor of Chicago and against Austin, of 7.2c. And still the Chicago Livestock Exchange is not satisfied, and claims that there is undue discrimination against it. The witness further testifies, page 666, that the livestock rate from Austin to Chicago, is 25c, and shows that if that rate was reduced to 15.7c, as the complainant asks, that is, if it was put on a parity with the packing house rate, a similar reduction would have to be made from all points beyond Austin; and therefore, the handicap of 7.2c under which Austin labors in competition with Chicago would be increased 9.3c more, or a total disadvantage of about 16½c, and even with the saving that is effected by buying hogs direct without a commission to the members of the Livestock Exchange, it would be impossible to do business at Austin with a profit.

Mr. Yapp, Assistant Secretary of the Minnesota State Railroad & Warehouse Commission, who has been for many years the statistician of that Commission, states that in the year 1902, there were received at South St. Paul 5341 car loads of cattle, hogs and sheep from points in southern Minnesota, as against 9305 cars af cattle, hogs and sheep shipped to Chicago from the same section, although the state line of Minnesota is only 120 miles south of St. Paul, and it is 400 miles to Chicago from St. Paul. (See pages 224, 225). He also testifies on pages 227 and 228, to the advantage possessed by the Chicago market over the St. Paul market on shipments fram points northwest of St. Paul. On page 229 he shows that in 1904, two years after the change in the rate which the complainants think so destructive to Chicago, there were listed for taxation in Houston County, Minnesota, 26,704 head of cattle. This is the county in the extreme southeast portion of Minnesota. The South St. Paul market did not receive a single head of these cattle. Fillmore County, on the southern border of the state, next west of Hauston, showed 32,992 head of cattle listed for taxation in 1904, and the St. Paul market received 21 head. There were 41,000 in Freeborn County, Minnesota, being another county on the southern border, about two and a half times as far from Chicago as from St. Paul, but only 318 head of cattle were shipped to the St. Paul market, and those counties are in the territory where St. Paul is in competition with Chicago. (See pages 229, 230). It further appears from his testimony

that while Swift & Co. has a packing house at South St. Paul, Armour & Co., Schwarzschild & Sulzberger, Armour Packing Co. and the National Packing Co. all have distributing stations at various points in Minnesota, which are supplied from Chicago, Kansas City and Omaha.

> "Q. The fact is that the farmers in Minnesota raise the hogs and cattle which are shipped through to Chicago, manufactured into packing house products and fresh meat and shipped back up into Minnesota to sell, isn't that true?
>
> A. Yes, sir." (Page 233).

Mr. Eaton, President and General Manager of the Sioux City Stockyards Co., prepared two very instructive tables, introduced as Eaton Exhibit A & B. See Record, pages 878 to 889, inclusive. These tables show an adjustment of rates on cattle and hogs distinctly favorable to Chicago as against Sioux City. It will be recalled that Sioux City is a Missouri river town, so that the product takes a 20c rate to Chicago, and it will be seen from this table that the through rates on livestock from South Dakota and other points naturally tributary to Sioux City are very much less than the sum of the livestock rates into Sioux City and the product rate out. We instance Madison, South Dakota, as a representative town. It will be found on the table at page 881. The distance to Sioux City is 150 miles. The rate on hogs 21c; the distance to Chicago 583 miles, the rate on hogs 32c. Add 20c on the product to the 21c, the in rate to Sioux City on

the hogs, and we have 41c as against the through rate on the livestock of 32c, or discrimination in favor of Chicago of 9c a hundred. It would seem that an examination of this table must be convincing that the claim of discrimination made here by the real complainants, the commission men of Chicago, is frivolous. In so far as there is discrimination in favor of one locality as against another, it is not against Chicago, but is in favor of Chicago and against the interior markets. Mr. Eaton corroborates General Flower as to the relatively better service to Chicago. See page 891.

Mr. Koch, Traffic Manager for T. M. Sinclair & Co., Limited, at Cedar Rapids, Iowa, testified, (page 598), that his firm slaughters about 600,000 hogs a year; that they have about a million dollars invested in their plant; that the bulk of their purchases of hogs is made in the state of Iowa. At page 600 he said that the average freight rate on the live animal from the points of purchase to the slaughtering house at Cedar Rapids, on Iowa shipments, was 11c a hundred, and the rate to Chicago on the finished product was 13½c. Having testified that it was necessary at times to purchase live animals at St. Joseph, Kansas City and Chillicothe, Missouri, he stated that the rate to Cedar Rapids from those points was 18½c and 15c respectively. At page 601 he said that his firm could not purchase hogs further east than the first tier of counties beyond Cedar Rapids, because of the rates; that the competition of Chicago in view of the adjustment of rates was such that it was impossible.

He illustrated that by reference to points along the Mississippi River, like Clinton, where the rate on the hogs to Cedar Rapids and on the product from there to Chicago would be 24c a hundred, while the direct rate on the livestock from Clinton to Chicago is only 15c. Under the present adjustment of rates there is only one outlet for the hogs, and that is Chicago. At page 602 he testified that the annual production of Iowa is about ten million of hogs; that there are slaughtered at the packing houses in the state outside of the plants at Sioux City approximately a million and a half.

Mr. Eaton testified, (page 893), that the total receipts at Sioux City are a little over 1,100,000. In view of the fact that a large number of the hogs at Sioux City come from outside of Iowa, it is probable that the sum of the million and a half and the 1,100,000 or 2,600,000, would fairly represent the number of hogs marketed at other points than Chicago. General Flower testifies that a large amount of packing house products moves east from St. Paul by way of the lakes. (See p. 795.) Mr. Yapp, at page 222, gives similar testimony. Nevertheless the live animal goes the long distance to Chicago rather than the short distance to St. Paul or other towns having easy access to lake ports. Mr. Koch sums up the rate situation in Iowa as between Cedar Rapids and Chicago, at page 604, by showing that the in rate to the packing house at Cedar Rapids on the live animal, plus the rate on the product from there to Chicago, averages 24½c, as against an average direct livestock rate to Chicago of 21c,

which is the advantage the Chicago packer has over the packer at Cedar Rapids. On page 605 he testifies that 35% of the product of his house is sold in Chicago, or on the basis of the Chicago local rates; the other 65% of the product is exported.

The seventh finding of fact of the trial court is:

"THAT THE RATES FOR CARRYING PACKERS' PRODUCTS AND DRESSED MEATS WERE REMUNERATIVE. THEY DID NOT PAY ANY PORTION OF THE FIXED CHARGES AND INTEREST OF THE RAILROAD COMPANIES, NOR ITS FULL SHARE OF THE OPERATING EXPENSES, BUT THEY DID PAY MORE THAN ITS COST OF MOVEMENT AND LEAVE SOMETHING TO APPLY UPON OPERATING EXPENSES."

It is unnecesary to discuss the testimony supporting this finding, as we have already called attention to Mr. Peabody's evidence and that of other witnesses, which shows that the court was justified in the conclusion stated.

The eighth finding is as follows:

"THAT THE WELFARE OF THE PUBLIC, INCLUDING THE SHIPPERS, CONSUMERS, AND ALL LOCALITIES AND MARKETS, DOES NOT SEEM TO BE MATERIALLY AFFECTED BY THE PRESENT RATES."

Mr. Baker, Secretary of the Livestock Exchange, on cross-examination identified the Chicago Daily Drovers' Journal of Monday, October 2nd, 1905, (Monday being the principal market day

as we have shown and the witness being on the stand Wednesday, October 4, 1905) and stated that it was a generally accredited journal, regarded as authentic and reliable by people who deal in livestock. (See pages 1450 to 1452). He read from this journal prices current at the Union Stockyards in Chicago for the day in question. An inspection of these prices, both for cattle and hogs, shows such a variation in price in the same grade of stock, that it is apparent that a difference of 3½c a hundred pounds, which is all that is complained of here, could have no appreciable influence in preventing cattle from moving to Chicago. Without going into these figures in detail, it is sufficient to say that the same grades of cattle fluctuate from twenty-five cents to a dollar a hundred pounds in a single day; and hogs of the same grade vary from 7½c a hundred to as much as $2.25 a hundred on the same day. It being established that prices fluctuate to the extent shown in the list quoted from, and that the Chicago market has prospered even more than the other markets since the present rates were in force, it seems clear that the court was bound to find, as it did, that no undue discrimination was practiced against the Chicago market. What amounts to undue discrimination is a question of fact dependent upon the circumstances of the particular case. The testimony bears out the finding of the court that such discrimination did not exist; that the markets have not been affected; that cattle and hogs have not been diverted from the Chicago market.

There has been a practical test of the question as to whether a very extreme change in the rate would make any difference in the movement of the traffic. At the time the Great Western contract was made, the Atchison, Topeka & Santa Fe Railway Co. put in a rate of 12c a hundred pounds on livestock from Kansas City to Chicago. (See Ripley's testimony, page 1142). The Santa Fe has never agreed with the other roads as to the matter of rates on livestock and packing house products, and is alone obeyed the order of the Commission and put in a 20c rate on livestock from Kansas City to Chicago, so as to have that rate on a parity with the 20c rate on the product. At page 1142 Mr. Ripley stated that he regarded the 20c rate as too low, and the 23½c rate which the other roads charge from the Missouri River zone, as too low. He then gave the following testimony:

> "Q. Then why was it that you put a 12 cent rate in force at the time these packing house rates went in? You put in a 12 cent rate, did you not, on livestock from Kansas City and intermediate points to Chicago?
>
> A. We did for a while. Well, without going into it at any very great length, it occurred to us, when this reduction was made in the packing house product and dressed beef, that it was so outrageous that it ought to be fought out. Our first disposition was to fight it out. We put in a rate of 12 cents, thinking possibly it would bring about a reform, and without having made very many figures on it, simply guessing at it, it was our opinion that the 12 cent rate on cattle was about as good as the 20 cent rate on packing house product; but we modified our position in that regard, after a little while, and advanced our rate."

Mr. Peabody testified, (pages 1375, 1379 & 1380), that no more stock moved over the Santa Fe road while that 12c rate was in, than before. He states that they had this reduced rate, which was 11½c under the rates by the other lines, in force for four months and twenty days, and took it out because it did not have the effect that they thought it would have. He says the other roads did not meet the rate, and that he had examined the record, and thought it did not increase their relative shipments during those months, and that they shipped more stock the year after, with the 20c rate during the same months of the year, than they did when the 12c rate was in force.

There is another matter that should be considered, which justifies the existence of the markets on the Missouri river and at St. Paul, and that is the desirability of near-by markets. Cattle and hogs when transported for long distances suffer a great shrinkage in weight. Mr. Sykes, a stock raiser and shipper of livestock living at a town in Iowa, who was called by the complainant, testified, at page 1186, that a car load of stock weighing from 24,000 to 26,000 pounds, would shrink in transit from his station to Chicago, from 1500 to 2000 pounds. He lives at a place 438 miles from Chicago. (Page 1170).

Taking the average shrinkage between the two figures he names, as 1750 pounds, and we have a loss of $70 a car load, computed on the basis of $4.00 per hundred pounds, which is less than the

average price given by the Drovers' Journal quoted by Mr. Baker at page 1451.

Mr. Kenyon testified, pages 1011 & 1012:

> "You have said that hogs were supposed to travel short distances to market. Why?
>
> A. It is generally supposed that taking the summer months, the hogs lose in weight by reason of the hot weather. The hogs are raised more plentifully than cattle. Shippers seem to desire to make their markets for them at near by points. * * * *
>
> I think hogs will shrink more traveling 500 miles than they will in traveling 100, and I think a steer will shrink more, too.
>
> Q. So do I. Is it an advantage to the shipper, therefore, to have a near by market?
>
> A. It usually is."

Under another head we have called attention to the necessity of spraying livestock in warm weather to alleviate their sufferings in transit, and to the fact that stock frequently get down in the cars and are killed, so that reasons of humanity would seem to require that they be slaughtered as near to the point of production as possible, and it must be that the product is more suitable for human food when the stock is not compelled to undergo the hardships of a long journey. Mr. Kenyon gives another series of reasons why it is an advantage to a shipper to have a near by market, at page 1012, as follows:

> "When the near by market relatively pays him as good a price as the distant market and he has less freight to pay. He has less shrinkage on his production. It enables him in many cases to get his money quicker. He does not have to be so long away from home."

All these things are proper to take into consideration in determining the question of whether there is *undue* discrimination in favor or against any particular market or class of traffic.

The last finding of fact is in substance that

> WHILE IT IS THE USUAL CUSTOM FOR RAILROADS TO CHARGE A HIGHER RATE FOR THE FINISHED PRODUCT THAN FOR THE RAW MATERIAL, THAT RULE IS NOT UNIVERSAL, AND FOR SIXTEEN YEARS OUT OF TWENTY-THREE BETWEEN MISSOURI RIVER POINTS AND ST. PAUL AND CHICAGO, THE PUBLISHED RATES ON LIVESTOCK WERE HIGHER THAN ON DRESSED MEATS AND ON PACKING HOUSE PRODUCTS.

Mr. Hiland testified, page 509, that he had in mind a case where the manufactured product was charged materially less than the raw material, and he gives the reason for giving a lower rate on cotton goods from the South than on raw cotton, as follows:

> "If I was engaged in the handling of the traffic I would make the raw material, if possible, I would make the rate so that the raw material would be used as near where it is raised as possible, and to ship it out to New England if I could get a higher rate than the manufactured product, I would make it.
>
> The Court: Why would you do that?
>
> A. I would do that for the purpose of developing the country that the railroad for which I was employed might increase their traffic, and they would increase it by reason

of getting a greater population, more passenger traffic and more incidental freight traffic and would encourage the further development of the soil itself. Instead of having 160 acres cultivated I would want 640 cultivated and to do that I would make it an object to have the material manufactured so that it could be placed in less bulk and distributed where it would in the end realize to the producer a greater value than would the raw material it shipped into New England in the larger volume."

At page 1377 Mr. Peabody's attention was called by counsel to certain items in the tariffs of the Santa Fe, which he was asked to look up, but we do not find in the printed record any further reference to the matter. It was conceded upon the trial, however, that the figures were correct, and they show a number of items upon which the finished product takes a lower rate than the raw material, as, for instance, pig iron, $3.08 per ton from Chicago to Kansas City, rails being the product $2 per ton; malt 10c per hundred, barley 15c per hundred, malt being the product of barley; paint 17c per hundred, linseed oil 27c per hundred, turpentine 27c per hundred, the oil and turpentine being the material from which the paint is manufactured. And more significant than this, because it shows a practice absolutely opposed to the relation of rates now contended for by the Commission, attention is called to page 1374, where it appears by Appendix G to the 16th Annual Report of the Interstate Commerce Commission, entitled "A Forty Year Review of Changes in Freight Rates," that for sixteen years

and seven months out of a total period of twenty-three years, extending from 1879 to 1902, the rates upon live cattle to Chicago were higher than the rates upon the product of cattle by from 5c to 7½c, and that during about one and a half months of that period the rates on live cattle were from 17 to 20c higher than the rates upon the product; and that during the same period for fifteen years and six months, the rates on live hogs from Kansas City to Chicago were higher than the rates on their product by from 5c to 11.64c per hundred; and that the rates on live cattle from Kansas City to St. Louis were higher than the rates on their product for sixteen years and ten months out of said period of twenty-three years by from 5c to 15¼c.

In conclusion it is respectfully submitted that upon the evidence in the case, the findings of fact of the trial court are abundantly sustained by the testimony, and it will probably not be seriously controverted that if the findings of fact are correct, the decree of the court below must be affirmed.

Respectfully submitted,

CORDENIO A. SEVERANCE,
FRANK B. KELLOGG,
ROBERT E. OLDS,

Solicitors for Defendant Chicago Great Western Railway Company.

INTERSTATE COMMERCE COMMISSION *v.* CHICAGO GREAT WESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 73. Argued April 16, 17, 1907.—Decided March 23, 1908.

Railroads are the private property of their owners, and while the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, the public is in no proper sense a general manager. The companies may, subject to change of rates provided for in the Interstate Commerce Act, contract with shippers for single and successive transportations and in fixing their own rates may take into account competition, provided it is genuine and not a mere pretense.

There is no presumption of wrong arising from a change of rate made by a carrier. The presumption of good faith and integrity attends the action of carriers as it does the action of other corporations and individuals and those presumptions have not been overthrown by any legislation in respect to carriers.

A rate on the manufactured article resulting from genuine competition and natural conditions is not necessarily an undue and unreasonable discrimination against a manufacturing community because it is lower than the rate on the raw material; and, under the circumstances of this case, there was no undue and unreasonable discrimination against the Chicago packing-house industries on the part of the railroads in making, as the result of actual competition and conditions, a lower rate for manufactured packing-house products than for livestock from Missouri River points to Chicago.

141 Fed. Rep. 1003, affirmed.

CERTAIN proceedings were had before the Interstate Commerce Commission. They were commenced by the filing of a petition by the Chicago Live Stock Exchange in April, 1902, charging the defendants, who are now the appellees, with the violation of §§ 1 and 3 of the Interstate Commerce Act of February 4, 1887. The specific offense stated was that the defendants were charging higher rates of freight upon live stock shipped from Missouri River points, and other points

similarly situated, to Chicago, than upon dressed meats and the prepared products known as packing-house products. It was contended that this higher rate of freight was an unlawful discrimination against shippers of live stock to Chicago, and gave to shippers of packing-house products an undue and unreasonable preference and advantage over the former; that it subjected the Chicago Live Stock Exchange and its members, who were engaged in the business of selling live stock on commission, as well as the owners of live stock and the shippers thereof, to an unreasonable prejudice and disadvantage. The several defendants, with one or two exceptions, answered, denying the allegations of the complaint. After a hearing, the Interstate Commerce Commission, on January 7, 1905, filed its report and opinion, including findings of fact, and made an order, which is the foundation of this suit. The order is in these words:

"Order of Commission.

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

"It is ordered, that, in accordance with said report and opinion, the present relation of rates maintained and enforced by defendants [naming them all, eighteen in number], whereby their rates for transportation are higher upon live cattle and live hogs than upon the dressed or prepared products of cattle and hogs on shipments thereof to Chicago, in the State of Illinois, from points on the Missouri River, Sioux City, in the State of Iowa, to Kansas City, in the State of Missouri, inclusive, and from South St. Paul, in the State of Minnesota, or from points in the territory between the Missouri River or South St. Paul and Chicago, constitutes wrongful prejudice

and discrimination, in violation of the provisions of the act to regulate commerce; and that said defendants be, and each of them is hereby, notified and required to cease and desist, on or before the fifteenth day of February, 1905, from maintaining or enforcing the said unlawful relation of rates, and from further continuing said unlawful prejudice and discrimination.

"And it is further ordered, that a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of section 15 of the act to regulate commerce."

The defendants not complying with this order, the Interstate Commerce Commission caused this suit to be commenced in the Circuit Court of the United States for the Northern District of Illinois, seeking to compel compliance. The defendants answered, admitting service of the order and refusal to comply therewith, denying that it was legal or binding, but on the contrary claiming that it was in violation of their rights. After the filing of the petition to enforce the order of the Commission and the answers thereto, and in August, 1905, the Commission also commenced an original proceeding under and by virtue of the act of February 19, 1903 (32 Stat. 847), known as the Elkins Act, charging substantially the same discrimination. These cases were consolidated and heard before the Circuit Court, an enormous volume of additional testimony being taken, and on November 20, 1905, that court announced its opinion, stated its findings of fact and conclusions of law, and ordered that the bill should be dismissed. A decree accordingly was so entered. 141 Fed. Rep. 1003. The findings of fact were as follows:

"First. That the live stock rates are reasonable in themselves. All live stock from points west, southwest and northwest of the Missouri River and St. Paul are shipped on a proportional rate from the Missouri River or St. Paul to Chicago. These rates are equal to or less than the rates on dressed meats

and packing-house products between the same points. There can be, and is, no complaint as to such traffic. The local rates from the Missouri River and St. Paul, and from 150 miles east, to Chicago, are as shown in above schedule. These rates gradually decrease until the Mississippi River is reached, and the average Iowa rate is 21 cents. The great weight of evidence indicates that these rates are at least reasonably low.

"Second. That the cost of carrying live stock is greater than that of carrying dressed meats and packing-house products.

"Third. That the value of the service of carriage is greater to the packers, because of the higher price of a car of dressed meats or packing-house products. Dressed meats and packing-house products are in value worth nearly twice as much as live stock. This factor is important, in ordinary cases, however, in part, because of the greater risk of carriage of high-priced commodities. In these cases, as to the particular commodities in question, the evidence shows that the defendant railroad companies pay out a much larger amount in damages for losses arising from the carriage of live stock than they do for losses arising from the carriage of dressed meats and packing-house products, in proportion to the value of the products carried, and more in damages per car regardless of the value. This makes the risk of carriage greater for live stock. The result is that the value of the service is not such an important factor in this kind of a case as it is considered to be in ordinary cases.

"Fourth. That the rates in question given to the packers at Missouri River and St. Paul were the result of competition. The product of the packers at these points was large in quantity, was certain and continuous in amount, was in the hands of a few people, and for years before the Federal injunction of March, 1902, had been competed for so strenuously by the railroads reaching and passing through these points, as to cause the cutting of rates and the giving of secret rebates in large amounts. Four of the defendant companies, the Chicago,

Milwaukee & St. Paul Railroad Company, the Chicago & Northwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Burlington & Quincy Railroad Company, passed through these points into the territory west of the Missouri River and St. Paul. Four other of the defendant companies, the Chicago Great Western Railway Company, the Chicago & Alton Railway Company, the Illinois Central Railroad Company, and the Wabash Railroad Company reached the Missouri River points and St. Paul, competing for this business. Other railroads, running south to the Gulf of Mexico, also competed more or less for said business, including the Atchison, Topeka & Santa Fé Railway. After said injunction was granted the defendant railroads (according to evidence herein) obeyed it, and until August of that year the said traffic was carried under competition between the defendants at the rate of 23½ cents from Missouri River points to Chicago, and 25 cents from St. Paul to Chicago, etc., as set out above. As a result of such competition, the Chicago Great Western Railway Company became dissatisfied with the proportion of the business it received, and, in order to get what it claimed as its share, cut the rate to 20 cents to Chicago and 18½ cents to the Indiana line for eastern business, and published the same. This it did under a contract with the packers running for seven years. The Chicago Great Western Railway Company was the longest route from Chicago to the Missouri River points. The other railroad defendants, to meet the rate made by the Chicago Great Western Railway Company, as a result of competition, met and published the same rate. These rates were not made voluntarily, but from necessity arising from competition; the necessity being that of carrying the goods at the lower rate or losing the business to which the officers of said companies thought they were entitled. This cutting of the rate by the Chicago Great Western Railway Company was not the origin of competition. That had existed legally since March, 1902, between defendant railroads and also between them and the Atchison, Topeka & Santa Fé

Railway Company. There was not competition enough at said points to lower the rate as to live stock. There was little and different competition on rates as to live stock at points between the Missouri River and St. Paul and Chicago. The only places where the opportunities for competition existed as to live stock the same as to packing-house products were immediately at Missouri River points and St. Paul, and there only as to live stock driven in on foot from the surrounding country. There is comparatively a small amount of this stock. If it was exactly the same kind of a commodity as that furnished by the packers there would be an opportunity for competition in this at these points alone.

"Fifth. That the competition in question did not result from agreement of the defendants, but was actual, genuine competition.

"Sixth. That the present rates on live stock have not materially affected any of the markets, prices, or shipments; that they are reasonably fair to Chicago and to the shippers; that the shipments of live stock from points between Chicago and the Missouri River and St. Paul are as great in proportion to the volume of business as before the present rates were made; that the majority of the live stock comes to Chicago from points as near as 150 miles this side of the Missouri River and St. Paul, and that the lower rate given to the packers does not seem to directly influence or injure the shippers of live stock.

"Seventh. That the rates for carrying packers' products and dressed meats were remunerative. They did not pay any portion of the fixed charges and interest of the railroad companies, nor its full share of the operating expenses, but they did pay more than its cost of movement and leave something to apply upon operating expenses.

"Eighth. That the welfare of the public, including the shippers, consumers, and all localities and markets, does not seem to be materially affected by the present rates.

"Ninth. That the usual custom for railroads is to charge a higher rate for the finished product than for the raw ma-

terial, and this, as a rule, has been applied to live stock and its finished products. This is not universal, however. There are many commodities where the raw material is charged more for carriage than its finished product, as in the case of the raw material of cotton and compressed cotton, straw, unbaled and baled, pig iron and its products, and many other commodities. It also appears that for sixteen years out of twenty-three, between Missouri River points and St. Paul and Chicago, the published rates on live stock were higher than on dressed meats and packing-house products. Many witnesses testified that the ideal rate for the finished product would be higher than the raw material. This, however, was based on the presumption that competition or commercial necessity did not interfere, and that the cost of service and value of the products would be greater in case of the finished products than in that of the raw material."

Section 3 of the Interstate Commerce Act, 24 Stat. 380, so far as it is material for this case, is as follows:

"It shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

And § 3 of the Elkins Act, 32 Stat. 847, provides:

"That whenever the Interstate Commerce Commission shall have reasonable ground for believing that any common carrier . . . is committing any discriminations forbidden by law, a petition may be presented alleging such facts" (such discrimination), "to the Circuit Court of the United States sitting in equity having jurisdiction . . . and upon being satisfied of the truth of the allegations of said petition said court shall . . . require a discontinuance of such discrimination by proper orders, writs," etc.

Mr. L. A. Shaver and *Mr. S. H. Cowan* for appellant:

A higher rate on live stock than on its products is contrary to the natural rule or law that the raw-material rate shall not be higher than that on the manufactured article.

A departure from that rule is contrary to public policy, because it involves the destruction of large public interests which have been built up under the rule.

The making of the live-stock rate higher than the product rate is contrary to the almost universal practice of carriers throughout the country under which the rate on live stock is made no higher, but in many instances less, than the rate on the prepared product.

The higher rate on the live stock than on the product is violative of the rule that, other things being equal, value should control or be taken into account in rate making—the article of higher value taking a higher rate than one of lower value.

The changed relation is unlawful because it was made for an unlawful purpose, namely, the building up of the Missouri River markets at the expense of the Chicago markets, and its natural tendency is to that end.

The changed relation is unlawful because it was initiated by the Chicago Great Western Railway Company solely with a view of promoting its own interest and without regard to the public interest involved.

The changed relation is unlawful because there was no legitimate competition in rates necessitating it—the only prior competition being in the shape of rebates.

The contract of the Chicago Great Western Railway Company with the Missouri River packers is unlawful under the so-called "anti-trust" act because it gives that company a "monopoly of a part of the trade or commerce among the several States," and, also, because it is "a contract in restraint of trade and commerce among the several States."

The contract is unlawful because it was for the reduction of a rate on the product claimed to be already unreasonably

low and which, that being the case, as reduced, places a burden upon other traffic.

The contract is unlawful because it gives an undue preference to one article of traffic (the product) over another article of traffic (live stock), both articles being in active competition with each other in the markets.

Mr. Cordenio A. Severance, with whom *Mr. Frank B. Kellogg* and *Mr. Robert E. Olds* were on the brief, for appellee, Chicago Great Western Railway Company:

Findings of fact by the Circuit Court should be accepted on appeal as witnesses testified in open court. *Halsell* v. *Renfrow*, 202 U. S. 291; *Shappirio* v. *Goldberg*, 192 U. S. 240; *Beyer* v. *Le Fevre*, 186 U. S. 119; *Stuart* v. *Hayden*, 169 U. S. 14; *Warren* v. *Keep*, 155 U. S. 267; *Crawford* v. *Neal*, 144 U. S. 596; *Evans* v. *Bank*, 141 U. S. 107.

The contract between respondent Chicago Great Western Railway Company and various packers was proper exercise of its right to compete for business. *Cotting* v. *Godard*, 183 U. S. 79; *Hopkins* v. *United States*, 171 U. S. 600; *Delaware, Lackawanna & Western Ry. Co.* v. *Kutter*, 147 Fed. Rep. 51; *Interstate Comm. Comm.* v. *B. & O. Ry. Co.*, 43 Fed. Rep. 37; *Whitwell* v. *Continental Tobacco Co.*, 125 Fed. Rep. 454.

The rate on live-stock products brought about by the Chicago Great Western contract did not involve an undue preference or unjust discrimination within the meaning of the Interstate Commerce law. *Interstate Comm. Comm.* v. *B. & O. Ry. Co.*, 145 U. S. 276; *East Tenn., V. & G. Ry. Co.* v. *Interstate Comm. Comm.*, 181 U. S. 1; *Texas & Pacific Ry. Co.* v. *Interstate Comm. Comm.*, 162 U. S. 197; *Interstate Comm. Comm.* v. *Alabama Midland Ry. Co.*, 168 U. S. 144; *Louisville & Nashville Ry. Co.* v. *Behlmer*, 175 U. S. 648; *Interstate Comm. Comm.* v. *Louisville & Nashville Ry. Co.*, 190 U. S. 273; *D., L. & W. Ry. Co.* v. *Kutter*, 147 Fed. Rep. 51; *Interstate Comm. Comm.* v. *B. & O. Ry. Co.*, 43 Fed. Rep. 37; *Platt* v. *Le Cocq*, 150 Fed. Rep. 391; *Interstate Comm. Comm.* v. *Western & Atlantic*

Ry. Co., 93 Fed. Rep. 83; Judson on Interstate Commerce, §§ 175–183.

Neither the Commission nor the court had the right to ignore the relative cost of the service in determining whether the apparent discrimination was undue or unreasonable. *Squire* v. *Michigan Central Ry. Co.*, 3 I. C. C. R. 521.

The Commission, previous to the amendment of the law in 1906, had no power to fix rates, and hence no power to establish the relation between rates. *Cincinnati, N. O. & Tex. Pac. Ry. Co.* v. *Interstate Comm. Comm.*, 162 U. S. 184; *Interstate Comm. Comm.* v. *C., N. O. & Tex. Pac. Ry. Co.*, 167 U. S. 479; *Interstate Comm. Comm.* v. *Alabama Midland Ry. Co.*, 168 U. S. 145; *Southern Pacific Co.* v. *Colorado Fuel & Iron Co.*, 101 Fed. Rep. 779.

Findings of fact of the lower court, from which the conclusion necessarily followed that respondents have a decree in their favor, was abundantly supported by the testimony and the law.

Mr. Ed. Baxter for appellees as of record. *Mr. Charles A. Clark* for intervenor, T. M. Sinclair & Company, Limited. *Mr. Frank T. Ransom* for intervenor, Union Stock Yards Company of Omaha, Limited. *Mr. Stephen S. Brown* and *Mr. John E. Dolman* filed a brief on behalf of intervenor, St. Joseph Stock Yards Company of St. Joseph, Missouri. *Mr. S. A. Lynde* filed a brief on behalf of appellee, The Chicago & Northwestern Railway Company.

Mr. Justice Brewer, after making the foregoing statement, delivered the opinion of the court.

It is unnecessary to define the full scope and meaning of the prohibition found in § 3 of the Interstate Commerce Act—or even to determine whether the language is sufficiently definite to make the duties cast on the Interstate Commerce Commission ministerial, and therefore such as may legally be imposed

upon a ministerial body, or legislative, and therefore, under the Federal Constitution, a matter for Congressional action—for within any fair construction of the terms "undue or unreasonable" the findings of the Circuit Court place the action of the railroads outside the reach of condemnation.

The complainant, before the Interstate Commerce action, was an incorportated association. The purposes for which it was organized were, as stated in its charter, "to establish and maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to provide for the speedy adjustment of all business disputes between its members; to facilitate the receiving and distributing of live stock, as well as to provide for and maintain a rigid inspection thereof, thereby guarding against the sale or use of unsound or unhealthy meats; and generally to secure to its members the benefits of coöperation in the furtherance of their legitimate pursuits." Its members were, as found by the Commerce Commission, "engaged in the purchase, shipment and sale of live stock for themselves and upon commission." It was such an association, with members engaged in the business named, that initiated these proceedings and in whose behalf they were primarily prosecuted. While it may be that the proceedings are not to be narrowly limited to an inquiry whether this particular complainant has been in any way injured by the action of the railroad companies, yet that question must be regarded as the one which was the special object of inquiry and consideration. It is true that the Commission subsequently commenced under the Elkins Act an independent suit in its own name, but it was practically to enforce the award made by the Commission after its inquiry into the controversy between the live stock exchange and the railroad companies.

It must be remembered that railroads are the private property of their owners; that while from the public character of the work in which they are engaged the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet in no

proper sense is the public a general manager. As said in *Int. Com. Com.* v. *Ala. Mid. R. R. Co.*, 168 U. S. 144, 172, quoting from the opinion of Circuit Judge Jackson, afterwards Mr. Justice Jackson of this court, in *Int. Com. Com.* v. *B. & O. R. R. Co.*, 43 Fed. Rep. 37, 50:

"Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits."

It follows that railroad companies may contract with shippers for a single transportation or for successive transportations, subject though it may be to a change of rates in the manner provided in the Interstate Commerce Act—*Armour Packing Co.* v. *The United States*, *ante*, p. 56, and also that in fixing their own rates they may take into account competition with other carriers, provided only that the competition is genuine and not a pretense. *Int. Com. Com.* v. *B. & O. R. R. Co.*, 145 U. S. 263; *T. & P. Ry. Co.* v. *Int. Com. Com.*, 162 U. S. 197; *Int. Com. Com.* v. *Ala. Mid. Ry. Co.*, *supra*; *L. & N. R. R. Co.* v. *Behlmer*, 175 U. S 648; *East Tenn. &c. Ry. Co.* v. *Int. Com. Com.*, 181 U. S. 1; *Int. Com. Com.* v. *L. & N. R. R. Co.*, 190 U. S. 273.

It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly when rates are changed the carrier making the change must,

when properly called upon, be able to give a good reason therefor, but the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done. Those presumptions of good faith and integrity which have been recognized for ages as attending human action have not been overthrown by any legislation in respect to common carriers.

The Commerce Commission did not find whether the rates were reasonable or unreasonable *per se*. Its omission may have been owing, partly at least, to the decision in *Interstate Commerce Commission* v. *C., N. O. & T. P. Ry. Company*, 167 U. S. 506, for this controversy arose before the amendment of June 29, 1906. 34 Stat. 584. On the other hand, the Circuit Court found specifically that the live-stock rates were reasonable, and also that the rates for carrying packers' products and dressed meats were remunerative. See Findings 1 and 7. Obviously shippers had in the rates considered separately no ground of challenge. But the burden of complaint is not that any rates taken by themselves were too high, but that the difference between those on live stock and those on dressed meats and packers' products worked an unjust discrimination.

It is insisted that "the making of the live-stock rate higher than the product rate is violative of the almost universal rule that the rates on raw material shall not be higher than on the manufactured product." This may be conceded, but that the rule is not universal the proposition itself recognizes, and the findings of the court give satisfactory reasons for the exception here shown. See Findings 2, 3 and 9. The cost of carriage, the risk of injury, the larger amount which the companies are called upon to pay out in damages make sufficient explanation. They do away with the idea that in the relation established between the two kinds of charges any undue or unreasonable preference was intended or secured.

Finding No. 6 is very persuasive. It reads:

"Sixth. That the present rates on live stock have not materially affected any of the markets, prices, or shipments;

that they are reasonably fair to Chicago and to the shippers; that the shipments of live stock from points between Chicago and the Missouri River and St. Paul are as great in proportion to the volume of business as before the present rates were made; that the majority of the live stock comes to Chicago from points as near as 150 miles this side of the Missouri River and St. Paul, and that the lower rate given to the packers does not seem to directly influence or injure the shippers of live stock."

If the rates complained of have not materially affected any of the markets, prices, or shipments; if they are reasonably fair to Chicago and the shippers; if the shipments of live stock from the west to Chicago are as great in proportion to the bulk of the business as before the present rates were made, and the lower rate given to the packers does not directly influence or injure the shippers of live stock; it is difficult to see what foundation there can be for the claim of an undue and unreasonable preference. It would seem a fair inference from the findings that the real complaint was that the railroad companies did not so fix their rates as to help the Chicago packing industry; that they recognized the fact that along the Missouri River had been put up large packing-houses, and, without any intent to injure Chicago, had fixed reasonable rates for the carrying of live stock to such packing-houses and also to Chicago; that those packing-houses being nearer to the cattle fields were able to engage in the packing industry as conveniently and successfully as the packing-houses in Chicago. If we were at liberty to consider the mere question of sentiment, certainly to place packing-houses close to the cattle fields, thus avoiding the necessity of long transportation of the living animals—a transportation which cannot be accomplished without more or less suffering to them—and to induce transportation to those nearer packing-houses would deserve to be commended rather than condemned.

With reference to competition we have referred to the cases in this court in which that matter has been considered. Ac-

cording to the fourth finding the rates in question given to the packers at the Missouri River and St. Paul were the result of competition. Without recapitulating all the facts disclosed in that finding it is enough to say that the Chicago Great Western Railway Company, which had the longest line from Chicago to Missouri River points, made a reduction in the rates, and did this, as its president testified, "for the purpose of securing a greater proportion of the traffic in the products of live stock than it had been previously able to obtain." That is one of the facts inducing competition, and one of the results expected to flow from a reduction of rates. It certainly of itself deserves no condemnation. In order to secure to themselves what was likely to be transferred to the Great Western by virtue of its reduction of rates, the other companies also made a reduction and, as shown by the fifth finding, the competition was not the result of agreement, but was an "actual, genuine, competition." It may be true, as contended by counsel for the appellant, that even a genuine competition which results in a change of rates does not necessarily determine the question whether the rates as fixed work an undue preference or create an unlawful discrimination. Those rates fixed may make a preference or discrimination irrespective of the motives which caused the railway companies to adopt them, and yet the fact of a genuine competition does make against the contention that the rates were intended to work injustice. An honest and fair motive was the cause of the change in rates; honest and fair on the part of the Great Western in its effort to secure more business, and equally honest and fair on the part of the other railway companies in the effort to retain as much of the business as was possible. In other words, this competition eliminates from the case an intent to do an unlawful act, and leaves for consideration only the question whether the rates as established do work an undue preference or discrimination; and as the findings of the court show that the result of the new rates has not been to change the volume of traffic going to Chicago, or materially affect the business

of the original complainant, it would seem necessarily to result that the charge of an unlawful discrimination is not proved. In short, there was no intent on the part of the railway companies to do a wrongful act, and the act itself did not work any substantial injury to the rights of the complainant.

We have not attempted to review in detail the great mass of testimony, amounting to two enormous printed volumes. It is enough to say that an examination of it clearly shows sufficient reasons for the findings of fact made by the Circuit Court.

In short, the findings of the Circuit Court were warranted by the testimony, and those findings make it clear that there was no unlawful discrimination.

The decree of the Circuit Court is

Affirmed.

MR. JUSTICE MOODY did not hear the argument nor take part in the decision of this case.